

Circuit Court for Baltimore City
Case No. 24-C-15-000398

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1086

September Term, 2020

PETER FERRARO

v.

L. CABRERA INC., et al.

Wells, C.J.,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 27, 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.

This case concerns a contract dispute between Peter Ferraro (“Appellant”), L. Cabrera Inc., and 4528-30 Harford Road, LLC (collectively, “Appellees”). Appellant loaned Appellees \$100,000.00 for the purchase of interest in an LLC in conjunction with the sale and renovation of a business and executed a promissory note (“Note”). The loan was to be paid in thirty-six payments to Appellant, with a balloon payment¹ as the final payment. Appellees did not make the final payment and defaulted on the loan.

After Appellees filed a motion against Appellant, the Circuit Court of Baltimore City held a bench trial in November of 2016. The circuit court held Appellant had failed to show that it was entitled to late fees, attorney’s fees, and interest collected and Appellees paid \$81,336.71 and that the amount due on the loan was \$18,663.29 plus 12% interest. Appellant appealed.

On appeal on July 22, 2019, this Court held, inter alia, that the circuit court did not abuse its discretion in denying Appellant attorney’s fees because Appellant failed to meet his burden of evidentiary proof to the Court. This Court remanded the final payment calculation to include post maturity interest from May 2011 to October 2014, and if applicable, late fees and the proper calculation of the late fees.

On remand in October 2020, the circuit court held that the post maturity interest would be calculated by working back from the balance on October 27, 2014 to the balance due on April 11, 2011 and “would treat each payment as a payment of principal”

¹ As defined by MD. CODE ANN., Com. Law § 12-1001(b)(1)(West 2020), a balloon payment is: “any scheduled payment on an installment loan that is more than two times the average of all other payments scheduled to repay the installment loan.” *Id.*

concluding that the post maturity interest due was \$17,400.41. The application of late fees was uncontested by both parties and the circuit court accepted this Court's calculation of late fees in the amount of \$1,072.96. The circuit court declined to award Appellant attorney's fees because this Court had already affirmed the circuit court's initial exercise of discretion to not award attorney's fees. Finally, the circuit court declared the new final judgement due was \$27,016.30.

Appellant files this timely appeal and presents two questions for appellate review, restated as follows:²

- I. Did the circuit court err in its calculation of additional amounts due and owed to Appellant under the Note on remand?
- II. Did the circuit court abuse its discretion in declining to award additional attorney's fees on remand?

For the following reasons, we remand the calculation of the interest owed to the Appellant under the Note back to the circuit court. This Court affirms the circuit court's decision to apply \$1,072.96 in late fees and decline to award additional attorney's fees.

FACTUAL & PROCEDURAL BACKGROUND

² The original questions presented in Appellant's Brief are as follows:

1. Whether the Trial Court on remand erred in its calculation of additional amounts due and owing to Appellant under the Note.
2. Whether the Trial Court abused its discretion in declining to award additional attorneys' fees on remand.

On March 17, 2008, Appellant and Appellees executed a promissory note (“Note”) for the purchase of interest in a limited liability company in conjunction with the sale and renovation of a business. Appellees received a loan in the amount of \$100,000 from Appellant for use in purchasing a restaurant property, improvements to the property, and business operations. The loan was to be paid in thirty-six consecutive monthly principal installments beginning on May 17, 2008 and ending on April 17, 2011. The first thirty-five payments to be paid were to be in the amount of \$1,021.87, inclusive of interest, while the final, thirty-sixth payment was to be a balloon payment in the amount of \$90,815.18. Appellant opened a bank account with First National Bank³ (“Bank Account”) for Appellees to make payments directly to Appellant. According to bank records, Appellees made payments to the Bank Account from June 14, 2008, until October 27, 2014.

Appellees did not make the final, thirty-sixth payment and defaulted on the loan. On January 26, 2015, Appellees filed a Complaint for Declaratory Judgment and to Quiet Title against Appellant regarding a dispute regarding the Note. After multiple cross filings, a bench trial was conducted on November 3, 2016, where the court found, inter alia, that Appellant had failed to show that it was entitled to late fees, attorney’s fees, and interest collected, that Appellees paid \$81,336.71, and that the amount due on the loan was \$18,663.29 plus 12% interest. Following the verdict, Appellant filed a Motion to Alter/Amend Judgement or, alternatively, for New Trial, which was denied. Appellant filed

³ First National Bank was subsequently purchased by Baltimore County Savings Bank (“BCSB”). Thus, although they are the same bank account, bank statements made before BCSB’s acquisition of First National Bank have the “First National Bank” logo, while more recent bank statements are from BCSB.

a Motion to Correct Judgement with the circuit court because Appellant believed that the final order did not reflect the 12% interest in the recorded judgement, which the circuit court also denied.

Appellant appealed, contending that the circuit court miscalculated the amount of money Appellees paid toward the principal balance. On July 22, 2019, this Court held: (1) the circuit court did not err in its calculation of the total amount paid by Appellees because the evidence presented by both parties were wholly inconsistent and contained errors and discrepancies; (2) the circuit court did not err in finding that Appellant did not give Appellees an interest free loan from the date of signing until default; (3) the thirty-sixth payment on the loan should have included the 12% interest; (4) the circuit court did not abuse its discretion in denying Appellant attorney's fees because Appellant failed to meet his burden of evidentiary proof to the Court; (5) costs to be paid half by Appellant and half by Appellees. This Court affirmed that Appellees paid \$81,336.71 and remanded to the circuit court: (1) the final payment calculation to include post maturity interest from May 2011 to October 2014; and (2) the issue of late fees, and if applicable, the proper calculation of the late fees.

In June of 2020, the circuit court issued a Scheduling Order on Remand requiring Appellant to designate witnesses for the interest calculations and for both parties to file memorandum detailing the calculation of all additional amounts claimed. In the October 2020 evidentiary hearing, the circuit court declined to admit into evidence an expert report

on new interest calculations because the expert was not present to testify. The circuit court also admitted an affidavit on Appellant’s attorney’s fees for Appellant’s current attorney.⁴

Following the evidentiary hearing, the circuit court held: (1) the post maturity interest would be calculated by working back from the balance of \$18,663.29 on October 27, 2014 to the balance due on April 11, 2011, treating each payment as “a payment of principal[,]” and concluded that the post maturity interest due was \$17,400.41; (2) late fees, based on twenty-one late payments at 5% of each payment due, would amount to \$1,072.96; (3) attorney’s fees, as declined by the circuit court and as affirmed by this Court, shall be declined by the circuit court on remand; (4) the initial judgement entered on November 9, 2016, has been satisfied; and (5) the new final judgement due to Appellant is \$27,016.30.

DISCUSSION

I. Calculations of Additional Amounts Due Under the Note

A. Parties’ Contentions

Appellant alleges the circuit court “erroneously applied post maturity payments to principal only in complete disregard to the terms of the Note.” Appellant states the Note outlines that all payments must “be applied firstly to late fees, secondly to costs and expenses, thirdly to payment of all interest then due on the unpaid balance . . .” Appellant contends that the circuit court “arbitrarily and erroneously treated each payment as

⁴ The affidavit did not include the attorney’s fees from Appellant’s prior attorney.

payment of principal only instead of applying each payment first to late fees, then to payment of all interest then due on the unpaid balance then to principal.”

Appellees state that Appellant disregarded the previous rulings of both the circuit court and this Court and has repeatedly failed to properly introduce interest calculations into evidence,⁵ and does so again in this appeal. Appellee claims that competent, material evidence supports the circuit court’s remand ruling, and therefore, the ruling cannot be clearly erroneous.

B. Standard of Review

The circuit court’s interpretation or construction of a contract is a legal question and subject to *de novo* review. *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 392 (2019). This court is then tasked with construing, “from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.” *Nationwide Mut. Ins. Co.*, 183 Md. App. at 722. (citing *Taylor v. NationsBank, N.A.*, 365 Md. 166, 178–79 (2001) (quoting *GMAC v. Daniels*, 303 Md. 254, 261 (1985))). “If the language of a contract is unambiguous, we give effect to its plain meaning . . .” *Cochran v. Norkunas*, 398 Md. 1, 16 (2007).

C. Analysis

⁵ In the first instance cited by Appellees, this Court affirmed the circuit court’s decision because Appellees failed to meet his burden of proof regarding entitlement to late fees, attorney’s fees, and interest. On remand, at the circuit court’s evidentiary hearing, Appellant attempted to enter an expert report on interest calculations into evidence. However, the expert witness was not present at the hearing to testify, so the circuit court did not allow the expert report into evidence.

The first question presented to this Court concerns the application of payments according to the language of the Note, which serves as a contract between Appellant and Appellee. Appellant asserts that the circuit court erroneously calculated the post maturity interest payments in a method that is not aligned with the Note. Appellant cites the language in the Note that all payments in account of the Note must “be applied firstly to late fees, secondly to costs and expenses, thirdly to payment of all interest then due on the unpaid balance” In advancing this argument, Appellant asks the Court to apply the post maturity payments to the late fees first, then calculate interest, and finally pay the principal to align with the Note.

i. Late Fees

This Court will address the issue of late fees first. The Note, in pertinent part, states: “if a payment due hereunder between maker and Lender is delinquent by more than ten (10) days, Maker shall pay a late payment penalty of Five Percent (5%) of the payment then due.” This Court calculated the late payments to be five percent of the standard monthly fee of \$1,021.87, which would be \$51.09 per payment, for twenty-one late payments totaling \$1,072.96. However, this Court remanded the issue of late fees back to the circuit court to determine if late fees should be applied, and if so, to properly calculate late fees.

With no dispute from the parties about the application of late fees, the circuit court held that late fees should be applied. Appellant, in their remand memorandum to the circuit court, agreed with our Court’s calculations stating the late fees apply to the twenty-one payments under the Note. Further, during the remand hearing, Appellant did not raise issue

with the calculation of the late fees. However, the circuit court considered Appellees' proposed lower amount of \$1,021.87 cited in their remand memorandum,⁶ which would amount to twenty late payments, instead of the calculated twenty-one late payments. Appellees, however proposed no basis for omitting the last late payment, so the circuit court held in favor of the Appellant. The circuit court found that the amount due for the late fees was \$1,072.96. This Court affirms the circuit court's findings on the amount.

Next, the Note is instructive regarding how the late fee amount is to be paid. The Note states all payments must "be applied firstly to late fees, secondly to costs and expenses, thirdly to payment of all interest then due on the unpaid balance . . ." "[I]f the language of a contract is unambiguous, we give effect to its plain meaning . . . Our search to determine the meaning of a contract is focused on the four corners of the agreement." *Cochran v. Norkunas*, 398 Md. 1, 16 (2007) (citing *Walton v. Mariner Health*, 391 Md. 643, 660 (2006)). The Note between the two parties was signed and initialed by Appellees and deemed valid and enforceable by both this Court and the circuit court. The language in the Note regarding the application of payments is clear, stating that the payments shall first be applied to late fees. Thus, as a starting point, the first month's payment of \$1,021.87 and \$51.09 of the second month's payment must be applied to the \$1,072.96 payment of late fees before the payment of any principal or interest. We explain further on the effect of the Note's language on the calculation of post maturity payments below.

⁶ Although Appellees proposed a different amount for the late fees in their remand memorandum, during the remand hearing on October 28, 2020, the Appellees stated that the late fees were \$1,072.

ii. Post Maturity Interest

This Court remanded the final payment calculation to include post maturity interest from May 2011 to October 2014 to the circuit court. The circuit court, in its holding on remand regarding post-maturity interest worked backward from the established balance on October 27, 2014 to the balance due on April 11, 2011. The circuit court then calculated the 12% interest rate on the amount of principal as it declined and found the post maturity interest due as of October 27, 2014 was \$17,400.41.

By using this methodology to calculate the post maturity interest, the circuit court failed to properly align its process with the plain language of the Note regarding the application of payments. The court applied the payments as principal, as outlined in its Memorandum Opinion and spreadsheet. However, as previously mentioned, the Note stated to first apply the payment to late fees, then interest, followed by the principal amount.

Since the Note was valid and binding, and the language of the Note regarding the application of payments is unambiguous, it is this Court's interpretation that the circuit court should have aligned the calculation of the post-maturity interest with the terms of the Note. Per this Court's remand instructions, the calculations should begin to apply the post maturity interest in May of 2011, and not April of 2011. Next, as previously mentioned, the circuit court must apply the monthly payments of \$1,021.87 to the \$1,072.96 amount in late fees first. The outstanding principal accrues interest during the period that the monthly payments are consumed in whole or in part by the late fees, but the separate payment of the late fees do not accrue interest. Next, the outstanding principal balance's interest for the prior month must be paid prior to applying the payment to the principal.

Finally, after the outstanding principal balance's interest for the prior month is paid, payment may be applied to the principal.

Because the calculations on post maturity interest are not aligned with this Court's instruction and the Note's language, we must remand the calculation of the post maturity interest back to the circuit court.

II. Attorney's Fees

A. Parties' Contentions

Appellant contends that the circuit court abused its discretion in declining to award attorney's fees based on the terms of the Note, because the Note states:

forwarded to an attorney for collection after maturity hereof (whether by acceleration, declaration, extension or otherwise), [Appellees] shall pay on demand all costs and expenses of collection including reasonable attorneys' fees of fifteen percent (15%) of the unpaid balance of the Principal Amount then outstanding.

Appellant also contends that because he provided evidence on remand for his new attorney's fees, the circuit court abused its discretion in declining to award attorney's fees in accordance with the Note.

Appellees' argument can be summed up in a quote from the circuit court, calling Appellant "the protagonist here on additional information." Appellees contend that Appellant ignores that the circuit court has discretion and introduces new information in the filing to this Court. Appellees contend that the new information was not part of the circuit court record and cannot be considered by this Court. Lastly, Appellees argue that on remand, the circuit court did not award attorney's fees based on previous rulings by this Court and the previous circuit court holdings.

B. Standard of Review

“We review a circuit court’s decision to award attorneys’ fees and costs for abuse of discretion.” *Pinnacle Grp., LLC v. Kelly*, 235 Md. App. 436, 476 (2018) (citing *Barufaldi v. Ocean City, Chamber of Com., Inc.*, 196 Md. App. 1, 35-36 (2010)). A circuit court abuses its discretion when the court disregards established principles or adopts a position that no reasonable person would accept.” *Id.* (citing *Letke Sec. Contractors, Inc. v. U.S. Sur. Co.*, 191 Md. App. 462, 474 (2010)). An abuse of discretion “should only be found in extraordinary, exceptional, or most egregious case[s].” *Aventis Pasteur, Inc. v. Skevofilax*, 365 Md. 405, 419 (2007).

C. Analysis

This Court remanded specific issues to the circuit court, and as stated by the circuit court, “[this Court] was very clear as to the narrow scope of what was being remanded back to the circuit court.” “Maryland Rule §8-604(b) permits an appellate court, if it concludes that error affects a severable part of the action, to reverse or modify the judgement as to that severable part of the action, remand that part for further proceedings, and affirm other parts of the judgement.” *Hoffman v. Stamper*, 385 Md. 1, 47 (2005) (citing Md. Rule §8-604). However, “[Maryland] Rule §8-604 is not to be regarded as a general antidote for the errors of counsel nor a method to correct errors committed during the trial itself.” *Southern v. State*, 371 Md. 93, 104 (2002) (holding that under Md. Rule §8-604(d), new evidence cannot be presented on remand where a party failed to sustain its burden of proof on issues previously raised).

The issues on remand to the circuit court were: (1) the final payment calculation to include post maturity interest from May 2011 to October 2014; (2) the issue of late fees, and if applicable, the proper calculation of the late fees; and (3) the circuit court clerk's clerical error on the judgement. Of the three issues on remand to the circuit court, attorney's fees were not among those remanded to the circuit court. This Court limited the issues on remand to the circuit court to those listed above and affirmed the circuit court's previous judgement in not awarding attorney's fees to Appellant, holding that the circuit court did not abuse its discretion.

Upon its review in the 2016 case, this Court quoted the circuit court stating:

I find as a finding of fact, that the [Appellant], Mr. Ferraro, has failed to show to this [c]ourt, and consequently meet his burden of proof, regarding entitlement to late fees, attorney's fees, and interest as prayed by him in his complaint.

At the time of the circuit court's holding, there was nothing in evidence to support the attorney's fees. As such, this Court held that upon reviewing the trial transcript, "the circuit court committed no capricious act that would amount to an abuse of discretion. In fact, it appears that the circuit court made this decision based on the evidence adduced at trial." Thus, this Court affirmed the circuit court's holding in not awarding Appellant attorney's fees because Appellant failed to meet his burden of evidentiary proof to the circuit court, and thus found that the circuit court did not abuse its discretion in denying Appellant attorney's fees. Appellant invites the Court to reconsider new information on attorney's fees outside the scope of this Court's limited remand to the circuit court, which we will not do.

Based on our limited remand to the circuit court and this Court's previous holding finding no abuse of the circuit court's discretion, we decline to award the requested attorney's fees to Appellant.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND REMANDED IN PART FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION; COSTS TO BE
PAID HALF BY APPELLANT AND HALF
BY APPELLEES.**