Circuit Court for Montgomery County
Case No. 482795V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 940

September Term, 2023

PROGRESSIVE TECHNOLOGY FEDERAL SYSTEMS, ET AL.

v.

TODD GLASS

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, 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).

This is the second appeal stemming from an attorneys' fees dispute in the Circuit Court for Montgomery County. The Appellee, Todd Glass (plaintiff below), dismissed, voluntarily and with prejudice, his complaint against the Appellants (defendants below): Progressive Technology Federal Systems and members of its Board of Directors: John Yokley, John Mutarelli, and James Ballard. The circuit court denied a consent motion, filed earlier, to bifurcate the issue of attorneys' fees, despite a contractual provision that assertedly "guaranteed" reasonable attorneys' fees to the prevailing party in such a dispute. The circuit court denied also Appellants' request to declare them to be the prevailing parties in the litigation.

In the first appeal, this Court's mandate contained three key components. First, we reversed the circuit court's denial of the motion to bifurcate attorneys' fees. Second, we vacated the court's denial of Appellants' request to declare that they achieved prevailing party status. Third, we remanded for further proceedings to determine whether Appellants prevailed and, if so, what reasonable attorneys' fees and costs may be owed to them. *Progressive Tech. Fed. Sys. v. Glass*, No. 1059 Sept. Term 2021, slip op. at 16 (Md. App. filed 17 August 2022) ("*PTFS I*").

On remand, the circuit court "d[id] not find that [any] party holds 'prevailing party' status." As a result, the court did not reach the question of whether non-parties to the contract are entitled to attorneys' fees under the fee-shifting provision.

In this second appeal, Appellants present three questions for our review,[1] which we consolidate and rephrase as follows:

> Did the circuit court err when it refused to designate Appellants as prevailing parties?

For reasons to be explained, we shall reverse the judgment of the circuit court and remand with directions.

BACKGROUND

In *PTFS I*, we explained, in detail, the background of this case. *See PTFS I*, slip op. at 2-8. Thus, we recount only the facts relevant to the resolution of the question before us in this appeal.

Beginning in 1995, Glass and Yokley developed jointly PTFS, a company that provides library automation and content management software solutions to commercial, defense, and other government agencies. *Id*. at 2. In 2007, PTFS kicked off the ultimate

[1] Appellants phrased the questions presented as follows:

> Did the Circuit Court err when it:
>
> (1) refused to designate Defendants/Appellants as the prevailing parties, even though Defendants secured dismissal with prejudice of all claims, forever terminating Glass's claims to an annual $100,000 consulting fee (plus 3% yearly increases), and a PTFS Board seat;
>
> (2) credited Plaintiff/Appellee Glass as preventing Defendants from prevailing by terminating the harms to PTFS that his frivolous lawsuit was causing; and
>
> (3) misinterpreted the "Go-To-Market" Plan as a settlement agreement that resolved this lawsuit, rather than as an independent agreement on a methodology to value and market PTFS.

stream of litigation by seeking a declaratory judgment to remove Glass as an officer of PTFS. *Id*. at 3.

In 2008, PTFS, Yokley, and Glass executed a settlement agreement to resolve the declaratory judgment action. *Id*. at 4. The settlement agreement stated that the prevailing party in any action involving an alleged breach of the settlement agreement "shall be entitled to an award of reasonable attorneys' fees and costs" and "[t]he tribunal is required to designate whether there is a prevailing party and if so, who such prevailing party is." *Id*.

In 2020, PTFS canceled Glass's consulting contract and removed him from the Board after Glass attempted stealthfully to negotiate a sale of his interest in PTFS. *Id*. at 4-5. Later that year, Glass filed this lawsuit. In his prayer for relief, Glass sought only money and resumption of his Board seat:

> WHEREFORE Plaintiff Todd Glass respectfully requests that the Court:
>
> a. Enter judgment in his favor and against Defendants jointly and severally for monetary legal and equitable damages in amounts to be determined at trial, but at least $175,000;
>
> b. Enter judgment in his favor and against Defendants PTFS and Yokley for attorneys' fees and costs incurred in bringing this action;
>
> c. Issue a Declaratory Judgment determining and declaring the May 19, 2020 election of the PTFS Board of Directors null and void, and that the PTFS Bylaws, the Settlement Agreement and the Shareholders' Agreement require that Yokley vote in such an election in a manner consistent with voting Glass onto the Board;
>
> d. Issue a Permanent Injunction vacating the May 19, 2020 election of the PTFS Board of Directors, and ordering a new election of the PTFS Board of Directors in which Yokley is ordered to vote consistent with the Shareholders' Agreement;

e. Award Plaintiff other applicable legal interests and costs;

f. Grant such other relief as the Court may deem just and proper.

On remand, the circuit court interpreted ultimately a written "Go-To-Market" Plan ("the Plan") between Glass and Yokley as a "settlement agreement" that resolved this lawsuit. The Plan stemmed from a private equity firm's offer to value and market PTFS. That offer led to the Plan, which outlined an agreed upon process to value and market the company. Yokley signed the Plan on 14 April 2021.

On 3 May 2021, Yokley emailed Glass and encouraged him to dismiss the lawsuit because the litigation was damaging the value of the company. Glass moved for voluntary dismissal of his complaint with prejudice on 17 May 2021, the same date on which he signed the Plan. The Plan made no mention of the litigation. Nor did the Plan state that the parties agreed thereby to resolve Glass's complaint.

At the hearing on remand in April 2023, Glass's counsel conceded that Glass's complaint had not requested any relief related to the sale of PTFS:

> [GLASS'S COUNSEL]: The two exhibits that I think are critical to that are the e-mail between Mr. Yokley and Mr. Glass -- again, they are combined 76 percent owners of the company. And again, the go to market agreement that sets out the floors by which a sale of this company will be undertaken -- again, the reason for the lawsuit being filed was the fear that the company was being sold out from under Mr. Glass. Yes, that's a subjective fear. The go to market agreement and the e-mail are objective. He now is getting what he wants. ***Did that change from what he asked for in the complaint? Yes.*** Is that an acceptable way to resolve a

> lawsuit? Can the parties change their positions and their tack and what they want as facts change? And to say that they cannot would hobble and impair any type of resolution that could possibly be made in the practical civil context.

(Emphasis added.)

The court, at that point, dangled an issue that had not been briefed by the parties: whether the Plan amounted to a settlement agreement. Consequently, Glass's then counsel tacked his sail and rose to the bait in response, arguing that the Plan was substantively a settlement, despite its form:

> THE COURT: Do you contend that the go to market agreement and the 5/3 e-mail together constitutes some kind of settlement agreement between the two?
>
> [GLASS'S COUNSEL]: They did not use the word settlement agreement, per se. They did not say -- substantively, yes. Form, no. Because you and I both know what a settlement agreement looks like, right? Recitals. Whereas, whereas. We do this, you do that. It didn't come out that way. So I can't say fully and formally it's a settlement agreement. But substantively, that's exactly what it is. Because you've got the two major shareholders of this company now making a decision as to what is going to happen with the company.

Appellants' counsel responded that the Plan was not a settlement:

> [APPELLANTS' COUNSEL]: The discussions that [Glass's counsel] discussed and Mr. Glass emphasizes preceding Mr. Glass dismissing his case simply do not constitute a settlement. Mr. Glass didn't condition his dismissal of the case on anything. If he felt like those discussions were a

> negotiation, then he could have suggested doing a stipulated dismissal based on an agreed settlement. That is not what happened here. And, you know, whatever his subjective motivations were, that simply wasn't an agreement or a condition for him dismissing the case.
>
> Communications between the parties is not negotiating a settlement agreement. And even if it were considered a settlement agreement, there's no indication that he gained anything out of it or would somehow be considered the prevailing party if that was crystalized into a settlement agreement. But the fact remains that it was not.

In June 2023, the circuit court issued a memorandum opinion declining again to designate a prevailing party or award fees and costs. Rather, the court focused on Glass's proffered subjective motivations for filing the complaint:

> Here, [Glass's] concern, made in his complaint filed July 2020, was not only that he was removed from the Board and denied his consulting fees, but it also was that he was being denied information relevant to the business (p.7), financial decisions were being made that were contrary to the interest of the company (p.8), including efforts to transfer company interests at a lower amount than their value (p.8). Glass further contended in his complaint that he was removed so he would be prevented from scrutinizing these actions of Yokley, Mutarelli and Ballard. (p.8).

The court concluded that the Plan amounted to a settlement agreement. According to the court, the Plan "is what the parties had hoped would resolve disputes [that Glass] put before the court—a process for valuation, marketing, and sale of PTFS." Because "[t]he [Plan] was signed prior to extensive discovery and trial preparation[,]" "[b]oth sides saved time and money entering into the [Plan,]" and "[b]oth sides benefitted from the agreement[,]" the court found that Appellants were not prevailing parties.

Additional facts will be included as they are relevant to the issues.

DISCUSSION

In the present appeal, Appellants contend that the circuit court erred in refusing to designate Appellants as the prevailing parties. In addition, Appellants claim that the court mis-interpreted the Plan as a settlement agreement "rather than an independent agreement on a methodology to value and market PTFS." Glass responds that the circuit court determined properly that there was no prevailing party and that the Plan constituted a settlement agreement.

The designation of the prevailing party for the purposes of awarding attorneys' fees is a question of law that we review without deference to the circuit court's determination. *Giant of Md., LLC v. Taylor*, 221 Md. App. 355, 368 (2015). In addition, "[t]he interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review." *Spacesaver Sys., Inc. v. Adam*, 440 Md. 1, 7 (2014) (quoting *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004)).

The American Rule prohibits generally the prevailing party in a lawsuit from recovering their attorneys' fees as an element of damages. *Wheeling v. Selene Fin. LP*, 473 Md. 356, 400 (2021). There are exceptions, however, to the American Rule. One exception allows for the imposition of attorneys' fees when "parties to a contract have an agreement regarding attorney's fees[.]" *Id*. PTFS, Yokley, and Glass signed a bona fide settlement agreement, which stated that the prevailing party in any action involving an alleged breach of that agreement "shall be entitled to an award of reasonable attorneys' fees and costs" and "[t]he tribunal is required to designate whether there is a prevailing party and if so,

who such prevailing party is." *PTFS I*, slip op. at 4. Glass alleged a breach of that agreement, the parties agreed to bifurcate attorneys' fees, and Glass dismissed voluntarily his complaint, with prejudice.

This Court recognizes three nontechnical and commonsense principles ("the *Hyundai* principles") to guide courts when deciding whether a party achieved "the requisite degree of success to be deemed a prevailing party":

> (1) A party prevails when its ends are accomplished as a result of the litigation;
>
> (2) If a party reaches a sought-after destination, then the party prevails regardless of the route taken; and
>
> (3) The standard is whether the party has prevailed in a practical sense.

Hyundai Motor Am. v. Alley, 183 Md. App. 261, 272-73 (2008) (citing *Blaylock v. Johns Hopkins Fed. Credit Union*, 152 Md. App. 338, 354 (2003)). *See also Brown v. Hornbeck*, 54 Md. App. 404, 412 (1983) (providing examples of potential routes to achieve prevailing party status: through compromise, trial, or judgment).

As we emphasized in the first appeal, there is ample evidence in the record that Appellants prevailed when Glass dismissed, with prejudice, his complaint:

> As further guidance on remand, we highlight that the record suggests that: Appellants defeated Glass's motion for a preliminary injunction (the preliminary injunction hearing judge finding that the unclean hands doctrine damaged Glass's likelihood of success on the merits because there was "incredibly strong evidence" that Glass had engaged in self-dealing); by dismissing voluntarily his complaint, with prejudice, Glass obtained from the court none of the relief that he sought in his complaint; and, Appellants did not agree to Glass's attempted voluntary dismissal, without prejudice, and he agreed to dismiss the case with prejudice. The record suggests that Appellants accomplished their ends, "prevailed 'in a practical sense[,]'" and "reache[d their] sought-after destination" when Glass dismissed his

> complaint with prejudice. *Hyundai*, 183 Md. App. at 272-73 (citation omitted).

PTFS I, slip op. at 16-17. On remand, however, the court ignored largely the sign posts in our opinion and instead mis-interpreted the Plan as a "settlement agreement," which it is not.

A "[s]ettlement is defined as '[a]n agreement ending a dispute or lawsuit.'" *Att'y Grievance Comm'n v. Sapero*, 400 Md. 461, 482 (2007) (quoting BLACK'S LAW DICTIONARY 1404 (8th ed. 2004)). Indeed, "[a] settlement agreement by definition should end litigation." *David v. Warwell*, 86 Md. App. 306, 317 (1991) (quoting *Wood v. Va. Hauling Co.*, 528 F.2d 423, 425-26 (4th Cir. 1975)). By contrast, the Plan was an agreement about a matter collateral to the litigation: the methodology to value and market PTFS. The Plan made no mention of the lawsuit. Nor did the Plan's terms contain any agreement to terminate Glass's dispute. Indeed, Glass and Yokley were the only parties who signed the Plan. The Plan contained no indication that Yokley agreed to settle unilaterally any of Glass's claims against Yokley, PTFS, Mutarelli, or Ballard. What is more, even after the Plan was signed, Appellants did not agree to Glass's attempted voluntary dismissal until Glass agreed to dismiss his complaint with prejudice.

Glass's complaint sought to hold Appellants liable, jointly and severally, for monetary legal and equitable damages, judgment against PTFS and Yokley for attorneys' fees, and a declaratory judgment and injunction that would lead to his reinstatement on the

Board. Glass attained none of those remedies.[2] He notes now that his complaint included a pro forma request for "such other relief as the Court may deem just and proper." From that premise, he contends that he received "at least some of the relief he sought in the complaint" because the Plan remedied "some of the core concerns that motivated [him] to file this lawsuit." The court did not grant, however, Glass "any other relief[,]" within the context of his complaint, prior to when he dismissed his complaint, with prejudice.

In sum, Appellants achieved prevailing party status. As a result, we shall reverse the judgment of the circuit court. On remand, the circuit court shall determine the amount of attorneys' fees due to Appellants.[3]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[2] On the first remand, the circuit court noted that Glass expressed several subjective concerns that he conjugated as additional causes to file his complaint. To be sure, Glass was concerned that the PTFS Board was withholding information about the business and undervaluing the company. Nevertheless, he received "not a whit" of the remedies that he pleaded in the complaint's prayer for relief. *PTFS I*, slip op. at 14.

[3] On the first remand, the circuit court declined expressly to determine whether "non-parties to the Settlement Agreement are entitled to fees thereunder." Because we are holding that Appellants achieved prevailing party status for purposes of the settlement agreement, the court on this second remand shall determine also whether non-parties to the settlement agreement (i.e., Mutarelli and Ballard) are entitled to fees under the only true settlement agreement in this record.