Circuit Court for Carroll County
Case No. C-06-CV-22-000088

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 18

September Term, 2023

WATERWORKS RESTORATION
BALTIMORE, LLC

v.

SHINE HOME IMPROVEMENTS, INC.

Ripken,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: September 16, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

"A stipulation has all the binding force of a contract." *C&K Lord, Inc. v. Carter*, 74 Md. App. 68, 94 (1987). Where parties make a stipulation "to save the time of the court, the expense and difficulty of producing witnesses, and for other good reasons[,]" they are bound by that stipulation. *Bloom v. Graff*, 191 Md. 733, 736 (1949). In this appeal, which comes from the Circuit Court for Carroll County, Appellant Waterworks Restoration Baltimore, LLC ("Waterworks") asks us to hold otherwise, claiming that the pretrial stipulation it entered with Appellee Shine Home Improvements, Inc. ("Shine") was neither binding nor enforceable.

Waterworks asks us to consider this question:

> Whether the Circuit Court for Carroll County erred in holding that the pretrial stipulation[1] constituted an enforceable settlement agreement?

For the reasons set forth below, we answer "no," and affirm the circuit court's judgment.

FACTS AND LEGAL PROCEEDINGS

There are two lawsuits that are material to this appeal. In both, Shine was the plaintiff and Waterworks was the defendant. The second lawsuit, which is the one that generated this appeal, was Shine's attempt to enforce a stipulation Shine and Waterworks had reached in the first lawsuit. Here, we start by outlining what happened in the first lawsuit. Then, we move on to the second.

[1] This appeal concerns a set of pretrial stipulations. Nonetheless, we refer to them as "the stipulation" when we are discussing them collectively.

The First Lawsuit

The first lawsuit was about a subcontractor agreement that Waterworks and Shine entered into in October 2018. Waterworks, a general contractor, hired Shine to repair a portico and a roof at a church in Carroll County. The subcontractor agreement consisted of a Master Tradesman Subcontractor Agreement and Proposals. The Proposals outlined the scope of work and associated costs.[2] When Shine submitted the Proposals, Waterworks accepted and signed them. Under the subcontractor agreement, Waterworks was required to provide Shine with notice of, and an opportunity to cure, any defective work.

Although Shine completed the portico and roof work as outlined in the Proposals, Waterworks terminated the subcontractor agreement and refused to pay, citing extensive defects in the roof work. Waterworks claimed that Shine's work caused bubbles, water ponding, and leaks in the roof. Except for some minor bubbles, Waterworks never informed Shine about these defects, though. Shine then sued Waterworks for breach of contract, negligent misrepresentation, and unjust enrichment, leading to a two-day bench trial.[3]

At the beginning of the trial, Waterworks informed the circuit court that the parties had reached "some stipulations that will make what you have to decide narrow

[2] For example, Proposal 18410 enumerates 15 different tasks for framing and estimated the total cost at $28,692.

[3] The trial was held on October 26 and 27, 2020.

significantly." The parties then made a stipulation in open court regarding Shine's portico work.[4]

> THE COURT: Okay. All right. [Waterworks], are you going to place these stipulations on the record or –
>
> [WATERWORKS]: The first one that the Court should see is a proposal number . . . . The first one should be 18410.
>
> [WATERWORKS]: 18410 - -
>
> THE COURT: 18410. Got it.
>
> [WATERWORKS]: - - is agreed to as to the work and the pricing.
>
> **THE COURT: So, there is a stipulation that the work that was set forth on 18410 was done and that the price agreed upon was the price set forth in that proposal?**
>
> **[WATERWORKS]: Yes, Your Honor.**
>
> **[SHINE]: Yes, Your Honor.**
>
> THE COURT: Okay.
>
> [WATERWORKS]: If you turn the page to 18411 - - . . . . Same agreement, Your Honor. Same stipulation.
>
> THE COURT: Got it. Okay. So next one is 18412.
>
> [WATERWORKS]: If you turn to - - yes, 18412. I guess you would say we have a partial stipulation. There is a $1,600 deduct that we will present evidence on, but the balance of that is not challenged.
>
> [SHINE]: $4,180, Your Honor.
>
> THE COURT: Forty-one eighty is agreed to?
>
> [SHINE]: Yes.

[4] During oral argument before us, Waterworks noted that the stipulated portion of the work "all dealt with the portico."

* * *

> [WATERWORKS]: The following is 18123. There are two-line items on there. The first one is $1,250. We will stipulate to that. The second is in dispute.
>
> [WATERWORKS]: And the following one, 18127 is agreed to, stipulated.
>
> THE COURT: All right. And it looks like that proposal was for work in the amount of $1,600.
>
> [WATERWORKS]: That is correct.
>
> [SHINE]: Yes, Your Honor.

In total, the parties stipulated that Waterworks owed Shine a total of $68,467 for its portico work, as detailed in the following proposals: 18410 ($28,692); 18411 ($32,745); 18412 ($4,180); 18123 ($1,250); and 18127 ($1,600). In addition, the parties stipulated that Shine caused damage to two church doors, resulting in repair costs of $11,735. Waterworks noted that the damage to the doors "was not part of the pleadings that [the court] would be looking at." Thus, $68,467 was offset by $11,735, a reduction that brought the total amount owed by Waterworks down to $56,732.

> [WATERWORKS]: . . . [T]here was damage done to two exterior doors of the church. And Plaintiff Shine is stipulating that they caused the damage and that the repair costs . . . in the amount of $11,735 is fair and reasonable, and is accepted as an offset by Plaintiff. I have a copy of the invoice if the Court wants to have it. I was just going to read it into the record otherwise.
>
> THE COURT: [SHINE], do you agree with that –
>
> [SHINE]: Yes.
>
> THE COURT: -- stipulation?
>
> [SHINE]: Yes, Your Honor.

THE COURT: Okay.

The court observed, "I gather that these stipulations will change the amount [Shine] is seeking as damages in this case," and Shine agreed, without objection from Waterworks, "[t]hat is correct, Your Honor."

The trial then proceeded on claims regarding Shine's roof work and prejudgment interest, with the parties confirming that the stipulation had resolved the dispute over the portico work. Albert Jang, Shine's principal witness, testified that Shine was seeking $63,004 in damages — "the full amount of the contract [price] minus the amount that was stipulated."[5] On cross-examination, Mr. Jang reaffirmed this figure and explained his calculation. During closing argument, Shine reiterated, "[a]s far as damages . . . the parties stipulated to the damages against [Waterworks] in favor of Shine. And that amount is $56,732 for the non-defective work." The circuit court then asked, "the 56,732 is not before me, right?" and Shine replied, "[t]hat is correct," while noting that it also sought prejudgment interest on the total damages, both the stipulated sum and the unstipulated sum. Waterworks verified the stipulated sum of $56,732, including the $11,735 offset, and stated that the parties agreed to payments for "work such as the portico[.]"

[5] While the pretrial stipulation left $63,804 in dispute, Shine only sought $63,004 for the unstipulated roof work. In its Memorandum Opinion and Order, the trial court "assume[d] that Shine elected to forgo its claim for recover of the $800[.]" The discrepancy of $800 was never challenged by either party.

Following trial, the circuit court noted the parties' stipulation. In its Memorandum Opinion and Order ("MOO"), the court said, "the parties stipulated that Waterworks owes Shine $56,732 for work that the parties agree was done properly . . . ."[6] The court further explained, "[w]hat remains for the [c]ourt to decide is Shine's claim for damage for the disputed claims and Shine's request for prejudgment interest on all unpaid sums." The court found that Shine failed to properly perform its work on the roof, but held that Waterworks breached its contractual obligation by not allowing Shine to cure the defective work. Thus, while declining to award any prejudgment interest, the court

[6] In its MOO, the circuit court incorrectly stated twice that the stipulated amount Waterworks owed Shine was "$56,732 less the $11,735 offset," which would have been $44,997. Other than these instances, the circuit court consistently and correctly referred to the stipulated amount as $56,732 throughout the trial.

The court's calculation table shows the correct stipulated amount of $56,732.

Proposal No.	Total Proposal Price	Amount Disputed	Amount Not Disputed	Total in Dispute
18410	$28,692	$0	$28,692	
18411	$32,745	$0	$32,745	
18412	$5,780	$1,600	$4,180	
18413	$47,454	$47,454	$0	
18123	$12,450	$11,200	$1,250	
18124	$800	$800	$0	
18126	$2,750	$2,750	$0	
181217	$1,600	$0	$1,600	
TOTAL	$132,271.00	**$63,804.00**	$68,467.00	**$63,804.00**
Less Agreed Offset			-$11,735.00	
Amount Agreed Waterworks Owes Shine			**$56,732.00**	

Therefore, the reference to "less the $11,735" appears to be a semantic, rather than substantive, error and does not affect our analysis.

awarded Shine $63,004 in damages for Waterworks' breach of contract, "in addition to damages to which the parties stipulated Shine is entitled[.]"[7]

After the trial, the circuit court found for Shine and entered judgment in favor of Shine for the unstipulated sums.

> For the reasons set forth in this [MOO], it is, by the Circuit Court for Carroll County, hereby
>
> **ORDERED**, that judgment is entered in favor of Plaintiff, Shine Home Improvements, Inc, and against Defendant, Waterworks Restoration Baltimore, LLC, as to **Count One, Breach of Contract** in the amount of **Sixty[-]Three Thousand Four Dollars ($63,004)**, court costs and plus post judgment interest at the legal rate; and it is further
>
> **ORDERED**, that judgment is entered in favor of Defendant, Waterworks Restoration Baltimore, LLC, and against Plaintiff, Shine Home Improvements, Inc., as to Count Two, Negligent Misrepresentation and Count Three, Unjust Enrichment; and it is further
>
> **ORDERED**, that any other relief not expressly granted herein is denied.

(emphasis in the original).

Waterworks satisfied the money judgment but did not pay the stipulated $56,732. At first, Shine moved to revise the $63,004 judgment under Maryland Rule 2-535, [8]

[7] The court denied Shine's negligent misrepresentation and unjust enrichment claims and declined to award any prejudgment interest.

[8] Rule 2–535(a) allows a court to revise a judgment "[o]n motion of any party filed within 30 days." In addition, the court may revise the judgment "[o]n motion of any party filed at any time . . . in case of fraud, mistake, or irregularity." Md. Rule 2–535(b).

alleging Waterworks' fraud "by representing to the [c]ourt that it would pay Shine for undisputed work," but the motion was denied.

The Second Lawsuit

Shine then filed the second lawsuit against Waterworks for the stipulated $56,732 and moved for summary judgment. In opposing summary judgment, Waterworks argued that the entry of the $63,004 judgment in the first lawsuit made the parties' stipulation about the $56,732 Waterworks owed Shine unenforceable. Specifically, Waterworks acknowledged that "the stipulation rises to the level of a contract," but argued that the "contract" was part of the first lawsuit only, thus merging into the $63,004 judgment.[9] Waterworks also claimed that while the $63,004 judgment did not reflect "the full judgment amount," Shine should have timely filed a motion to revise the judgment or sought an appeal, rather than filing a separate lawsuit. The circuit court denied Shine's motion for summary judgment.[10]

[9] "Merger" means that after a contract is enforced with a judgment or decree, the rights (or liabilities) under the contract are "merged" into the judgment or decree and may not be separately enforced. *Estate of Brown v. Ward*, 261 Md. App. 385, 430 (2024). "In general, under the rule of merger, a simple contract is merged in a judgment or decree rendered upon it, and all its powers to sustain rights and enforce liabilities are terminated in the judgment or decree." *Id.* (cleaned up).

[10] Other than stating that there were "disputes of material fact that [could] not be resolved by summary judgment," the circuit court did not detail its reasoning for the denial. Our record also does not include a transcript from that summary judgment hearing.

Shine subsequently renewed its summary judgment motion, arguing that the stipulation remained as a separate, enforceable agreement after the entry of the $63,004 judgment. Shine acknowledged that, under the rule of merger, a judgment rendered upon a contract extinguishes "all powers contained in that contract to sustain rights and enforce liabilities," leaving only the judgment enforceable. However, Shine argued that the rule did not apply here because the pretrial stipulation constituted a separate settlement agreement, distinct from the original subcontractor agreement. Waterworks filed no response to Shine's renewed motion for summary judgment.[11]

Following a hearing, the circuit court granted Shine's renewed summary judgment motion. First, the circuit court observed that there was no factual dispute as to the formation of a "contract" that required Waterworks to pay Shine $56,732. The court also found that "neither party intended to have the [c]ourt issue a judgment on" the stipulated amount. Second, the court held that merger, *res judicata*, and estoppel would not apply because "[t]he cause of action in this case against Waterworks [was] on the independent contract that was formed at the outset of the trial by stipulation." The court explained that Shine could "enter into an agreement to resolve all or a portion of litigation" and file a separate action to enforce that agreement. The court then entered judgment for Shine in

[11] Waterworks moved to strike this motion, but the circuit court denied Waterworks' motion and then set a hearing on the renewed summary judgment motion. At the hearing, the court initially stated that it treated Waterworks' motion to strike as an opposition to the renewed summary judgment motion, but was reminded by a clerk that the motion to strike had already been denied.

the amount of $56,732, along with costs and post-judgment (but not pre-judgment) interest.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

Standard of Review

Whether the circuit court properly granted summary judgment is a question of law, which we review *de novo*. *River Walk Apartments, LLC v. Twigg*, 396 Md. 527, 542 (2007). Summary judgment is appropriate when "there is no genuine dispute as to any material fact" and "the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2–501(f). Thus, we "independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Livesay v. Baltimore*, 384 Md. 1, 9–10 (2004). In doing so, we view "the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Id.* at 10. Moreover, "[o]n appeal from an order entering summary judgment, we review only the legal grounds relied upon by the [circuit] court in granting summary judgment." *Cochran v. Norkunas*, 398 Md. 1, 12 (2007).

The same *de novo* standard of review governs the circuit court's interpretation of the stipulation in this case. *See Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 137 (2000) (applying *de novo* standard when determining ambiguity of stipulation). "To guide

our review of the [s]tipulation, we turn to review the well-established body of law governing the interpretation of contracts." *Id.* at 135. "The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review." *Sy-Lene of Wash., Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 163 (2003).

Waterworks' Contentions

Having previously acknowledged that the stipulation here rises to the level of a contract, Waterworks now contends otherwise. It argues that, while some stipulations might constitute a binding contract, the one here was "nothing more than an acknowledgement as to the factual accuracy of some of Shine's proposals." Waterworks claims that the stipulation here lacked the mutual assent necessary for a binding contract, as there was no indication of the parties' intent to be bound and the stipulation was not sufficiently definite, missing terms on payment schedules, interest rates, and default.

Analysis

We begin "by discussing the essential prerequisite of mutual assent to the formation of a contract."[12] *Falls Garden Condo. Ass'n, Inc. v. Falls Homeowners Ass'n,*

[12] As a preliminary matter, Waterworks failed to demonstrate any material fact in dispute during the second lawsuit. In its opposition to Shine's initial summary judgment motion, Waterworks did not provide "an affidavit or other written statement under oath," Md. Rule 2–501(b), or an affidavit "that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit," Md. Rule 2–501(d). Waterworks also did not file a response to Shine's renewed summary judgment motion. Thus, we see no error in the circuit court's determination that Waterworks failed to raise a genuine dispute of material fact.

Inc., 441 Md. 290, 302 (2015). "By definition, a stipulation is an agreement between counsel akin to a contract." *Broberg v. State*, 342 Md. 544, 609 (1996) (citing *Burke*, 204 Md. 637, 645 (1954)).[13] As such, a stipulation carries "all the binding force of a contract," and may be set aside only for reasons that would justify setting aside a contract. *C&K Lord, Inc.*, 74 Md. App. at 94. Further, like contracts, "a stipulation by definition must be based on mutual assent[.]" *Broberg*, 342 Md. at 559.

Thus, the real question before us is not *whether* mutual assent existed, but *to what* the parties mutually assented.[14] In construing the terms of the stipulation, we must "employ our familiar contract interpretation toolkit." *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 28 (2020). "As a fundamental principle of contract construction, we seek to ascertain and effectuate the intention of the contracting

[13] In its brief, Waterworks contrasts *Broberg* with *Burke*, asserting that only "Burke-type" stipulations can bind the parties like a contract. Waterworks further argues that the stipulation here, similar to the one in *Broberg*, does not amount to a binding contract. However, as the *Broberg* Court's reliance on *Burke* shows, the dichotomy Waterworks claims does not exist. *See Broberg*, 342 Md. at 609 (citing *Burke* to explain the binding nature of a stipulation).

Waterworks' reliance on *Broberg*, a criminal case, is also misguided. In *Broberg*, the binding nature of the stipulation was never an issue. The issue concerned the admissibility of a homicide victim's "in-life" photographs after the parties stipulated to the victim's identity. The Supreme Court upheld the photographs' admissibility, noting that the stipulation "did not deprive [them] of all relevance." The Court did not treat the stipulation as a mere "trial strategy," as Waterworks suggests.

[14] While Waterworks claims that the stipulation here is not a contract, it acknowledges that the parties made "a series of verbal stipulations . . . the clear purpose of which was to lessen the cost and time of trial[.]" Waterworks maintains, both below and on appeal, that the stipulation was meant solely for the trial in the first case and was not intended to bind parties beyond that trial.

parties." *Young v. Anne Arundel Cnty.*, 146 Md. App. 526, 585 (2002). In ascertaining the parties' intent, we examine the contract as a whole. *Id.* at 586. We also consider "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Id.* at 587 (citing *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985)). Ultimately, "the true test of what [a contract] meant is . . . what a reasonable person in the position of the parties would have thought the contract meant." *Young*, 146 Md. App. at 586. If the contract, when viewed in full context, can be ascribed only one reasonable meaning, "that meaning necessarily reflects the parties' intent." *Id.* (cleaned up).

In *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, *supra*, we held that a pretrial oral agreement made on the record constituted a binding settlement agreement. 246 Md. App. at 8. In that case, following disputes over the appellant's right to erect a sign, the parties "reached what they both believed to be a settlement" the night before trial. *Id.* at 10. The next morning, the court expressed that it was "happy that the parties have reached an agreement." *Id.* The parties then announced the terms, which included dismissing the lawsuits without prejudice, and later with prejudice if the appellant relocated the sign "within 45 days" after the hearing. *Id.* at 12, 29. The parties noted that the agreement was "going to be followed by a settlement agreement." *Id.* at 11. Before concluding the hearing, the court again expressed satisfaction that the parties "reached a settlement." *Id.* at 13. When efforts to finalize a written agreement failed, the appellee moved to enforce the terms as announced on the record, and the circuit court granted the

motion as a matter of law. *Id.*

On appeal, we examined the circuit court's record as a whole, highlighting several *indicia* of the parties' mutual assent to the terms stated on the record. *4900 Park Heights Ave.*, 246 Md. App. at 29. The circuit court, without objection from either party, repeatedly acknowledged the existence of a settlement agreement. After the terms were announced, the appellant denied having "[a]ny modifications, additions, [or] deletions." *Id.* at 29–30. Moreover, "the context of the negotiations and presentation – with counsel appearing at what would have been the beginning of trial after communicating to the court that they had reached a settlement – strongly suggest[ed]" that the parties intended the oral agreement to be binding, even in the absence of a finalized written settlement agreement. *Id.* at 30. Further, during the hearing on the motion to enforce, the appellant conceded that the parties "went into that courtroom to put on the record that we had settled the case," and that they "intended to be bound[.]" *Id.* at 30. In light of these undisputed facts, we found no error in the circuit court's conclusion that the oral agreement was intended as a binding settlement.

This case is similar. Before placing the stipulation on the record in the first lawsuit, Waterworks stated that the stipulation would "narrow significantly" what the court needed to decide at trial, with no suggestion that it was limited to certain Proposals' accuracy.[15] The inclusion of the $11,735 offset for Shine's damages to the church

[15] In fact, the accuracy of the Proposals, whether stipulated or not, was never contested during the trial.

doors—a matter beyond the scope of the first lawsuit—further indicates that the stipulation was intended as a binding contract, "not one that vanishes" when the parties leave the courtroom. *See Sprint Nextel Corp. v. Wireless Buybacks Holdings, LLC*, 938 F.3d 113, 124 (4th Cir. 2019) (discussing the binding nature of a stipulation to potential damages). The court also repeatedly addressed the impact of the stipulation on Shine's pending claims, stating, "I gather these stipulations will change the amount [Shine] is seeking as damages in this case," and confirming, "the [$]56,732 is not before me, correct?" Neither party contradicted these statements. Thus, in full context, the stipulation unambiguously demonstrated that the parties intended to form a binding settlement agreement, *i.e.,* one requiring Waterworks to pay $56,732 for Shine's portico work.

To the extent that any ambiguity remains, Waterworks acknowledged in the second lawsuit that the stipulation from the first lawsuit was intended as a binding agreement to pay. *See 4900 Park Heights Ave.*, 246 Md. App. at 30 (holding that non-moving party's admission during the hearing on the motion to enforce indicated the parties' intent to be bound). In the second lawsuit, during the hearing on Shine's renewed motion for summary judgment, the court asked, "So, is [Waterworks'] position now that there was no agreement to pay [$56,732]?", and Waterworks responded, "[T]here was an agreement to do that[.]" Waterworks also agreed that Shine was entitled to the stipulated sum "[b]y virtue of a representation made in court[.]" Later, when the court asked, "So, on this record, in this case, [Waterworks] agrees that there was an agreement for Waterworks to pay Shine that amount, correct?" Waterworks affirmed again, "Correct."

Therefore, the circuit court did not err in finding the parties' mutual assent for Waterworks to pay Shine the stipulated $56,732.

Though Waterworks claims on appeal that the absence of the terms regarding payment, interest rate, or default renders the stipulation unenforceable, it made no such argument below. Under Rule 8–131(a), as a general matter, "an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" This rule promotes fairness and judicial efficiency by ensuring that "(1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judges are given an opportunity to consider and respond to the challenge." *Barber v. Catholic Health Initiatives, Inc.*, 180 Md. App. 409, 437 (2008). Because Waterworks' argument regarding the missing terms was not presented to, or decided by, the circuit court, we need not address it.

In any event, even if the issue was preserved, the stipulation outlines the parties' agreed-upon obligations with sufficient certainty and definiteness: Waterworks will pay Shine the contract price of $56,732 for Shine's portico work, a sum that reflects the $11,735 offset for the damage Shine caused to the church doors. *See Kiley v. First Nat'l Bank of Md.*, 102 Md. App. 317, 333 (1994). The agreement does not need to include "[e]very possible term." *Falls Garden*, 441 Md. at 305. Parties may "express definite agreement on all necessary terms, and say nothing as to other relevant matters that are not essential, but that other people often include in similar contracts." *Id.* at 301. Because the stipulation here is certain and definite enough that "the meaning of the parties can be

ascertained, either from the express terms . . . or by fair implication[,]" it constitutes an enforceable agreement. *Paape v. Grimes*, 256 Md. 490, 497 (1970).

Unlike cases where an interest rate and payment terms are needed to calculate total interest due, the stipulation here simply mandated payment of the stipulated amount, with no mention of interest. *Collins v. Morris*, 122 Md. App. 764, 778 (1998) (holding that a contract is not enforceable for failure to state the interest rate where it "provided for the payment of principal only."). *See also Paape*, 256 Md. at 496 (overruling any cases that imply that "where a contract expressly provides for interest, the rate of interest must be specifically stated in order for the contract to be definite enough to be specifically enforced."). Likewise, "the absence of a default provision does not render the contract invalid for vagueness." *Collins*, 122 Md. App. at 780. Because the missing terms do not affect the enforceability of Waterworks' obligation to pay Shine $56,732, we see no error in the circuit court's conclusion that the stipulation constituted a binding, enforceable settlement agreement.

Turning to whether the stipulation remained enforceable after entry of the judgment of $63,004 in the first lawsuit, we conclude that it was.[16] Typically, a final

[16] Despite extensive discussion in the circuit court regarding whether the $63,004 judgment extinguished Shine's claim for the stipulated $56,732, Waterworks' brief barely mentions merger, *res judicata*, or any other preclusion theory. Rule 8–504(a)(3) requires that an appellant present each issue as a "statement of the questions . . . separately numbered, indicating the legal propositions involved." In addition, the appellant must provide arguments "in support of the party's position on each issue." Md. Rule 8–504(a)(6). Noncompliance with these briefing requirements may result in dismissal of the appeal under Rule 8–504(c). *See also Honeycutt v. Honeycutt*, 150 Md. App. 604, 618

(Cont'd . . . .)

judgment in an action extinguishes the plaintiff's right to seek remedies against the defendant "with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Dill v. Avery*, 305 Md. 206, 210 (1986) (citing Restatement (Second) of Judgments § 24 (1982)).[17] Yet this rule against "claim-splitting" does not extinguish the right to relief if the parties "have agreed on terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein[.]" *Lake v. Jones*, 89 Md. App. 579, 587 (1991) (citing Restatement (Second) of Judgments, *supra*, § 26(1)(a)). *See also Keith v. Aldridge*, 900 F.2d 736,740 (4th Cir. 1990) (quoting Restatement (Second) of Judgments, *supra*, § 26(1)(a) cmt. a) (holding that the doctrine of *res judicata* or claim preclusion does not apply where the defendant gives "consent 'in express words or otherwise' to the splitting of the claim"). "Most importantly, the rule prohibiting claim[-]splitting does not apply where, as here, the parties have agreed to split the claim by settling only part of the dispute between them." *Charles E. S. McLeod, Inc.*

(declining to address appellant's argument where it "failed to adequately brief" it), *cert. denied*, 376 Md. 544 (2003).

However, in this appeal, we exercise our discretion to consider whether the judgment has rendered the parties' stipulation unenforceable. *See Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007) (noting that reaching a decision on the merits of a case "is always a preferred alternative."). The parties' arguments below and Waterworks' explanation during the oral argument before us suggests that the issue is "implicit" in this appeal. *Grant v. State*, 414 Md. 483, 489 n. 2 (2010). Additionally, Shine has made no objection to our consideration of the issue.

[17] Courts in Maryland have looked to the Restatement (Second) of Judgments provisions for guidance with regards to *res judicata* and collateral estoppel principles. *Potomac Design, Inc. v. Eurocal Trading, Inc.*, 839 F. Supp. 364, 366 n.7 (1993).

v. R.B. Hamilton Moving and Storage, 453 N.Y.S.2d 251, 252–53 (1982) (citing Restatement, Judgments 2d [Tent. Draft No 1, 1973], § 61.2); *Barnum v. Coastal Health Servs., Inc.*, 288 Ga. App. 209 (2007) (holding that "the prohibition against claim splitting does not apply to a partial settlement[.]").

We find *Barnum*, *supra*, instructive. There, the parties in a wrongful death action reached a partial settlement agreement, which provided, in relevant part:

> This will confirm that we have agreed to settle all claims of [the deceased], his estate and/or the beneficiaries of his estate arising out of any and all care [he] received . . . . This settlement involves only those claims that you may have had against the [defendant] for damages on or before July 1, 2001, as it is your intent to continue to pursue additional claims that you have against the [defendant] that allegedly arose and allegedly caused damage to [the deceased] after July 1, 2001.

Barnum, 288 Ga. App. at 210. When the plaintiff sought to amend the complaint to limit the claims to those arising after July 1, 2001, the defendant moved for summary judgment, claiming that "the settlement agreement was intended to and in fact did resolve all of the plaintiff's pending claims." *Id.* at 211.

In rejecting that argument, the Appellate Court of Georgia reasoned:

> It is true . . . that Georgia law prohibits the splitting of claims such that in suing a particular defendant, a plaintiff must bring every claim for relief he has concerning the same subject matter in one lawsuit. Notably, however, the prohibition against claim splitting is for the benefit of the defendant and thus can be waived by him or her. As such, we have held that the prohibition against claim splitting does not apply to a partial settlement, since in that context the defendant has waived any objection to the splitting of the claims.

Id. at 212. (cleaned up). Thus, the court in *Barnum* concluded that the settlement agreement amounted to the defendant's waiver of "any objection to the claim splitting by the plaintiff." *Id.*

Similarly, we conclude that Waterworks waived its objection to claim-splitting by agreeing to proceed with the trial solely on Shine's (unstipulated) roof work. *See ACAS, LLC v. Charter Oak Fire Ins. Co.*, 626 F. Supp. 3d 866, 881 (D. Md. 2022) (stating that courts may consider the defendant's "arguments in the prior case, his failure to address the plaintiff's stated intent to split her claims, and his failure to object during [ ] proceedings on the split claim."). Following the stipulation in the first lawsuit, both Waterworks and Shine confirmed that claims related to the portico work were no longer before the court, and the trial focused on Shine's claim for "the full amount of the contract [price] minus the amount that was stipulated." In its closing, Waterworks acknowledged that "[t]he core of this case is bubbles in the roof" and that the parties "agreed to payments" for the portico work. In the second lawsuit, during the hearing on the renewed motion for summary judgment, Waterworks admitted that the parties never sought to reduce their stipulation to a judgment. Therefore, the judgment for Shine's roof work did not extinguish its right to stipulated relief of $56,732 for the portico work.[18]

[18] Notably, during the oral argument before us, Waterworks explained its position on merger as follows: "If there is no intent by the parties that these agreements survive and have an independent status that could be enforced later, then there is merger." As we understand it, Waterworks acknowledges that if the stipulation constituted an enforceable settlement agreement, that agreement would not merge into judgment. Since we have concluded that the parties here intended the stipulation as a binding settlement

(Cont'd . . . .)

Because the stipulation in the first lawsuit constituted a binding settlement agreement for Shine's portico work and remained enforceable after the entry of the $63,004 judgment there, the circuit court did not err in granting summary judgment in favor of Shine in the second lawsuit. We affirm.

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

agreement, rather than a mere factual agreement for trial purposes, it follows that, by Waterworks' own reasoning, the stipulation did not merge into the $63,004 judgment.