

Circuit Court for Montgomery County
Case No.461646V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 923

September Term, 2021

SU MYA LIN

v.

BELFOR USA GROUP INC.

Kehoe,
Nazarian,
Reed,

JJ.

Opinion by Nazarian, J.

Filed: September 29, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Su Mya Lin and her husband, Tin Ko Latt, own real property in Rockville. After the property sustained water damage in January 2018, Ms. Lin filed a homeowner’s insurance claim through AIG Private Client Group (“AIG”). Belfor USA Group, Inc. (“Belfor”) performed the property restoration and filed suit in the Circuit Court for Montgomery County after Ms. Lin withheld payments for services Belfor had performed. The court found that Ms. Lin had breached the Maryland Work Authorization Contract (the “Contract”) and awarded Belfor damages, attorney’s fees, and interest on both. Ms. Lin contends on appeal that the circuit court erred in finding the contract enforceable and that Belfor complied with it. We affirm.

I. BACKGROUND

Ms. Lin and Mr. Latt own the rental property at issue, and in January 2018, the tenants contacted them to report that a pipe had burst. Ms. Lin contacted a plumber who made temporary repairs and instructed her to contact AIG to submit a claim for the remainder of the damage.

On January 15, Ms. Lin met with Michael Tress, AIG’s adjuster, to review the extent of the damage and determine whether the damage was covered under the policy. After confirming that the damage was covered, Ms. Lin contacted Belfor, an AIG-authorized restoration company. The same day, Belfor’s property manager, Travis Burton, visited the property, and Ms. Lin and Belfor executed the Contract, in which they agreed that Belfor would provide emergency services to fix the water damage and perform restorative services to return the property to its original condition. The Contract outlined the services to be

performed, but defined the total price as the scope of the work AIG approved:

4. PRICING

(a) Emergency Services Pricing

* * *

(2) If required by the Owner’s insurance company, the cost of Emergency Services, materials, equipment, and supplies may be calculated by a scope of work generated by a computer software program (e.g., *Xactimate*®). BELFOR shall be paid the amount calculated by the computer software program and agreed upon by BELFOR and Owner’s insurance company.

(b) Reconstruction and Contracting Services Pricing

(1) Price: TBD

(2) Price is determined by the scope of work approved by Owner’s insurance company, and agreed to by BELFOR,

(3) BELFOR agrees to accept the insurance proceeds as payment for the approved and agreed upon scope of work

The contract specified that Belfor was to be paid by the insurance proceeds:

8. ASSIGNMENT AND AUTHORIZATION

(a) Owner assigns to BELFOR Owner’s right, title, and interest to any insurance proceeds, checks, drafts for work and material furnished by BELFOR.

(b) Owner authorizes its insurance carrier to name BELFOR USA GROUP, Inc. as sole payee on all insurance checks or drafts for all insurance work and materials furnished by BELFOR.

(c) Owner shall endorse and tender to BELFOR all checks or drafts from the Owner’s insurance carrier or mortgage company for BELFOR’s work.

(d) Owner shall obtain the endorsement of Owner’s insurance or mortgage company if either is named as a payee on any check or draft for any portion of BELFOR’s work.

The Contract provided further that Ms. Lin appointed Belfor as her attorney-in-fact and authorized Belfor to endorse checks for services provided.

Belfor performed emergency and restoration work on the property from January 2018 through the end of April 2018. In April, Ms. Lin directed Belfor to stop work until further notice. On May 30, 2018, Belfor submitted two separate invoices to AIG, one for \$50,000 and the other for \$25,000. The invoices stated that the amounts were for “progress billing on rebuild.”

Belfor then awaited approval from Ms. Lin to resume work. On August 18, 2018, Brandon Develli, a Belfor representative, visited the property to estimate the total cost of the restorative services. Three days later, Mr. Develli submitted a restoration work “proposal” in the amount of \$171,399.30. The proposal included a detailed room-by-room report describing the cost of materials and labor for a complete restoration and was calculated using Xactimate, a software utilized to factor in the national rate and material costs.

On August 29, Mr. Tress approved the restoration estimate and sent Ms. Lin a letter detailing the costs for both emergency and restorative services. Mr. Tress outlined the cost of the emergency services and the estimated cost of the proposal in accordance with Belfor’s estimation. Mr. Tress concluded the email by saying that “[a]s the work is completed, I will request a check in the amount of \$171,394.30.” Less than a month later, Ms. Lin replied to Mr. Tress’s email, expressing her displeasure with the extent of Belfor’s performance and noting that Belfor had not completed the restorative services Mr. Develli detailed in his report. She requested that Mr. Tress split the approved amount of Belfor’s proposal into two separate checks—one check totaling \$75,000 to Belfor for the progress

invoices sent in May, and another check for the remaining balance, \$96,394.30, to her directly. By her reasoning, Ms. Lin stated, “I do not want to give them a blank check for the whole amount of the job that they have not done yet.” Furthermore, Ms. Lin expressed her intention to hire a new contractor for the remainder of the job “after the tenant is comfortable with the repair schedule.”

Shortly after, Mr. Develli confirmed with Mr. Tress that the only remaining work was the completion of the primary bathroom, work worth an estimated \$35,107.85. Belfor then submitted a final invoice for \$136,286.45, an estimate for the total work completed by Belfor through April 2018. This amount represented the difference between the \$171,394.30 proposal and the estimate for the primary bathroom, \$35,107.85, that was not yet completed. Four days later, Mr. Tress reviewed the new proposal from Belfor and confirmed that it reflected the amount due.

Ms. Lin objected to the proposed amount. She maintained that the two progress invoices (\$50,000.00 and \$25,000) covered the entirety of the work performed. In an email to Mr. Tress sent in late September, Ms. Lin stated that the two invoices from May 2018 encompassed the work Belfor had completed so far and that there had been no additional work completed since those invoices were issued. Ms. Lin then sent another email to Mr. Tress on October 1, 2018 stating that “[t]here were only 2 invoices [T]he job was done from them way before that. Belfor can’t make up numbers. I would not let Belfor take advantage of it. If Belfor doesn’t agree with their own invoices of \$75,000 total, we don’t have any other way to solve it except legal action.”

On two separate occasions, Mr. Tress reached out to Ms. Lin in an attempt to reconcile the situation. He offered to meet on site with Ms. Lin and Mr. Develli to go over the extent of Belfor's work. Ms. Lin didn't respond. So Mr. Tress issued a \$75,000 check to Belfor for the two invoices sent in May 2018 and a \$96,394.30 check to Ms. Lin in her name.¹

In December 2018, Belfor sent an invoice to Ms. Lin for \$66,285.46, representing the remaining balance from the initial invoice of \$136,286.45, minus the \$75,000 paid to AIG in October. Ms. Lin never paid it, though, and Belfor filed suit in the Circuit Court for Montgomery County on January 22, 2019.

In its amended complaint, filed on February 5, 2019, Belfor asserted claims for breach of contract, quantum meruit, and unjust enrichment. Belfor alleged damages of \$61,285.46, the value of the unpaid services it provided, and sought attorney's fees. A bench trial was held on July 28–29, 2021. The court found that the Contract was an enforceable contract and that the price designation was sufficiently certain based on the language providing that the final price would be calculated using Xactimate. The court reasoned that the price terms were sufficiently definite and necessary “in emergency situations” for work to begin.

The court also found that the first two invoices sent by Belfor in the amount of \$25,000 and \$50,000 were essentially draw payments, not final invoices, and that AIG and

¹ When asked by the court why he sent Ms. Lin the \$96,394.30 check in her name when it was AIG's position that the funds were earned by the contractor, Mr. Tress stated, “AIG does not get involved in disputes with contractor [and] the insured.”

Belfor were “continuing the work to finalize the amount due under the contract.” The court clarified that the “171,000 invoice and/or proposal that went to AIG” was “just a misstatement of a current situation” regarding the work yet to be completed in the primary bathroom. Despite the confusion between Ms. Lin, AIG, and Belfor, the court was comfortable with the accuracy detailed in the line-item invoices presented by Belfor.

Next, the court addressed the actual work completed by Belfor, and found that Ms. Lin had not challenged the work that was done. Belfor’s witnesses testified that the work was done, Belfor’s expert witness confirmed it, and Ms. Lin offered no testimony disputing it. Despite Ms. Lin’s displeasure with certain aspects of Belfor’s work, including the paint, refinishing of the hardwood floors, a hallway closet and insulation, Belfor’s expert, Eric Huzzy, testified that Belfor “would have been entitled to seek a slight increase in the amount of work done because there[] [were] some additional add-ons that they did not bill [] for in this case.”

Finally, the court found that Ms. Lin had retained insurance proceeds due to Belfor and that, under the Contract, she had authorized AIG to name Belfor as the sole payee for all insurance payments. Therefore, the court found that Ms. Lin breached the Contract and entered judgment in favor of Belfor in the amount of \$61,285.46.

The court issued an order on September 22, 2021 awarding Belfor \$61,285.46 in damages, and a later order awarding attorney’s fees of \$94,456.03, plus post-judgment interest on both. Ms. Lin filed a timely notice of appeal. We supply additional facts as necessary below.

II. DISCUSSION

Ms. Lin raises two issues on appeal.² *First*, she argues that the circuit court erred in finding the Contract enforceable with respect to price. *Second*, she disputes that Belfor complied with the contractual procedures set forth by AIG for getting the work approved and paid.

“When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). The clearly erroneous standard applies only to factual findings of the trial court, though, and we review questions of law *de novo*. *L.W. Wolfe Enters., Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md.

² Ms. Lin listed two Questions Presented in her brief:

- I. Did the trial court err in its determination that there were enforceable contractual provisions with respect to Section 4(b) of the Work Authorization for Belfor’s reconstruction work on Ms. Lin’s property?
- II. Did Belfor comply with the requirements and procedure set forth by AIG to obtain approval and payment pursuant to the Work Authorization?

Belfor listed its Questions Presented as follows:

1. Did the trial court correctly determine that Lin’s contract with Belfor was enforceable when the price was readily ascertainable?
2. Did the trial commit clear error in concluding that Belfor performed all the work for which it sought payment when the evidence overwhelmingly showed that the work was in fact completed?

App. 339, 344 (2005). Maryland appellate courts “review the decision of legal questions, including the interpretation of the contract, its amendments, and the assignments, without according any special deference to the [trial court].” *Pines Plaza Ltd. P’ship v. Berkley Trace, LLC*, 431 Md. 652, 663 (2013) (citing *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 677 (2007)).

A. The Circuit Court Did Not Err When It Found The Contract Price Sufficiently Certain.

First, Ms. Lin argues that the trial court erred in determining that the Contract was enforceable. She points specifically to the price term contained in Section 4(b)(1), which she characterizes as open-ended and too indefinite to form an enforceable agreement.

“Generally, Maryland courts subscribe to the objective theory of contract interpretation.” *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019) (citing *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)). Under the objective theory approach, “the primary goal of contract interpretation is to ascertain the intent of the parties in entering the agreement and to interpret the contract in a manner consistent with that intent.” *Id.* Where contractual language is unambiguous, the intent of the parties is based on what a “reasonable person in the position of the parties would have understood the language to mean and not ‘the subjective intent of the parties at the time of formation.’” *Id.* (quoting *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 86 (2010)) (internal citations omitted).

“For a contract to be legally enforceable, its language must not only be sufficiently definite to clearly inform the parties to it of what they may be called upon by its terms to do, but also must be sufficiently clear and definite in order that the courts, which may be

required to enforce it, may be able to know the purpose and intention of the parties.” *Robinson v. Gardiner*, 196 Md. 213, 217 (1950) (citations omitted). “Expressions that at first appear incomplete or uncertain are often readily made clear and plain by the aid of common usage and reasonable implications of fact. Apparent difficulties of enforcement due to uncertainty of expression may disappear *in the light of courageous common sense*.” *Trotter v. Lewis*, 185 Md. 528, 535 (1946) (emphasis added); see Restatement (First) of Contracts § 370 cmt. a (Am. L. Inst. 1932) (“It is enough that the parties have agreed in their expressions and that these expressions have a reasonably clear and definite meaning.”). A “term which is clear in one context may be ambiguous in another.” *Sullins v. Allstate Ins. Co.*, 340 Md. 503, 508 (1995) (citations omitted).

When applying this broad principle to price terms, though, “[a]n agreement is not unenforceable for lack of definiteness of price or amount if the parties specify a practicable method by which the amount can be determined by the court without any new expression by the parties themselves.” *Hanna v. Bauguess*, 49 Md. App. 87, 93 (1981) (quoting *Foard v. Snider*, 205 Md. 435, 445 (1954)). “[W]here a contract specifies that the price is to be measured by the ‘fair market value,’ ‘reasonable value’ or ‘current market value’ . . . courts have generally held that the price is sufficiently certain in order to have an enforceable obligation.” *Id.* at 94. The question here is whether the price term in this Contract is measurable in a discernible way, and we agree with the circuit court that it is.

In *Hanna v. Bauguess*, we found an enforceable contract where the price was initially left undetermined. *Id.* at 96. The contract did, however, stipulate that the price was

to be determined by the average of three separate, third party appraisers. *Id.* at 95–96. We concluded that although there was no specification as to price, nor a mention as to fair market value or other similar terms, the process the contract created for establishing the price would result in a fair market price:

In the instant case, the option clause does not specify a sale price, nor does it provide that the property be measured by “current market value,” “reasonable value,” or other similar items. Here, the price “arrived at by three independent realty appraisers” would perforce be the fair market value of the property at the time the option was to be exercised. The option clause itself, therefore, provided a practical method by which the price could be determined.

Id. at 95–96 (cleaned up).

So too here. The price in this Contract would be determined by an independent third party. Section 4(b)(1) states that the price is “TBD” (a/k/a to be determined), but continues in 4(b)(2) to clarify that the “[p]rice is determined by the scope of work approved by Owner’s insurance company, and agreed to by BELFOR.” The scope and pricing wouldn’t be pulled out of thin air—AIG required Belfor to use a third-party software that generates estimates for restoration projects. The software, Xactimate, is a “unit cost estimating software that is used by the insurance industry both on the contractor side and the carrier side.” According to Mr. Develli, Xactimate is “the industry standard for creating an estimate in the insurance reconstruction industry and the disaster recovery industry.”

In its memorandum opinion, the trial court ruled that this Contract’s method for determining price was sufficiently definite:

So, while most contracts the price term is stated in the

contracts, this contract the Court did find to be reasonably certain in the fact that it had a mechanism by which the price would be determined, and that that price would be determined by work approved by the owner's insurance company. And the owner's insurance company has every incentive to try and minimize the amount to be paid to the contracting company.

We agree. Although price is an essential term in nearly any contract, the Contract provided Ms. Lin with information sufficient to understand her obligations under the Contract and provided a clear and practicable method by which the price would be determined. And, importantly, the pricing methodology encompassed a commitment by Ms. Lin's insurer to fund the work: by specifying that the price "is determined by the scope of work approved by Owner's insurance company," the Contract included only work that AIG had agreed already to fund, and that agreed scope of work formed the boundary for the ultimate price. We see no error in the court's determination that the price term was based on a "fair market value" easily obtained using a "practical method," *Hanna*, 49 Md. App. at 96, and we affirm the court's ruling that the Contract was an "enforceable contract."

B. The Trial Court's Finding That Belfor Complied With The Contract Is Not Clearly Erroneous.

Ms. Lin next raises two points about Belfor's performance: *first*, that Belfor didn't perform all the work in the final invoice, and *second*, because AIG didn't verify the extent of Belfor's performance prior to issuing payment, AIG didn't approve Belfor's reconstruction work pursuant to its "process for approval and issuance of payment." From there, Ms. Lin argues that "[t]he trial court improperly determined that a key term of the contract, the amount to be paid to Belfor pursuant to the [Contract], which is determined by AIG, is sufficiently certain and able to be enforced, particularly absent Belfor's

compliance with AIG’s stated process of approval.”

1. There is ample evidentiary support for the trial court’s conclusion that Belfor performed the restoration work.

A court “will not disturb the factual findings of the trial court if there is any competent evidence to support those factual findings,” *Dickerson v. Longoria*, 414 Md. 419, 433 (2010), and Belfor provided ample proof that the work they billed had in fact been performed. Through the testimony of Mr. Burton, Mr. Develli, and Mr. Huzzy, in collaboration with the evidence presented in the form of the line-item invoices, the court was able to determine that Belfor performed its contractual obligations. That work tracked the estimations approved by AIG, after which Belfor billed AIG and Ms. Lin in the amount of \$136,286.45 on September 24, 2018. Noting that AIG had issued two “progress invoices,” totaling \$75,000 in May 2018, Belfor was due the balance remaining of the initial \$136,286.45 minus the \$75,000 invoices, totaling \$61,285.46.

During the trial, Belfor provided pages of detailed room-by-room invoices that outlined all services and materials Belfor furnished. The testimony revealed that on two separate occasions, Mr. Tress attempted to reach Ms. Lin to arrange an on-site meeting to “walk through [the] property with the estimate to confirm which items have been completed.” Ms. Lin declined to meet with Mr. Tress and Belfor. The trial court determined that there was “no evidence that the work was not done” Additionally, the testimony from Belfor’s expert, Mr. Huzzy, supported the court’s ruling that “not only was the work performed, but in essence, Belfor was, or would have been entitled to seek a slight increase in the amount of work done because there’s some additional add-ons that they did not bill

[] for in this case.” Accordingly, we affirm the circuit court’s determination that Belfor complied with its obligations under the Contract.

2. Belfor complied with AIG’s requirements and procedures for obtaining approval.

Finally, Ms. Lin argues that because AIG did not verify the extent of Belfor’s performance prior to issuing payment, AIG did not approve Belfor’s reconstruction work pursuant to its “process for approval and issuance of payment.” According to Ms. Lin, AIG issued its check directly to her rather than to Belfor because AIG “did not approve Belfor’s reconstruction work pursuant to the [Contract] . . . [and] [t]his left the ultimate pricing term of the agreement subject to dispute and interpretation.” She argues that the contrast between the approval process for the emergency and restorative work serves as evidence of Belfor’s failure to comply with the terms of the Contract. Even if this were true, though, it doesn’t matter: Belfor’s compliance with AIG’s approval process (which, by the way, AIG is not challenging) doesn’t affect Ms. Lin’s obligation under the Contract to pay Belfor for the work Belfor performed at the property and to use the insurance proceeds for that purpose.

The trial court held that “[t]o the extent that Ms. Lin has concern about the work that was done and whether or not her house was properly restored to its pre-condition, that’s a dispute that she has with AIG.” That’s true, and she could have even taken that up with Belfor as well. But she didn’t. And the evidence at trial revealed that Belfor provided the services described in the Contract and obtained AIG’s approval for payment, which was then forwarded to Ms. Lin and not paid by her to Belfor. There was no evidence at

trial that could support Ms. Lin's contention that Belfor failed to comply with AIG's review process, and the fact that AIG paid the invoice is first-hand evidence to the contrary. We see no error in the circuit court's finding that Belfor completed the work described in the invoice and that Belfor was owed the sums AIG paid Ms. Lin to cover the cost of that work.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**