UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1808

September Term, 2012

SAMAR GHADRY

v.

PENSON FINANCIAL SERVICES, INC.

Krauser, C.J.,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: May 7, 2015

Samar Ghadry, appellant, hired Martin Angeli to sell her more than a million-and-a-half shares of stock in Paradigm Holdings, Inc. At his direction, she subsequently opened an account with appellee, Penson Financial Services, Inc., a "clearing corporation,"[1] to facilitate the sale. To open that account, Ghadry was required to sign a "Customer Account Agreement," the front page of which was e-mailed to her for her signature. It stated in bold capital letters directly above the signature line: "**BY SIGNING BELOW, THE UNDERSIGNED AGREES TO ALL TERMS OF THE CUSTOMER AGREEMENT PRINED ON THIS SIDE AND THE REVERSE OF THIS DOCUMENT**. . . ." It further advised, also in bold capital letters, that "**THE REVERSE SIDE OF THIS AGREEMENT, PARAGRAPH 8, CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE.**" But that e-mailed front page, understandably, had no reverse side with printed terms, and it was not purportedly provided to her at the time she was sent the front page of the agreement.

After Angeli—who did not work for Penson—unlawfully and without Ghadry's knowledge retained a fifth of the proceeds of what was more than a three-million-dollar stock sale, by misrepresenting the amount of the money received from that sale, Ghadry brought an action, in the Circuit Court for Montgomery County, alleging thirteen counts against him, Penson, and several others, whom she believed were indirectly or individually

[1] Clearing corporations are "organizations . . . that are exchange-affiliated and facilitate the validation, delivery, and settlement of securities transactions." Dictionary of Finance and Investment Terms 119 (8th ed. 2010).

responsible for her monetary loss.[2] Penson responded by moving to enforce the arbitration clause and to stay the action. While conceding that she did, in fact, sign the front page of the agreement, which referred to the arbitration clause, Ghadry opposed that motion, contending that she never received the reverse side of that page, which contained the arbitration clause, and therefore was not bound by it to submit her claims against Penson to arbitration. The circuit court ultimately granted Penson's motion to compel arbitration and stayed the action pending the outcome of that arbitration. Then, after a panel of arbitrators "denied" Ghadry's claim against Penson "in its entirety," Ghadry filed an appeal from the order of the circuit court compelling arbitration. Finding no error, we affirm.

Facts

Ghadry sought to retain the services of Martin Angeli to sell 1,590,000 shares of stock she owned in Paradigm Holdings, Inc. To that end, on May 1, 2006, she and Angeli entered into a "Stock Selling Agreement" wherein Ghadry agreed to pay a two-percent commission and a $20,000 bonus to Angeli, upon the sale of those shares. The proceeds from the sale were to be deposited in Ghadry's Bank of America account. That month, according to Ghadry, she and Angeli "spoke every two to three days about the status of the transaction," during which Angeli repeatedly represented to her that he was "working on it" and that he was "close to a deal."

[2] Ghadry brought suit against KH Funding Company; Prime Global Securities, Inc.; Forum Trading Corp.; FTC Capital Markets, Inc.; FTC Group, Inc; Penson Financial Services, Inc.; Martin Angeli; and Sonia Aguirre Pietri De Angeli.

On May 30, 2006, Ghadry received an e-mail from Angeli notifying or, more accurately, "misinforming" her that he had sold her stock at the sought-after price of $2.00 per share and requesting her to send him her "bank information" so that he could then deposit the $3,045,734, constituting the proceeds of the sale minus "fees, commissions, markup, execution cost, etc." into her account. He further assured her, in that e-mail, that he would "not be owed anything" else and that the "payment w[ould] complete the transaction to the full satisfaction of the parties involved." Ghadry responded by providing Angeli with the information he requested with the expectation that he would then deposit the funds into her Bank of America account.

But, instead of transferring the proceeds from the stock sale to that account, as agreed, Angeli thereafter asked Ghadry to open an account with Penson, a clearing corporation, assuring her that the proceeds of the sale would be transferred to that account and then distributed to her. To open the Penson account, Ghadry was required to fill out a "Customer Account Agreement"—which is the focus of the instant appeal.

The parties do not dispute that Ghadry received by e-mail the front page of the Customer Account Agreement. Nor is there any disagreement that she signed that page and faxed a signed copy back to Angeli. The front page advised Ghadry that by signing that page she was "agree[ing] to all terms of the customer agreement printed on this side and the reverse of this document," and it then went on to advise her that "[t]he reverse side of this agreement, paragraph 8, contains a pre-dispute arbitration clause." In contrast to the text of the printed front page, that advisement was in bold capital letters and was directly above the signature line. It read:

> **BY SIGNING BELOW, THE UNDERSIGNED AGREES TO ALL TERMS OF THE CUSTOMER AGREEMENT PRINTED ON THIS SIDE AND THE REVERSE OF THIS DOCUMENT. THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT, THE INFORMATION BROCHURE PREPARED BY PENSON FINANCIAL SERVICES, INC., AND PENSON'S PRIVACY POLICY. THE UNDERSIGNED CERTIFIES THAT THE UNDERSIGNED HAS READ AND UNDERSTANDS ALL PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT BENEFITS PENSON FINANCIAL SERVICES, INC., INTRODUCING BROKERS FOR WHICH IT CLEARS AND PERSONS RELATED TO EACH OF THE FOREGOING. THE REVERSE SIDE OF THIS AGREEMENT, PARAGRAPH 8, CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE.**

(Underlining added.)

Ghadry asserted that, a month later, in July of 2006, she received a four-page "Statement of Account," from Prime Global Securities, Inc.,[3] that advised her that $3,045,734 had been transferred to her Bank of America account but that an additional $864,298 had been transferred to a different account, an account of which that she had no prior knowledge.[4] As it turned out, Angeli had sold Ghadry's shares for $2.50 per share—50¢ more per share than what he had represented to Ghadry had been the sales price per share. Moreover, in perpetrating this fraud, Angeli had forged Ghadry's signature on two "wire request forms," one of which authorized the transfer of $3,045,734 to Ghadry's Bank of America account and the other authorized the transfer of $864,298 to a second account—which Ghadry alleged was controlled by Angeli and his mother—in the name of KH Funding Company "for further credit to SA Ghadry."

[3] The relationship among Prime Global Securities, Inc.; Penson; and Angeli is unclear from the record.

[4] Suggesting that Penson was somehow involved with that statement sent to her from Prime Global, was the phrase, written in capital letters on the bottom of the statement's pages, "accounts carried by Penson Financial Services, Inc."

In April of 2008, the Securities Division of Maryland's Office of the Attorney General notified Ghadry that it was conducting an investigation of Angeli for securities fraud. That notification apparently led Ghadry to pursue her own inquiry. Thereafter, she requested and obtained documents from Maryland's Security Commissioner, including copies of the wire forms bearing her forged signatures which, she claimed, was the first time that she was ever given an opportunity to see the pre-dispute arbitration clause.

Later that year, Ghadry filed a complaint, in the Montgomery County circuit court, alleging multiple counts of, among other things, negligence, fraud, conversion, and breach of contract against several defendants, including Angeli, whose whereabouts were and are presently unknown, and Penson. The counts against Penson allege negligence and sought a "re-credit of account for unauthorized transfers." In response, Penson, relying on the Customer Account Agreement Ghadry had signed in opening her account with Penson, moved to compel arbitration of Ghadry's claims and to stay the suit Ghadry had filed in circuit court, pending that arbitration.

Ghadry opposed Penson's motion, asserting that "she never received a copy of the 'terms and conditions' page" of that agreement and that "therefore, never agreed to the 'terms and conditions,' which included the arbitration clause." "Had she received the entire agreement at the time she executed the" Customer Account Agreement, Ghadry claimed that she "would not have agreed to waive her rights to a jury trial." But she did not dispute that she had received and signed the front page of the Customer Account Agreement, which informed her, in bold capital letters, immediately above the signature line: "**THE REVERSE SIDE OF THIS AGREEMENT, PARAGRAPH 8, CONTAINS A PRE-DISPUTE ARBITRATION**

CLAUSE." In fact, Ghadry asserted, in an affidavit submitted with her motion for reconsideration of the court's orders granting Penson's motions to compel arbitration and to stay all proceedings pending in the circuit court, that Angeli "emailed [her] two pages of new account forms, and a one-page Customer Account Agreement to complete." That one page she admitted receiving was the front page which referred to an arbitration clause on the reverse side of that page.

Discussion

Ghadry contends that she never agreed to arbitrate any dispute between her and Penson because "no document signed by her contained an arbitration clause or similar statement that she would be required to arbitrate with Penson." While conceding that she did receive and sign one page of the agreement, which stated that there was a pre-dispute arbitration clause on the reverse side, she asserts that that statement did not "involve a true incorporation by reference of the terms of one document into another" and that she was "presented in the first instance with an incomplete document."

"A trial court's order to compel arbitration constitutes a final and appealable judgment." *Walther v. Sovereign Bank*, 386 Md. 412, 422 (2005). Our review of such an order "extends only to a determination of the existence of an arbitration agreement." *Id.* (citations and internal quotation marks omitted). That is a question of law, which we review *de novo*, *Holloman v. Circuit City Stores, Inc.*, 391 Md. 580, 588 (2006) (quoting *Walther*, 386 Md. at 422), keeping in mind that there is a "strong policy, made clear in both federal and Maryland law, that favors the enforcement of arbitration provisions," *Walther*, 386 Md. at 438.

To determine whether an agreement to arbitrate exists, we look to well-established principles of contract. *Holloman v. Circuit City Stores, Inc.*, 391 Md. 580, 590 (2006). Under the objective interpretation of contract, to which Maryland adheres, "where the language employed in a contract is unambiguous, a court shall give effect to its plain meaning and there is no need for further construction by the court." *The Redemptorists v. Coulthard Services, Inc.*, 145 Md. App. 116, 144–45 (2002) (quoting *Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250–51 (2002)). The "'test of what is meant is . . . what a reasonable person in the position of the parties would have thought' the contract to mean." *Phoenix Services Ltd. Partnership v. Johns Hopkins Hosp.*, 167 Md. App. 327, 392 (2006) (quoting *Society of Am. Foresters v. Renewable Natural Res. Found.*, 114 Md. App. 224, 234 (1997)). On the other hand, "[c]ontractual language is considered ambiguous when the words are susceptible of more than one meaning to a reasonably prudent person." *Id.* "To determine whether a contract is susceptible of more than one meaning, the court considers 'the character of the contract, its purpose, and the facts and circumstances of the parties at the time of the execution.'" *Id.* (quoting *Pacific Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985)).

Finally, "under Maryland law, a party who signs a contract is presumed to have read and understood its terms and as such will be bound by its execution." *Holloman*, 391 Md. at 595. That is because

> one is under a duty to learn the contents of a contract before signing it; if, in the absence of fraud, duress, undue influence, and the like he fails to do so, he is presumed to know the contents, signs at his peril, suffers the consequences of his negligence, and is estopped to deny his obligation under the contract.

Holzman v. Fiola Blum, Inc., 125 Md. App. 602, 629 (1999) (quoting 17 C.J.S. Contracts § 137(b) (1961)). In short, "the usual rule is that if there is no fraud, duress or mutual mistake, one who has the capacity to understand a written document who reads and signs it . . . is bound by his signatures as to all of its terms." *Binder v. Benson*, 225 Md. 456, 461 (1961). And, more on point, "a signer's duty to read and understand that which it signed is not diminished merely because the signer was provided with only a signature page." *Marciano v. DCH Auto Group*, 14 F. Supp. 3d 322, 330 (S.D.N.Y. 2014) (alteration marks omitted) (quoting *Dasz, Inc. v. Meritocracy Ventures*, Ltd., 969 N.Y.S.2d 653, 655 (N.Y. App. Div. 2013)).

The logical corollary of the foregoing principle is that, when a party to a contract is plainly notified by the front page of a form contract that she will be bound by the terms of a page of that contract she has not yet received, and yet she nonetheless signs that contract, she will be, in fact, bound by those terms, in the absence of fraud, duress, or mutual mistake, or other circumstances that place in question whether she knowingly and voluntarily signed that agreement.

Moreover, Ghadry does not allege that she did not read and understand the front page of the Customer Account Agreement that plainly referred to an arbitration clause on the "reverse" side. In fact, she represented that she had received, read, and signed the front page of the agreement. And, according to the front page of the Customer Account Agreement, Ghadry, by affixing her signature to that document, she, among other things, "agree[d] to all terms" of the agreement and confirmed she had "read and underst[ood] all

provisions" of the agreement. She was therefore on notice that there was an arbitration clause on the reverse side of the front page.

Furthermore, Ghadry does not claim she made any attempt to procure the missing pages of the agreement, a failure that amounted to negligence. Although she claims to have received only the front page, there is no reason not to have requested the rest of the agreement, save a conscious willingness to be bound by what she presumed was a standard arbitration clause, or a desire to disavow the applicability of such a clause of a dispute between the parties ever arose. The document she received was clear and unambiguous; the reference to the arbitration clause was written in bold capital letters and occupied a conspicuous and noteworthy location on the page, that is, directly above where Ghadry ultimately placed her signature. Upon signing the page, and thereby confirming that she agreed to "all terms of the Customer [Account] Agreement printed on this side and the reverse of this document," it became Ghadry's responsibility to request any pages that she had not received or read. For this Court to hold otherwise would reward Ghadry for her negligence or indifference. Such a result would contravene the basic principles that underlie the laws of contract in Maryland.

Finally, although there are no cases directly on point, *Harby ex rel. Brooks v. Wachovia Bank, N.A.*, 172 Md. App. 415 (2007), offers some guidance in this matter. There, we addressed whether a bank's "Customer Access Agreement," signed by a bank client, and which referred to a "Deposit Agreement" containing an arbitration clause, which was not signed by the same client, bound that client to arbitrate disputes concerning the account. In that case, after a minor child had received $100,000 in proceeds from his

father's insurance policy, the court appointed the child's mother as the guardian of those proceeds. *Id.* at 417. As guardian, she then attempted to open an account at Wachovia Bank and deposit the proceeds there. *Id.* To do so, she was required by the bank to sign a "Customer Access Agreement." *Id.* In signing that contract, she agreed to, among other things, the terms of the bank's "Deposit Agreement and Disclosures," which contained an arbitration clause. *Id.* at 417–18. At the time she executed the access agreement, she was given a copy of the "Deposit Agreement and Disclosures." *Id.* at 418.

Sometime later, the child's mother withdrew funds from the Wachovia account in violation of the court's order that she not do so without the court's permission. *Id.* at 417. As a result of the mother's violation of that order, the court removed the mother as guardian, and appointed Shawn Harby in her place. Harby then filed suit against the mother and the bank for various torts arising from the mother's unauthorized withdrawals, whereupon the bank moved to enforce the arbitration agreement. *Id.* at 418–19. When the circuit court granted the bank's motion and stayed Harby's lawsuit, Harby noted an appeal from that decision. *Id.* at 419. On appeal, Harby pointed out that the access agreement was signed but the deposit agreement containing the arbitration agreement was not and that, although the signed access agreement referred to the unsigned deposit agreement, it did not specifically refer to any agreement to arbitrate that was mentioned in the unsigned deposit agreement. *Id.* at 421.

This Court held that the arbitration agreement was enforceable. *Id.* at 422. In doing so, we explained that the guardian, by signing the access agreement, indicated that she understood and agreed "to be bound by terms and conditions" set forth in the "explicitly

identified" deposit agreement, which did contain the "unambiguous agreement to arbitrate." *Id.* at 423–24.

Although the unsigned deposit agreement in *Harby*, containing the arbitration clause, was given to the guardian, while, in the instant case, Ghadry purportedly did not receive the page containing the arbitration provision at issue, we believe that, when we contrast the facts of the two cases, *Harby* supports, by implication, our conclusion that Ghadry was bound by the entire agreement when she signed the front page, acknowledging that she understood and accepted the terms of the entire agreement.

In *Harby*, we concluded that the substitute guardian was bound by an arbitration clause that was not part of the access agreement that had been signed, because it was included in the unsigned deposit agreement, which was incorporated by reference into the signed access agreement. Here, in contrast, Ghadry signed a page that directly notified her of an arbitration clause contained in the agreement. The notice of the agreement to arbitrate was not obscured by a reference to a second document that just happened to contain the clause, as it was in *Harby*. If the guardian in *Harby* was bound by the arbitration clause at issue, then Ghadry was surely bound by the far more conspicuously identified arbitration clause in the Customer Account Agreement, which was, as previously noted, in bold capital letters, and directly above the line which bore her signature.[5]

[5] Ghadry, of course, contends otherwise, and directs our attention to two unreported out-of-state decisions, *Swett v. Hudson*, No. 2002-444, 2002 WL 34422240 (Vt. 2002), and *Dreyfuss v. eTelecare Global Solutions-U.S. Inc.*, 349 Fed. Appx. 551 (2d Cir. 2009). We stress, however, that "it is the policy of this Court in its opinions not to cite for persuasive value any unreported federal or state court opinion." *Kendall v. Howard Cnty*, 204 Md. App. 440, 445 n.1 (2012). We therefore shall not address either unreported case.

Ghadry claims that "even supposing the Circuit Court correctly imputed knowledge of the missing pages" to her, "it is clear" that because she "faxed back to Angeli only page 1 of the Customer Agreement," the circuit court should have concluded that the "partial return of the Agreement constituted a counteroffer," which Penson accepted. This contention is without merit.

If Ghadry had meant to reject the arbitration clause and, in effect, made a counter-offer, Penson could reasonably have expected her to strike the language notifying her that she was bound by the terms that there was an arbitration clause on the reverse side of the front page. Transmitting the signed page alone indicating exactly the opposite of what she now asserts clearly established that she accepted all of the terms of the agreement, without change. To conclude otherwise, as Penson puts it, "borders on the risible."

Finally, Ghadry advances two contentions for the first time on appeal, namely, that the Customer Agreement is a "contract of adhesion" that must be construed against Penson and that Penson did not prove that it was a party to the Customer Account Agreement. Because those claims were not raised below, they are not preserved for appellate review, and we shall not address them. *See* MD. Rule 8-131(a).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.