

Circuit Court for Prince George's County  
CAL20-0363

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1336

September Term, 2022

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CRYSTAL, LLC, ET AL.

v.

LA UNION CENTER, LLC, ET AL.

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Leahy,  
Tang,  
Harrell, Glenn T., Jr.,  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Leahy, J.

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Filed: August 28, 2023

\*During the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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 appeal concerns the enforceability of a contractual jury trial waiver in a commercial lease agreement. In the Circuit Court for Prince George’s County, Maryland, Crystal, LLC and Charles Leintu, (collectively, “Appellants”), filed suit against their former landlord, La Union Center, LLC (“LUC”); Michael Kim, LUC’s property manager; Manna Restaurant and Bar, Inc. (“Manna”), a restaurant that took over the premises formerly leased by Crystal, LLC; and Francisca Marcial-Urena and her brother, Francisco Marcial, owners and operators of Manna (“the Marcials”), (collectively, “Appellees”). In their complaint, Appellants asserted numerous claims arising from an alleged agreement between them to sell Appellants’ business to the Marcials. LUC and Mr. Kim moved to strike Appellants’ jury trial demand on the ground that it was barred by a jury trial waiver in the lease agreement between Crystal, LLC, Mr. Leintu, and LUC. The Marcials and Manna joined the motion to strike. The court granted the motion, and the case was tried to the court, which entered judgment in favor of the Appellees on all counts.

The Appellants filed a timely appeal and pose one question,<sup>1</sup> which we have rephrased as: Did the circuit court err by determining that the jury trial waiver in the lease was binding and enforceable against Appellants in this case?

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<sup>1</sup> The question posed by Appellants in their brief is:

- I. “Did the circuit court err in granting appellee’s motion to strike jury trial and in denying the jury trial prayed [for] by appellants?”

We hold that the circuit court did not err by striking Appellants’ jury demand in the underlying case because they were bound by the jury trial waiver contained in the lease agreement, which, by its plain language, was enforceable “in any litigation *involving* this Lease.” We affirm the judgment of the circuit court.

### **BACKGROUND**

Mr. Leintu is the controlling member of Crystal, LLC, a Maryland limited liability company.<sup>2</sup> Between 2001 and early 2017, Crystal, LLC traded as a nightclub and restaurant known as “Crystal’s” at 1401 University Boulevard East, Unit G-11 (“the Premises”), which is part of what is now known as the La Union Mall in Hyattsville. The mall is partially enclosed by several shops located in its interior and also has units that are accessible from the parking lot. The Premises is an externally accessible unit.

Since 2012, LUC has owned and operated La Union Mall. Mr. Kim is LUC’s property manager.

The Marcials own and operate Manna, a restaurant and bar. Manna was previously located in Montgomery County, but the restaurant at that original location burned down in January 2017. Since April 2017, the Marcials have leased the Premises from LUC for their restaurant.

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<sup>2</sup> Mr. Leintu testified that he formed Crystal, LLC with another member who owned a 25% interest, but the other member is now deceased. It is unclear from the record what became of the other member’s 25% interest upon his passing.

### **The Lease**

On August 16, 2001, Mr. Leintu and Chrisley, LLC, a predecessor in interest to Crystal, LLC, as tenants, and Asian Group, LLC, a predecessor in interest to LUC, as landlord, entered into a lease for the Premises (“the Lease”). The Lease was executed by a representative of the Asian Group, as predecessor in interest to LUC, and by Mr. Leintu. For ease of discussion, we shall refer to the parties to the Lease by their current appellations.

The Lease contains 66 numbered paragraphs with headings that are both underlined and in bold typeface. We shall set forth the provisions of the Lease pertinent to the present appeal.

The term of the Lease was ten years, commencing July 17, 2001, and terminating on November 30, 2011, unless extended. Appellants were obligated to pay a fixed annual rent, which increased by 5 percent each year of the term and was payable in monthly installments, in addition to monthly common area maintenance costs (“CAM charges”), and a proportionate share of real estate taxes for the property.

Tenants were permitted to install furniture, fixtures, and machinery at the Premises for the business and were entitled to remove the same prior to the expiration of the Lease term. Any property left at the Premises after expiration of the Lease would be deemed abandoned and become property of LUC.

Prior written consent of LUC was required before Crystal, LLC and Mr. Leintu could sublet, transfer, or assign the Lease. LUC agreed “not to unreasonably withhold its consent” to an assignment or sublet of the Lease.

Paragraph 53 contains the jury trial waiver and states:

**53. Applicable Law; Waiver of Jury Trial.**

A. This Lease shall be construed under the laws of the State of Maryland.

B. Tenant hereby elects domicile at the Premises for the purposes of service of all notices, writs of summons, or other legal documents, or process, in any suit, action or proceedings which Landlord may undertake under this Lease.

*C. Tenant hereby waives all rights to trial by jury in any litigation involving this Lease or the rights and/or obligations of the parties hereunder.*

(Emphasis added).

The Lease contained an option, exercisable by the tenants, to extend the term for an additional five years “on the same terms and conditions contained in [the] Lease[.]” It could be exercised if three conditions were met: (1) the Premises were maintained in “first rate condition” as determined by LUC; (2) Mr. Leintu and/or Crystal, LLC gave written notice of their intent to exercise the option no later than six months and no earlier than nine months before the expiration of the Lease; and (3) Mr. Leintu and/or Crystal, LLC were not “in default” at the time they exercised the option or immediately before the commencement of the option term. If exercised, the option term commenced the day after the termination date in the Lease and continued for an additional five years.

### **The Amendment**

In 2011, Appellants gave timely notice of their intent to exercise the option to extend the Lease. They executed an “Amendment to Lease” (“Amendment”) dated March 30, 2012. The Amendment was between Jin Suk Kim Trust, successor to Asian Group, LLC, and predecessor to LUC, as landlord; Crystal, LLC, as tenant; and Mr. Leintu, as limited guarantor. It “reaffirmed” and “expressly incorporated” all the “terms and conditions of the [L]ease,” which were “acknowledged to be binding upon Tenant.” To the extent those terms conflicted with the Amendment, however, the terms of the Amendment prevailed. The Lease term was extended for five years and three months, with a new termination date of February 28, 2017. The Amendment set a base monthly rent for each year of the extended term, due on the first of the month. Crystal, LLC remained liable for monthly CAM charges and its proportionate share of real estate taxes as set forth in the Lease. The Amendment included an option to extend the Lease, as amended, for an additional five-year term on the conditions that Crystal, LLC remain current on the payments and give written notice 120 days in advance of the Lease’s expiration.

The Amendment stated that Crystal, LLC had an outstanding account balance and owed “numerous late fees,” which, as recognized in the Amendment, Crystal, LLC disputed. Accordingly, under the Amendment, Crystal, LLC agreed to pay the first four month’s rental payments and an additional payment of \$4,988.39 to replace a lost payment in exchange for LUC’s agreement to restore their account to a zero balance.

Mr. Leintu agreed to guarantee all rent and other charges due under the Lease, as amended. His liability was limited to a maximum of 12 times the aggregate monthly rent due at the time of any default and, if there was no uncured default during the first six months of the extended term of the Lease, the guaranty would expire.

The Amendment was executed by a representative of the predecessor in interest to LUC on behalf of the landlord; by Mr. Leintu on behalf of Crystal, LLC as the tenant; and by Mr. Leintu, individually, as limited guarantor.

### **Termination of the Lease**

On March 1, 2017, Mr. Leintu gave possession of the Premises to the Marcials.<sup>3</sup> On April 1, 2017, LUC entered into a new ten-year lease with the Marcials. In addition to monthly rental payments, CAM charges, and taxes, the Marcials agreed to pay \$200,000 in additional consideration to LUC, with \$100,000 paid upfront upon the Marcials' acquisition of a liquor license and the remaining \$100,000 paid in monthly installments over 12 months in addition to regular rent.

### **The Complaint**

On January 30, 2020, Crystal, LLC and Mr. Leintu filed suit against LUC, Mr. Kim, the Marcials, and Manna, asserting eight counts: Breach of Contract (Count I); Unjust Enrichment (Count II); Promissory Estoppel (Count III); Quantum Meruit (Count

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<sup>3</sup> As discussed *infra*, Appellants claim that Crystal, LLC timely exercised its option to extend the Lease but then assigned its interest in the Lease to the Marcials. Appellees take the position that the Lease terminated on February 28, 2017.

IV); Conversion (Count V); Deceit (Count VI); Conspiracy (Count VII); and Breach of Fiduciary Duty (Count VIII).

Appellants made the following relevant allegations. On or about March 1, 2017, LUC agreed to renew or extend the Lease, as amended, for an additional five years. On or about that same date, Appellants entered into an agreement with the Marcials and Manna to sell “Crystal’s” to them for \$320,000. LUC and Mr. Kim represented to Appellants that they would “broker,” “guaranty,” and “facilitate” this sale, including the “assignment of [Appellants’] leasehold rights and all other assets” and to “collect all monies due to [Appellants]” for disbursement to them. In reliance on these agreements and promises, Mr. Leintu surrendered his keys to the Marcials and did not remove the fixtures and furnishings from inside the Premises. LUC and Mr. Kim, however, did not disburse any monies received from the Marcials and Manna to Appellants. LUC and Mr. Kim also “failed and refused to extend [Appellants’] lease agreement” and instead “entered into agreements with Manna [and the Marcials] for the lease of the space formerly occupied” by Appellants.

In each of the eight ensuing claims for relief, Mr. Leintu averred that he, in reliance on the alleged agreement to sell “Crystal’s” to the Marcials and Manna, transferred “assets” to the Marcials and was owed payments then being withheld by LUC and Mr. Kim. Appellants’ claims for Conversion (Count V) and Breach of Fiduciary Duty (Count VIII) were pled only as to LUC and Mr. Kim. Appended to the complaint



was a demand for a jury trial “as to all issues and damages claimed in [Appellants’] complaint and as to all matters triable in [Appellants’] complaint.”

**Motion to Strike Jury Demand**

On August 8, 2022, LUC and Mr. Kim moved to strike the jury demand. They asserted that the complaint arose from the Lease and that the crux of the claims was that “the Landlord failed to honor [Appellants’] attempted extension of the [L]ease and prevented [Appellants] from assigning their interest in the [L]ease to other defendants.” Given the “clear, unambiguous jury trial waiver” appearing in Paragraph 53 of the Lease, LUC and Mr. Kim maintained that Appellants were not entitled to a jury trial on any of their claims, which “spring entirely from their rights and obligations under the [L]ease[.]”

Appellants opposed the motion to strike, arguing that it was untimely, that the litigation “does not arise from the written lease agreement,” and that because Mr. Kim, the Marcials, and Manna were never parties to the Lease, claims against them could not be subject to the jury trial waiver. Alternatively, they argued that the Lease expired on November 30, 2011.

The parties appeared for trial two weeks later. At the outset, the court heard argument on the motion to strike the jury demand, which the Marcials and Manna joined. Mr. Kim and LUC argued that the entire case “flows” from the Lease because without a leasehold interest in the Premises, Appellants had nothing to assign to the Marcials and Manna. If the Lease did not exist, there would be no case.

Appellants responded that Mr. Kim and LUC waived this argument by waiting over two years to file its motion to strike the jury demand.<sup>4</sup> Alternatively, they argued that they were suing not for breach of the Lease, but for breach of a collateral agreement among other claims for relief, thus taking the case outside of the jury trial waiver. Further, Mr. Leintu was not a tenant under the Amendment, and the individual defendants and Manna were not parties to the Lease. Consequently, in Appellants' view, if the court were to grant the motion to strike, it only could apply to claims raised by Crystal, LLC against LUC, resulting in a bifurcated trial.

LUC and Mr. Kim disputed that any claims or parties could be disentangled from the underlying Lease, reiterating that the oral agreement alleged by Appellants was contingent upon a continued interest in the Premises.

The court asked counsel to explain “how . . . the parties’ relationship c[a]me to exist[.]” Counsel for Mr. Kim and LUC responded:

. . . .[T]here is a lease agreement between Mr. Leintu and the former owner of the property. Then the lease was amended to make Mr. Leintu a guarantor, but not the primary tenant. And Crystal, [LLC,] the lead Plaintiff in this case, is now the tenant under that lease.

Defendants’ position is that the lease expired by its own terms years ago, but Plaintiffs’ position, and what we’re stuck with at this point, is that the lease was extended and was agreed to be assigned.

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<sup>4</sup> Appellants do not advance this argument on appeal and, therefore, have waived it. *See, e.g., Klauenberg v. State*, 355 Md. 528, 552 (1999) (observing that arguments not raised in an appellant’s brief are waived) (citation omitted).

The court asked counsel for Appellants whether he agreed that “the parties’ relationship exists because of the lease agreement?” Counsel disagreed, arguing that Appellants’ relationship with the Marcials and Manna arose out of negotiations over the sale of Appellants’ business, “Crystal’s.” Further, he argued that Mr. Leintu had “no obligations” under the Amendment, because he was a mere guarantor and his guarantee expired.

Counsel for the Marcials and Manna summarized the case as follows:

. . . . You have old tenant. You have landlord. You have new tenant. The transaction is here that the old tenant is trying to assign the lease to my clients. The landlord gets in the middle of it. The lease is never assigned. He is suing [the Marcials and Manna] as a result of it.

The question of whether it arises out of the [L]ease is a definite yes.

The court took a 23-minute recess. When the proceedings resumed, the court explained that it had reviewed the motion to strike and the opposition to it as well as other documents in the case file, including motions to dismiss, a motion for partial summary judgment, and Appellants’ answers to interrogatories attached as exhibits to that motion. The court noted that there was an interrogatory asking Appellants whether they contended that they were “damaged by the purported lease of the property not being extended after [they] transferred Crystal’s to [the Marcials] and turned over the keys,” and if so, to explain the facts supporting that contention. Appellants responded that they suffered damages, not limited to the loss of the business, the liquor license, and future income, occasioned by the failure to extend the Lease, as amended. Based on its review

of the file, the court granted the motion to strike the jury demand, concluding that the litigation related to the Lease.

### **The Bench Trial**

The trial commenced that same day. In Appellants' case, Mr. Leintu testified and called Mr. Kim and the Marcials as witnesses. Mr. Leintu testified that he was the managing member of Crystal, LLC and that he operated "Crystal's" at the Premises from 2001 until March 1, 2017. He obtained a liquor license for the Premises in 2002, which he continuously renewed every year thereafter. His 2016-2017 liquor license had been due to expire on May 31, 2017.

He testified that on October 31, 2016, he hand-delivered a letter notifying Mr. Kim that Crystal, LLC intended to exercise the option in the Amendment to extend the Lease for an additional five-year term. According to Mr. Leintu, he had a conversation with Mr. Kim at the LUC offices in January 2017 when Mr. Kim agreed to extend the Lease for five years.

Around the same time, Mr. Leintu claimed he met the Marcials, who were seeking a new location for their restaurant due to the fire. They began discussing a sublease or sale of "Crystal's." Mr. Leintu prepared a "Working Agreement" document under which the Marcials would take over and operate "Crystal's" for one year, as subtenants under the existing Lease and liquor license. That agreement was never executed, however, because the Marcials decided that they wished to purchase "Crystal's" outright. Mr. Leintu proposed a sales price of \$375,000, but the Marcials asked for a \$12,000 reduction

for the cost to convert the kitchen from electric to gas. They exchanged financials and determined that they needed to meet with Mr. Kim to ensure that LUC was satisfied with the arrangement to assign the Lease.

In February 2017, Mr. Leintu asserted he met with the Marcials and Mr. Kim at an office at La Union Mall. During the meeting, the Marcials confirmed that LUC could offer them a 10-year lease, but Mr. Marcial became dissatisfied with certain answers he received from Mr. Kim and threatened to walk away from the deal if the price were not reduced to \$320,000. Mr. Leintu said there was no deal at that price. Mr. Kim suggested that he and Mr. Leintu meet privately.

Mr. Kim and Mr. Leintu left the meeting and spoke at another office at La Union Mall. Mr. Kim convinced Mr. Leintu to not walk away from the deal, noting the Marcials had “good financial[s]” and that he could “broker th[e] deal” for Mr. Leintu. Mr. Kim suggested that they close the deal, that he would draft the documents, and that the Marcials could pay him in rent, and he would disburse the funds to Mr. Leintu. Mr. Leintu agreed to this arrangement.

According to Mr. Leintu, during this meeting, Mr. Kim advised him for the first time that he owed back rent. He acknowledged that there had been times he “fell behind” on his rent but stated that he and Mr. Kim always had communicated about those

situations and Mr. Kim had reduced the rent at different points during the term of the Lease.<sup>5</sup>

On March 1, 2017, Mr. Leintu turned over the keys to the Premises to the Marcials on instructions from Mr. Kim. He claimed that he left property at the Premises valued at over \$500,000, including a sound system, furniture and fixtures, alcohol stock, and food stock. It was his understanding that Mr. Kim would be sending him paperwork to finalize the deal for the Marcials to purchase “Crystal’s” and for assignment of the Lease.

Mr. Kim told Mr. Leintu, when asked why he had not drafted the documents to carry out the deal with the Marcials, that he was “not giving [Mr. Leintu] anything” and that he could “crush” Mr. Leintu. According to Mr. Leintu, Mr. Kim said he was “the mastermind” and began yelling at Mr. Leintu. Mr. Leintu claimed that he later tried to speak to the Marcials about when he would be paid. They responded that they “paid the landlord” and the landlord would disburse any funds owed to Mr. Leintu.

Mr. Leintu was cross-examined by counsel for Mr. Kim and LUC extensively about being in default under the terms of the Lease, as amended, in response to Mr. Leintu’s allegation that he attempted to exercise his option to renew the Lease. Among other things, he was asked about many months when LUC’s ledger reflected that no rent payments were made. On cross-examination by counsel for the Marcials, Mr. Leintu was

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<sup>5</sup> In May 2017, LUC sued Mr. Leintu in the Circuit Court for Montgomery County for back rent, late fees, and CAM charges of over \$300,000. That case later was voluntarily dismissed with prejudice.

questioned about the condition of the Premises when he turned over the keys to the Marcials and about improvements they made to it thereafter.

During the direct examination of the Marcials, they each testified about their lease agreement with LUC. They had paid approximately \$182,000 of the \$200,000 in additional rent to LUC and were current on their regular rent and other charges under that lease. They characterized the payment of \$200,000 in additional rent as being for “the right to be in the premises.” When they signed their lease, they were unable to operate Manna immediately because “Crystal’s” did not have a current occupancy permit, health department permit, or a fire marshal’s permit.

Mr. Kim testified on direct that the \$200,000 in additional rent under the lease agreement between LUC and the Marcials was consideration for “the immediate use of the space[.]”. The court then reserved on the defendants’ motion for judgment.

Mr. Kim testified in the defense case that Crystal, LLC’s “rent payment history” was “spotty.” He claimed that Crystal, LLC had accrued over \$300,000 in unpaid rent, CAM charges, real estate taxes, and other fees.

Mr. Kim’s recollection of the February 2017 meeting between him, Mr. Leintu, and the Marcials differed in significant respects from Mr. Leintu’s testimony. He recalled that the Marcials learned for the first time during that meeting that the Lease, as amended, “was within days of expiring.” They were “very upset about the situation.” Mr. Kim denied ever having offered to “broker” a deal between Mr. Leintu and the Marcials.

After the meeting, Mr. Kim had a discussion with Mr. Leintu about the expiration of the Lease, explaining that he had “a right to remove all property” before he turned over the keys. Mr. Leintu removed his personal property and everything that remained behind was deemed abandoned. Thereafter, Mr. Kim negotiated the lease between LUC and the Marcials.

Mr. Marcial testified that at the February 2017 meeting, he and his sister learned for the first time that Mr. Leintu was behind in his rent and that the Lease was about to expire. LUC permitted the Marcials to use the Premises for the first two weekends in March 2017 to determine if they could operate as “Crystal’s,” but the condition of the Premises made this impossible. Ultimately, they entered into the new lease agreement with LUC to operate Manna out of the Premises and undertook extensive renovations before reopening in June 2017 for food sales. They obtained a new liquor license in July 2017. Mr. Marcial denied that Mr. Leintu left food and alcohol at the Premises.

After hearing closing arguments, the court recessed for almost an hour before ruling from the bench. As pertinent to the jury demand issue, the court supplemented its ruling by noting that Appellants introduced the Lease and the Amendment as their first two exhibits at trial.

The court found that Mr. Leintu’s testimony was not credible. The judge found that Mr. Leintu vacated the Premises on February 28, 2017, the same day the Lease, as amended, had expired. The judge found that the Lease was not extended a second time and, consequently, there was no interest as of that date for Mr. Leintu to assign, transfer,



or sublease. The court granted judgment in favor of Appellees on all counts of the complaint, concluding that Appellants failed to meet their burden to prove the elements of any of their causes of action.

This timely appeal followed. We shall include additional facts as necessary to our analysis.

### DISCUSSION

Article 23 of the Maryland Declaration of Rights<sup>6</sup> guarantees the right to a jury trial in civil cases.<sup>7</sup> Nevertheless, “parties can contractually waive their right to a jury trial.” *Walther v. Sovereign Bank*, 386 Md. 412, 442 (2005); *accord ST Systems, Corp. v. Md. Nat’l Bank*, 112 Md. App. 20, 34 (1996).

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<sup>6</sup> Article 23 states that “[t]he right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State . . . shall be inviolably preserved.” Maryland Code (1958, 2003 Repl. Vol.), Constitutions Article, Article 23.

<sup>7</sup> Appellants cite to numerous federal decisions construing contractual jury trial waivers under the Seventh Amendment to the United States Constitution. The right to a jury trial guaranteed by the Seventh Amendment does not apply to the states, however. *Consumer Protection Div. v. Morgan*, 387 Md. 125, 189 (2005). Though federal decisions may be persuasive authority on this issue, we are primarily concerned with Maryland decisional law pertaining to the reach of Article 23 of the Maryland Declaration of Rights.

The sole issue on appeal concerns whether the trial court erred by ruling that Appellants contractually waived their right to a jury trial in this case.<sup>8</sup> The waiver at issue provides:

Tenant hereby waives all rights to trial by jury in any litigation involving the lease or the rights and/or obligations of the parties hereunder.

We construe a jury trial waiver in a contract under the established principles of contract interpretation. *ST Systems*, 112 Md. App. at 34. “The cardinal rule of contract interpretation is to effectuate the intentions of the parties.” *Owens-Illinois, Inc. v. Cook*, 386 Md. 468, 497 (2005) (citing *Kasten Constr. Co., Inc. v. Rod Enters., Inc.*, 268 Md. 318, 328 (1973)). Our task is to “give effect to the plain meaning of the contract, read objectively, regardless of the parties’ subjective intent at the time of contract formation.” *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 507 (2021) (citing *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)). “In other words, when the contract language is plain and unambiguous, ‘the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.’” *Id.* (quoting *Dennis v. Fire & Police Emps.’ Ret. Sys.*, 390 Md. 639, 656-57 (2006)). The interpretation of a contract is a question of law that we review

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<sup>8</sup> As Appellants recognize, only their legal claims were triable to a jury, whereas their equitable claims were triable to the court. *See, e.g., Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 631 (2005) (explaining that “[w]ith the merger of law and equity in 1984, in cases in which legal and equitable claims both are made, and trial by jury is requested, a jury will hear the case and decide common and legal issues, and the court will hear the case and decide equitable claims”).

*de novo*. See, e.g., *Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241, 262 (2009).

**A. Parties' Contentions**

Appellants argue that the trial court erred by granting the motion to strike their jury trial demand for three reasons. First, they argue that the trial court failed to determine if the jury trial waiver in the Lease was entered into knowingly and voluntarily and that LUC and Mr. Kim failed to meet its burden on that issue. Second, they maintain that, even if the waiver was valid, it was not enforceable against Mr. Leintu because he did not sign the original Lease as an individual, only on behalf of Chrisley, Inc., and that he was only a guarantor to the Amendment incorporating the jury trial waiver. Likewise, the waiver could not apply to Mr. Kim, the Marcials, and Manna, who were not parties to the Lease. Third, Appellants assert that their claims did not arise from the Lease, but from the side agreement between Mr. Leintu, Mr. Kim, and the Marcials, relative to the sale of “Crystal’s.”

LUC and Mr. Kim<sup>9</sup> respond that Appellants waived their jury trial waiver issue because they never raised the argument before the trial court in their written opposition to the motion to strike or during argument. Regardless, they assert that the record does not support Appellants’ argument that the waiver was invalid. With respect to whether the

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<sup>9</sup> The Marcials filed a separate brief from the brief filed by LUC and Mr. Kim.

waiver is enforceable against Mr. Leintu, LUC and Mr. Kim argue that because Mr. Leintu was a tenant under the original Lease and the Amendment incorporated all terms not explicitly altered by it, the jury trial waiver remained effective against him. Alternatively, they argue that as a third-party who benefited from and was closely related to the contract, he could be bound by its terms. They maintain that all the claims in this case involved the Lease and, therefore, the waiver was applicable.

The Marcials agree that Appellants failed to preserve any argument that the jury trial waiver is void. Had that argument been made, however, they maintain that the waiver was valid and enforceable. Further, because Mr. Leintu was a tenant under the Lease, which is the document containing the jury trial waiver, his change in status to guarantor under the Amendment does not alter the enforceability of the waiver against him. They maintain that the claims raised in Appellants’ complaint and tried to the court clearly arose from and involved the Lease, making the waiver applicable to the litigation.

### **B. Analysis**

There are three subparts to jury trial waiver issue in this case.

#### *1. Is the Validity of the Jury Trial Waiver Before this Court?*

“In order to have a valid waiver of a fundamental right such as the right to a jury trial, . . . there ordinarily must exist a ‘knowing and intelligent’ waiver of the right.” *Walther*, 386 Md. at 442 (citation omitted). In *ST Systems*, this Court explained that “[s]ome courts apply a presumption against enforcing contractual jury waiver provisions” and some “apply a presumption in favor of upholding contractual waiver provisions.”

112 Md. App. at 34 n.6 (citations omitted). In either instance, the presumption concerns “who has the burden of proving that the waiver was knowing and intelligent.” *Id.* Because there were “no facts in the record to support an allegation that the jury waiver provision was not entered into knowingly and intelligently,” however, we declined to decide who bore that burden. *Id.*

The same result follows in this case. Appellants did not argue before the trial court that the jury trial waiver in the Lease was the product of unequal bargaining power or that it was not sufficiently conspicuous.<sup>10</sup> A central purpose of Rule 8-131(a), which provides that an appellate court ordinarily will not consider an issue on appeal “unless it plainly appears by the record to have been raised in or decided by the trial court” is “to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings[.]” *Md. State Bd. of Elections v. Libertarian Party of Md.*, 426 Md. 488, 517 (2012) (quoting *Fitzgerald v. State*, 384 Md. 484, 505 (2004)). If Appellants had raised the validity of the waiver before the circuit court, the parties could have developed the record pertaining to the negotiation of the Lease and the Amendment. Instead, we are left with Appellants’ bald assertions that Mr. Leintu “was obviously not in an equal position of bargaining power with the landlord who owned the entire shopping mall.” The

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<sup>10</sup> With respect to the conspicuousness of the waiver provision, we note that it was labeled in the Lease as “Waiver of Jury Trial” in bold typeface that was underlined. Though it was one of 66 paragraphs, it was not hidden.

question of whether the jury trial waiver provision of the Lease was a valid and enforceable waiver is not preserved for review and we decline to address it.

2. *Who Is Bound by the Jury Trial Waiver?*

We now turn to the issue of which parties are bound by the jury trial waiver in the Lease. The waiver, on its face, binds “Tenant.” The Lease defined “Tenant” to include Mr. Leintu and Chrisley, LLC, Crystal, LLC’s predecessor in interest. Mr. Leintu signed the Lease as “Tenant.” It follows that Mr. Leintu and Crystal, LLC—when it succeeded to Chrisley, LLC’s interest—were bound by the jury trial waiver provision under the Lease as parties to the Agreement.

Mr. Leintu’s status, however, was altered by the Amendment and we are not persuaded by Appellees’ contention that Mr. Leintu remained bound by the jury trial waiver as a “Tenant” after the parties executed the Amendment. The Amendment expressly changed Mr. Leintu’s role from “Tenant” to “Limited Guarantor.” He signed the Amendment both in his representative capacity on behalf of Crystal, LLC, as Tenant, and on behalf of himself, as Limited Guarantor. The Amendment “expressly incorporated” the terms of the Lease, and the parties to the Amendment acknowledged those terms to be “binding upon Tenant.” (Emphasis added). Further, a “Conflict of Terms” provision in the Amendment specified that if there was a conflict between the Lease and the Amendment, the Amendment controlled. Consequently, though the Amendment incorporated the jury trial waiver by reference, that waiver only bound the

“Tenant” under the terms of the Amendment. Mr. Leintu no longer was a Tenant and was not expressly bound by the jury trial waiver as a party to the contract.

We nevertheless conclude that the waiver provision was enforceable against Mr. Leintu in this case. This Court’s decision in *Westbard Apartments, LLC v. Westwood Joint Venture, LLC*, 181 Md. App. 37 (2007), is instructive. In that case, a limited liability company, Westbard, and its non-managing member, NEBF, filed suit against the owner of the managing member, Cohen, and other entities asserting claims that the sale of certain parcels directly to the entity owned by Cohen violated rights of first refusal and first offer that were reserved to Westbard under a commercial lease agreement. *Id.* at 40-43. As pertinent, both the lease agreement and Westbard’s operating agreement contained jury trial waivers and Cohen and other defendants successfully moved to strike Westbard and NEBF’s jury demand. *Id.* at 46. On appeal, NEBF argued that the trial court had erred by striking the jury demand as it applied to a claim brought by it against the lessor because it was not a party to the lease agreement. *Id.* at 49. We held that NEBF was bound by the waiver, however, because it was a member of Westbard and had assumed the “benefits, rights or privileges of the [l]ease.” *Id.* at 51. Because NEBF was suing derivatively on behalf of Westbard, a signatory to the lease, it could not “disclaim provisions in the [l]ease by which Westbard [was] bound.” *Id.* We further reasoned that NEBF relied on the lease to bring the action and that its standing derived from its relationship to a party to the lease. *Id.*

Likewise, in this case, Mr. Leintu’s claims all derive from his interest in Crystal, LLC, which remained a tenant under the Amendment and was bound by the jury trial waiver. In the complaint, Mr. Leintu identifies himself as the managing member of Crystal, LLC. Crystal, LLC is the entity that did business under the trade name, “Crystal’s,” and it was the entity that, beginning December 1, 2011, possessed a leasehold interest in the Premises. It was that interest, along with the related liquor license, that Mr. Leintu alleged he negotiated to assign to the Marcials, and it was that interest that he claims Mr. Kim and LUC wrongfully refused to extend. Mr. Leintu may not sue based upon the rights derived from Crystal, LLC’s interest in the Premises arising under the Amendment and simultaneously disclaim the provisions of the Lease and Amendment by which Crystal, LLC was bound.

Appellants also contend that the jury trial waiver could not bind Mr. Kim, the Marcials, and Manna because they were not parties to the Lease or the Amendment. This argument misses the mark for several reasons. First of all, Mr. Kim, the Marcials, and Manna did not elect a trial by jury under Rule 2-325(a) and instead *moved to strike* Appellants’ jury demand. The question thus becomes whether those parties were entitled to *invoke* the jury trial waiver, not necessarily whether they were bound by it. On that point, it is true that “a jury waiver is a contractual right and generally may not be invoked by one who is not a party to the contract.” *Paracor Finance, Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1166 (9th Cir. 1996). Yet, as we recognized in *Westbard*, there are exceptions to that rule which enable a non-party to an agreement to enforce a jury trial



waiver. *Westbard*, 181 Md. App. at 51-52. One such exception derives from the doctrine of equitable estoppel, which stands for the principle that it is “unfair ‘for a party to rely on a contract when it works to its advantage, and repudiate it when it works to its disadvantage.’” *Griggs v. Evans*, 205 Md. App. 64, 83 (2012) (quoting *Wachovia Bank N.A. v. Schmidt*, 445 F.3d 762, 769 (4th Cir. 2006)) (cleaned up).

Specifically, we recognized that “equitable estoppel applies when the signatory to a written agreement . . . must rely on the terms of the written agreement in asserting its claims against the nonsignatory” or “when the signatory . . . raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.” *Westbard*, 181 Md. App. at 51 (quoting *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999), *abrogated on other grounds by, Arthur Andersen LLP v. Carlisle*, 566 U.S. 624, 631 (2009)). Accordingly, we explained that because *Westbard* and NEBF “rel[ied] on the Lease and the Agreement to bring the instant matter[,]” they were estopped from avoiding the jury trial waivers in their claims against non-signatory defendants. *Id.* at 52. Here, as we shall explain in more detail in the ensuing section, all of Mr. Leintu’s and Crystal, LLC’s claims against Mr. Kim, Manna, and the Marcials relied on the existence of the Lease, as amended. He cannot simultaneously ground his claim in the provisions of the Lease while avoiding the jury trial waiver contained therein.

3. *Does the Litigation Involve the Lease?*

Appellants assert that their legal claims for breach of contract, conversion, deceit, and conspiracy were “not based on any facts involving the lease or rights and obligations of the parties under the lease.” We disagree.

We addressed a similar issue in *ST Systems*. In that case, the parties signed a loan agreement in which the parties agreed to waive “trial by jury in any litigation between Bank and Borrower arising out of the Loan Documents and the transactions contemplated.” *ST Systems*, 112 Md. App. 20 at 24-26, 33. The Loan Documents were further defined by the original loan agreement to include “any and all revisions, amendments and modifications to, replacements of and substitutions” of the loan agreement. *Id.* at 33. We concluded that jury trial provision contained in the original loan agreement therefore applied to subsequent modifications of that agreement and noted that a later loan agreement “was an effort to restructure the original” loan and “was born out of the original loan proposal.” *Id.* at 34-35.

Here, the jury trial waiver was even broader and was not limited to claims brought by the tenant against the landlord for breach of the terms of the Lease. Rather, by its plain language, the waiver is enforceable “in any litigation *involving* this Lease or the rights and/or obligations of the parties hereunder.” (Emphasis added). The Supreme Court of Maryland recently construed the term “involves” in the context of a criminal statute that defined sexual abuse to include “an act that involves sexual molestation or exploitation of a minor[.]” *State v. Krikstan*, 483 Md. 43, 65 (2023) (quoting Maryland

Code (2002, 2021 Repl. Vol.) Criminal Law Article, section 3-602(a)(4)(i)). The Court explained that based upon dictionary definitions and prior decisions construing a predecessor statute, the word “involves” “connotes a broad sense of inclusion, such as an act *relating to*” the conduct prohibited by the statute. *Id.* at 66 (quoting *Degren v. State*, 352 Md. 400, 419 (1999)) (emphasis in original) (additional citations omitted).

Consistent with this reasoning, the jury trial waiver in the Lease, as incorporated by the Amendment, extends to any litigation *relating to* the Lease or to the rights and obligations of the parties to it. We think it plain that Appellants’ claims all related to the Lease and to the rights and obligations of Crystal, LLC and LUC under the Lease. The alleged contract between Appellants on the one hand, and the Marcials and Manna, on the other hand, for the sale of “Crystal’s” was dependent upon Appellants’ having a continuing interest in the Premises to assign to the Marcials and Manna. For this reason, Appellants adduced testimony and other evidence during the bench trial in an attempt to show that Crystal, LLC timely invoked its option under the Amendment to renew the Lease for an additional five years and that it was not in default under the Lease at the time that it did so. Absent an interest in the Premises, Appellants had nothing to offer the Marcials and Manna. Further, absent the Lease, it would not have been necessary for Mr. Leintu to involve Mr. Kim in the negotiations for the sale of his business.

Appellants’ reliance on the Lease, as amended, as the foundation of their claims is apparent from the proceedings below. In the complaint, Mr. Leintu alleged he and Crystal, LLC entered into an agreement with the Marcials and Manna to sell “Crystal’s”

to them for \$320,000 and LUC and Mr. Kim represented they would “broker,” “guaranty,” and “facilitate” this sale, including the “*assignment of [Appellants’] leasehold rights and all other assets[.]*” (Emphasis added). Mr. Leintu further alleged LUC and Mr. Kim “failed and refused to extend [Appellants’] lease agreement” and instead “entered into agreements with Manna [and the Marcials] for the lease of the space formerly occupied” by Appellants. In each claim for relief, Mr. Leintu averred that he, in reliance on the alleged agreement to sell “Crystal’s” to the Marcials and Manna, transferred “assets” to the Marcials and was owed payments then being withheld by LUC and Mr. Kim pursuant to that agreement. Moreover, as pointed out by the trial court, Appellants introduced the Lease and the Amendment as their first two exhibits at trial.

For all these reasons, the court did not err by ruling that the jury trial waiver was enforceable against Appellants in the underlying litigation and by striking the jury demand. Appellants’ claims, even if not pled as alleging a breach of the Lease, nevertheless constituted “litigation involving the lease or the rights and/or obligations of the parties hereunder.”

**JUDGMENT OF THE CIRCUIT  
COURT FOR PRINCE GEORGE’S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANTS.**