Circuit Court for Baltimore County
Case No. 03-C-14-010401

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1526

September Term, 2022

ATHENS HEALTHCARE MANAGEMENT, INC., ET AL.

v.

ROBERT V. GIBBS

Graeff,
Reed,
Taylor, Robert K., Jr.
(Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 3, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Athens Healthcare Management, Inc., and Bruce Boyer, appellants,[1] filed suit against Robert Gibbs, appellee, in the Circuit Court for Baltimore County. The complaint alleged, among other things, breach of contract due to Mr. Gibbs' failure to repay three promissory notes. The court granted Mr. Gibbs' motion for summary judgment, ruling that a Settlement Agreement entered into after execution of the notes released Mr. Gibbs from any repayment obligation.

On appeal, appellants present the following question:

Did the circuit court err in granting summary judgment in favor of Mr. Gibbs?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Initial Promissory Notes

The following facts are not in dispute. In 2002, Mr. Boyer and Mr. Gibbs formed a partnership to seek out and purchase long-term healthcare facilities throughout the United States, with the understanding that any transaction pursued by one or the other was for the benefit of the partnership. The parties did not execute a written partnership agreement.

In 2005, Mr. Boyer formed Athens Healthcare Management, Inc. ("Athens"). Mr. Boyer was the only shareholder and director of Athens.

[1] Bruce Boyer died on January 1, 2023, while this appeal was pending. On March 23, 2023, this Court ordered that Gail Boyer, wife and personal representative of the Estate of Bruce Boyer, be substituted for Bruce Boyer in this appeal.

On April 1, 2006, Mr. Gibbs executed three promissory notes (the "Notes") in favor of Athens to be paid in full, plus interest, within three years. The principal sums of the Notes at issue were $375,000, $355,000, and $125,000, and the Notes provided that they would be governed by Maryland law.[2] The Notes stated that Mr. Gibbs held an 87.5% ownership interest in American Senior Living Communities, MD I, LLC (defined in the Note as "Holding Company"), which had been formed to acquire the assets of "Ivy Hall Geriatric Center" ("Ivy Hall"), a long-term healthcare facility located in Baltimore. Athens lent the money to Mr. Gibbs to assist in financing the acquisition of Ivy Hall. The $375,000 and $125,000 notes each contained a provision that gave the parties the option of converting the outstanding sums due into "shares or other evidence of ownership in the Holding Company totaling [37.5%]."[3] Accordingly, Mr. Gibbs could satisfy those two

[2] Mr. Gibbs executed two other notes at the same time in favor of Athens for $62,500 each. Those notes are not involved this appeal.

[3] The conversion option is found in Section 3 of the two notes and provides, in relevant part, as follows:

> 3. **TENDER OF BALANCE DUE, SHARES IN HOLDING COMPANY.**
>
> (a) The principal balance due hereunder, and all accrued interest thereon, shall be due and payable in full, without further demand, in the form of cash, certified or bank check or federal funds wire transfer, on or before the third (3rd) anniversary of the date of this note[.] . . . Notwithstanding the foregoing, and subject to the Transfer Conditions (hereinafter defined), [Athens] shall have the option of accepting from [Mr. Gibbs], and [Mr. Gibbs] shall have the option of "putting" to [Athens] or a nominee of [Athens], in full satisfaction of all sums due hereunder, shares or other evidence of ownership in the Holding Company totaling thirty-seven and

(continued)

notes by paying the outstanding debt or granting Athens ownership shares in the Holding Company. The Notes became due and payable on April 1, 2009.

II.

Settlement Agreement

Disagreements subsequently arose between Mr. Boyer and Mr. Gibbs. On April 28, 2009, approximately one month after payment on the Notes was due, Mr. Boyer and Mr. Gibbs entered into a confidential settlement agreement ("Settlement Agreement" or "Agreement") to resolve their disputes.

The initial paragraph of the Settlement Agreement states that the agreement is between:

> **Bruce E. Boyer, for himself and** his heirs, personal representatives and assigns, along with **any healthcare related entities which he may own or have an interest in (collectively, "Boyer")**, and Robert V. Gibbs, for himself and his heirs, personal representatives and assigns, along with any healthcare related entities which he may own or have an interest in (collectively, "Gibbs").

(Emphasis added).

In a section titled "Background," the Settlement Agreement sets forth the following nine recitals that explain the reasons for the Agreement:

A. In April 2002, Mr. Boyer and Mr. Gibbs "entered into a partnership to seek out and purchase long-term health care facilities throughout the United States."

B. Pursuant to the partnership, Mr. Boyer and Mr. Gibbs agreed to "maintain equal interests in any and all opportunities to purchase, operate, manage

---

one-half percent (37.5%) of all of the issued and outstanding ownership interests in the Holding Company (the "Holding Company Shares").

or own any long-term care facilities, or any portion thereof, that were discovered, contracted for or purchased, in whole or in part, by either party" on or after the date their partnership was formed and to "share equally in any proceeds, distributions, consideration or other benefits of any kind, paid and/or transferred in accordance with those interests."

C. After the partnership was formed, Mr. Boyer purchased, on behalf of the partnership, Ashton Healthcare, a long-term healthcare facility located in Pennsylvania.

D. "On or about August 1, 2005, Boyer formed Athens Healthcare Management, Inc., a Pennsylvania corporation ("Athens") for the original purpose of providing management services to Ashton Healthcare. Athens currently acts as a lending source to related entities."

E. After purchasing Ashton Healthcare on August 1, 2005, Mr. Boyer received dividend payments "totaling $2,737,738.63 of after tax proceeds from the facility (the "Boyer Distribution")."

F. After the partnership was formed, Mr. Gibbs purchased on behalf of the partnership, Ivy Hall, a long-term care facility.

G. "On or about April 1, 2006, Athens made certain loans to Gibbs in connection with his purchase of Ivy, which loans eventually totaled $980,000 and were evidenced by Promissory Notes in the amount of $355,000, $375,000, $125,000, $62,500, and $62,500 (collectively, the "Gibbs Notes"). The Gibbs Notes gave Boyer the option of converting a portion of the outstanding sums owed under the notes into a 43.75% ownership interest in Ivy (the "Boyer Option")."[4]

H. In April 2007, Mr. Boyer sold Ashton to ASLC PA I, LLC, after which Boyer and Gibbs held equal 37.5% voting interests in that company. As part of that sale, Mr. Boyer also acquired $4.3 million worth of non-voting preferred shares in ASLC PA I, LLC.

[4] We note that the description of the "Boyer Option" in the Settlement Agreement differs from the conversion option described in the Notes. *See infra* p. 2, n.3. The conversion option in the Notes is for 37.5% ownership interest in **ASLC**. The Boyer Option as described in the Settlement Agreement is for 43.75% ownership interest in **Ivy Hall**. It may be that the additional percentage in the Agreement includes two Notes not subject to the complaint. In any event, the discrepancy in the percentages has no bearing on our decision here, but as explained, *infra*, the different entities listed is relevant to the issues presented.

I. Mr. Boyer agrees "to relinquish and/or transfer a 50% ownership interest in Athens to Gibbs and to take other actions in satisfaction of all of his obligations under the Partnership, and the parties have agreed to release each other from any further liability relating to either party's prior violations of the terms of the Partnership as set forth in this Agreement."

The next section sets forth the terms of the Agreement. Of relevance are the following provisions:

1. **DISTRIBUTION OF OWNERSHIP INTEREST.** Mr. Boyer agrees to transfer to Mr. Gibbs a 50% interest of the outstanding stock of Athens, free and clear of all liens.

2. **SETTLEMENT OF EQUITY DISTRIBUTION.** "Beginning immediately, and in accordance with the dividend payments previously made by Athens to Boyer, Gibbs shall begin to receive dividend payments from Ivy. Gibbs shall continue to receive said dividend payments until such time as Gibbs receives . . . an amount equal to the Boyer Distribution plus interest . . . ("Gibbs Distribution"). Boyer shall not be able to exercise the Boyer Option until such time as the Gibbs Distribution is paid in full."

3. **SETTLEMENT OF PREFERRED SHARE ALLOCATIONS.** "Upon the closing of the anticipated sale of Ivy to an ASLC related entity, which shall occur only after full payment of the Gibbs Distribution, . . . Gibbs shall receive $4.3 million worth . . . of non-voting preferred shares in the ASLC related entity that ultimately purchases Ivy."

4. **WAIVER OF OWNERSHIP INTEREST.** Gibbs hereby agrees to forever waive and forego any interests or rights, however defined, equitable or otherwise, that he ever had in the facility commonly known as "Michaux Manor," located at 11302 S. Mountain Road, Fayetteville, Pennsylvania.

* * *

7. **RELEASE.** "Upon execution of this Agreement, Gibbs and Boyer hereby remise, release and forever discharge each other from any and all manner of actions, causes of action, suits, obligations, covenants, contracts, agreements, promises, claims and demands whatsoever, predicated on facts arising prior to the date of this Agreement, whether at law, in equity, or otherwise, which either party ever had, now has, or shall

> or may in the future have arising out of or relating to any and all agreements, whether written, oral, imposed by operation of law or otherwise, entered into between the parties in connection with the Partnership."
>
> 8. **AGREEMENT REVIEWED BY COUNSEL.** "It is further understood and agreed that all parties to this Agreement have had the opportunity to consult with counsel, that they have made and have had explained to them all of the terms and conditions of this Agreement and of all claims, and agree freely, voluntarily and intelligently to all of its terms and conditions after having had the benefit of legal counsel and intending to be bound thereby."

On the signature page of the Settlement Agreement, both Mr. Boyer and Mr. Gibbs signed individually. Mr. Boyer also signed as president of "Athens Healthcare Management, Inc., a Pennsylvania corporation" ("Athens PA").

III.

Subsequent Litigation

On April 27, 2013, Mr. Gibbs, who did not make any payments under the Notes, wrote a letter to Boyer stating that he considered the debt "forgiven." On September 18, 2014, Mr. Boyer filed articles of revival with the Maryland Department of Assessment and Taxation for Athens' corporate charter, which had been forfeited in 2007 for failure to file a 2006 property tax return.

On September 25, 2014, appellants filed a two-count complaint in the circuit court against Mr. Gibbs, seeking recovery of the sums due under the Notes. The parties subsequently engaged in discovery.[5]

[5] Both parties filed additional claims after the initial complaint. On November 4, 2015, Mr. Gibbs filed a third party complaint against Mr. Boyer for declaratory judgment, (continued)

On December 11, 2014, Mr. Gibbs filed a motion for summary judgment, with a supporting affidavit, alleging that his obligations under the Notes were extinguished pursuant to the release provision of the Settlement Agreement. Appellants opposed the motion, arguing that Mr. Gibbs' affidavit in support of his motion for summary judgment did not properly verify the accuracy of factual allegations in his supporting memorandum. The court agreed and denied Mr. Gibbs' motion on the ground that his affidavit was defective.

On May 31, 2016, Mr. Gibbs again moved for summary judgment, arguing that the obligation to pay the Notes was released by the 2009 Settlement Agreement, which sought to "accomplish the true-up between [Mr.] Gibbs and [Mr.] Boyer." Mr. Gibbs also filed a new affidavit.

Appellants opposed the summary judgment motion, alleging that the release language of the Settlement Agreement entered into by the parties did not discharge Mr. Gibbs' obligations under the Notes. Appellants argued that the Notes did not fall under the release provision because the release extended only to agreements, and the Notes were "instruments-not agreements," executed "only by Gibbs as maker." Moreover, appellants asserted that a proper reading of the other provisions of the Settlement Agreement showed

reformation of contract, and fraudulent inducement. On March 17, 2016, he filed a counterclaim against Athens alleging, among other things, negligence, professional negligence/legal malpractice, and respondent superior. On April 26, 2016, Mr. Boyer filed a cross-claim (counterclaim) against Mr. Gibbs for fraudulent concealment, partner liability, and breach of the settlement agreement, as well as a third-party complaint against John P. Leonard, Esq., and McElroy, Deutsh, Mulvaney & Carpenter, LLP ("law firm defendants"), for claims in connection with preparation of the Settlement Agreement.

that the Notes were not released. Finally, appellants argued that the Settlement Agreement was not executed by appellants, a Maryland corporation, and any issue of "mutual mistake" with regard to which Athens entity signed the Agreement was not appropriate for summary judgment.

In his reply, Mr. Gibbs argued that Athens was a party to the Settlement Agreement because Mr. Boyers signed the Agreement on behalf of Athens, and he "had authority to bind Athens, 'a healthcare related entit[y] which he may own or have an interest in.'" Mr. Gibbs further asserted that the unambiguous terms of the Settlement Agreement should be enforced as written. He disputed the argument that the Notes could not be reconciled with the Settlement Agreement, stating that, subsequent to the Agreement, the "Gibbs Distribution" and the "Boyer Option" were no longer tethered to the terms of the Notes, but Mr. Boyer's option to buy into Ivy could be exercised only once Mr. Gibbs "received his equivalent distribution from Ivy."

IV.

Circuit Court Hearing and Decision

On March 29, 2017, the circuit court held a hearing on several motions, including Mr. Gibbs' motion for summary judgment.[6] Counsel for Mr. Gibbs argued that Athens was bound by the Settlement Agreement, for either of two reasons. First, the Agreement was signed on behalf of Athens PA, but that was a "mutual mistake" because Athens PA did not actually exist at the time the agreement was signed, and the intended signatory was

[6] The court also heard arguments on Mr. Gibbs' motion to strike Athens' counter-claim and Athens' motion to dismiss Mr. Gibbs' third party complaint against Mr. Boyer.

Athens Healthcare Management, the Maryland corporation, ("Athens MD"). Second, regardless of which Athens entity signed the Agreement, the first paragraph of the Settlement Agreement stated that it was made on behalf of Mr. Boyer, "along with any healthcare related entities which he may own or have an interest in," which included Athens MD. Counsel argued that the release covered the Notes because it stated that the Boyer Option, to obtain an ownership interest in Ivy Hall, was deferred until after Mr. Gibbs had received 2.7 million dollars in dividends from Ivy Hall, an amount "equal to the amount that Boyer ha[d] already received from Ashton Healthcare."

Appellants argued that the purpose of the Settlement Agreement was to equalize distributions under the partnership and that forgiveness of the Notes would instead give Mr. Gibbs "a million dollar benefit" that was not intended by the parties. Appellants asserted that Athens MD was not bound by the Agreement because it was not a "[h]ealthcare related entity," noting that Athens never owned the land on which any of the long-term care facilities were located, nor owned or managed any of the facilities. Appellants asserted that Mr. Boyer formed Athens MD just "to make the loan" to Mr. Gibbs, and it "[n]ever had any other operations." They contended that summary judgment was not appropriate because there was a dispute of material fact as to whether Athens MD was a healthcare related entity.

Mr. Gibbs argued in reply that the "collection of entities" involved in the management, holding, operations, and financing of the long-term health care facilities were

all involved in the same "industry" and were the "Healthcare related entities." [7] Counsel noted that appellants' argument that Athens MD was not a healthcare related entity was belied by the company's own name, Athens **Healthcare** Management, Inc.

On July 21, 2017, the circuit court issued a written order and memorandum opinion that, as relevant to this appeal, granted summary judgment in favor of Mr. Gibbs. The court found that the language releasing the parties from "[a]ny" and "all" liabilities was unambiguous and showed that the "parties intended to forever release one another from each and every actual or potential liability, connected to the partnership, that arose prior to the Settlement Agreement." The "omnibus language [did] not leave room for a competing interpretation that . . . the Notes[] were excluded from the release provision."

The court also found that the Boyer Option survived the Settlement Agreement, but "instead of being retrospectively connected" to the Notes, "it was prospectively connected to the Gibbs Distribution." "Boyer retained the ability to obtain a 43.75% interest in Ivy, but only after paying to Gibbs the dividends owned to him from Ivy." The court explained that, if Athens did not intend to release the Notes in the Settlement Agreement, it would not have "condition[ed] the option to satisfy that liability on the payment of further sums to" Mr. Gibbs.[8]

[7] Both parties agreed that the term "Healthcare related facility" was not defined anywhere in the Settlement Agreement.

[8] The court also noted that the use of the past tense in the Settlement Agreement provision, *i.e.*. "[t]he Gibbs Notes **gave** Boyer the option of converting a portion of the outstanding sums **owed**, indicated that the Notes did not provide for the option after expectation of the Settlement Agreement. The court stated that, if the Boyer Option remained connected to the Notes, the language would have stated: "The Gibbs Notes **give** Boyer the option of converting a portion of the outstanding sums **owing** under the notes."

After finding the Agreement unambiguous, the court addressed the argument that Athens MD was not bound by the Agreement because it was signed by Athens PA, not Athens MD. The court noted that Mr. Gibbs argued that this was a mistake, and Athens actually was a Maryland Corporation. The court stated that, because Mr. Boyer revived Athens' corporate charter in Maryland in 2014 and "seeks to recover a right that he claims is owed to that entity, [it would] interpret the contract to bind Athens . . . as revived in the state of Maryland."

The court next rejected appellants' argument that the Notes were not "promises" under the Settlement Agreement, stating that the suggestion that a "promissory note is not a 'promise' contradicts one-hundred and thirty four years of . . . precedent." It further rejected appellants' argument that the Notes were not "entered into between the parties in connection with the Partnership." Noting that the Agreement itself "unambiguously state[ed] that the notes were made in connection with a loan made by Athens to Gibbs," the court stated that Athens MD would not have standing to sue for payment if the Notes were not executed by the parties. The court also found that both the Settlement Agreement and the Notes expressly stated that the purpose of the Notes was to allow Gibbs to purchase Ivy Hall on behalf of the partnership, and a reasonable person would have explicitly exempted the Notes from the release if there was an intention under the Settlement Agreement to preserve Mr. Gibbs' repayment obligation.

The court ruled that the Gibbs Notes were extinguished by the mutual release provision in the Agreement. Accordingly, the court granted Mr. Gibbs' motion for summary judgment." [9]

This timely appeal followed.

DISCUSSION

Appellants contend that the circuit court "erred in deciding as a matter of law that the Settlement Agreement released the payment obligations of appellee under the Gibbs' Notes." They assert that the ruling was based on a "misunderstanding of the facts."

Mr. Gibbs disagrees. He contends that the court properly granted his motion for summary judgment on the ground that the Settlement Agreement released him from the payment obligation under the Notes.

I.

Standard of Review

A court's grant of summary judgment is subject to *de novo* review. *Jahnigen v. Smith*, 143 Md. App. 547, 554-55, *cert. denied*, 369 Md. 660 (2002). Md. Rule 2-501, governing motions for summary judgment, provides that a circuit court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). "A material fact is

[9] As a result of its decision to grant summary judgment in favor of Mr. Gibbs, the court issued other rulings, including dismissing Counts I, II, III, and V of Mr. Gibbs' third party complaint as moot and denying Mr. Boyer's motion to dismiss the remaining counts in the third-party complaint.

a fact the resolution of which will somehow affect the outcome of the case." *Matthews v. Howell*, 359 Md. 152, 161 (2000) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)).

In reviewing a grant of summary judgment, we "independently review the record" in the light most favorable to the non-moving party "to determine whether the parties properly generated a dispute of material fact." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). If we conclude that there are no genuine issues of material fact, we must determine whether the circuit court's grant of summary judgment is legally correct. *Jahnigen*, 143 Md. App. at 554-55. To defeat a motion for summary judgment, the non-moving party "must submit some evidence in which the jury could reasonably find for the [non-moving party]." *Danielewicz v. Arnold*, 137 Md. App. 601, 612, *cert. denied*, 365 Md. 65 (2001). "Even if it appears that the relevant facts are undisputed, if those facts are susceptible to inferences supporting the position of the party opposing summary judgment, then a grant of summary judgment is improper." *Ashton v. Brown*, 339 Md. 70, 79-80 (1995) (quoting *Clea v. City of Baltimore*, 312 Md. 662, 667 (1988)).

"Each opposing party is given ample opportunity to place before the [circuit] court [evidence to] . . . show that a fact, material to the opponent's position, is disputed." *Vanhook v. Merchs. Mut. Ins. Co.*, 22 Md. App. 22, 26 (1974). Md. Rule 2-501 sets forth the requirements of a party's response to a summary judgment motion:

> **(b) Response.** A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a

> material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.
>
> **(c) Form of Affidavit.** An affidavit . . . opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

"The party opposing the motion for summary judgment must demonstrate the existence of a genuine dispute as to a material fact by '*producing factual assertions, under oath*, based on the *personal knowledge* of the one swearing out an affidavit, giving a deposition, or answering interrogatories.'" *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 179 (quoting *Reiter v. ACandS, Inc.*, 179 Md. App. 645, 660 (2008)), *cert. denied*, 444 Md. 641 (2015). Conclusory denials and bald allegations are insufficient to defeat a motion for summary judgment. *Danielewicz*, 137 Md. App. at 613. The function of pleadings in summary judgment cases is twofold: to "frame the issues" on which the court must determine materiality, and to establish facts, based on allegations and the response or lack of response, as admitted for the purpose of the case. *Vanhook*, 22 Md. App. at 27. *See also Castiglione v. Johns Hopkins Hosp.*, 69 Md. App. 325, 335 (1986) ("[C]oncessions in pleadings may serve as a basis for summary judgment."), *cert. denied*, 309 Md. 325 (1987).

II.

Analysis

We begin with a review of the applicable law governing the interpretation of the Settlement Agreement. "Contract interpretation is . . . a question of law that may be properly determined on summary judgment." *United Servs. Auto Ass'n v. Riley*, 393 Md.

55, 78 (2006). "Settlement agreements are . . . subject to the same general rules of construction that apply to other contracts." *Maslow v. Vanguri*, 168 Md. App. 298, 316, *cert. denied,* 393 Md. 478 (2006). In determining whether summary judgment is proper where a contract is disputed, courts look to the contract as a whole and construe the "words consistent with their usual and ordinary meaning." *Id*. at 318.

In Maryland, we "have long adhered to the objective theory of contract interpretation, giving effect to the clear terms of agreements, regardless of the intent of the parties at the time of contract formation." *Myers*, 391 Md. at 198. Under this theory, when the language used in a contract is clear and unambiguous, "a court shall give effect to its plain meaning." *DIRECTV, Inc. v. Mattingly*, 376 Md. 302, 312 (2003). "Contractual language is considered ambiguous when the words are susceptible of more than one meaning to a reasonably prudent person." *Maslow*, 168 Md. App. at 319. "To determine whether a contract is susceptible of more than one meaning, the court considers the 'character of the contract, its purpose, and the facts and circumstances of the parties at the time of the execution.'" *Id*. (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985)). *See also Calomiris v. Woods*, 353 Md. 425, 436 (1999) ("Thus, while evidence of prior intentions and negotiations of the parties is inadmissible, the parol evidence rule would not bar a court from considering the context of the transaction or the custom of the trade in a determination of ambiguity.").

We note that a contract is not ambiguous "merely because the parties do not agree as to its meaning," nor may a court rewrite the terms of a contract to avoid hardship to a party or because a party "has become dissatisfied with its terms." *Maslow*, 168 Md. App.

at 319. "[O]ur task [is] to examine the agreement the parties did sign, not the agreement that one or the other now wishes they had negotiated instead." *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 339 (quoting *John Newell et al. v. Johns Hopkins Univ.,* 215 Md. App. 217, 242 (2013)), *cert. denied,* 438 Md. 741 (2014). Where the language is ambiguous and not clear, "extraneous evidence of what the parties intended may be admitted to assist the court in determining the agreement of the parties." *Deleon Enters., Inc. v. Zaino*, 92 Md. App. 399, 407 (1991), *cert. denied*, 328 Md. 239 (1992). Summary judgment is therefore appropriate when the contract at issue is unambiguous or when the court can resolve an ambiguity by reference to extrinsic evidence. *Cochran v. Norkunas*, 398 Md. 1, 16 n.8 (2007).

The Fourth Circuit has summarized the framework for interpreting Maryland law on contracts on a motion for summary judgment:

> A court faces a conceptually difficult task in deciding whether to grant summary judgment on a matter of contract interpretation. Only an unambiguous writing justifies summary judgment without resort to extrinsic evidence, and no writing is unambiguous if susceptible to two reasonable interpretations. The first step for a court asked to grant summary judgment based on a contract's interpretation is, therefore, to determine whether, as a matter of law, the contract is ambiguous or unambiguous on its face. If a court properly determines that the contract is unambiguous on the dispositive issue, it may then properly interpret the contract as a matter of law and grant summary judgment because no interpretive facts are in genuine issue. Even where a court, however, determines as a matter of law that the contract is ambiguous, it may yet examine evidence extrinsic to the contract that is included in the summary judgment materials, and, if the evidence is, as a matter of law, dispositive of the interpretative issue, grant summary judgment on that basis. If, however, resort to extrinsic evidence in the summary judgment materials leaves genuine issues of fact respecting the contract's proper interpretation, summary judgment must of course be refused and interpretation left to the trier of fact.

Wash. Metro. Area Transit Auth. v. Potomac Inv. Props., Inc., 476 F.3d 231, 235 (4th Cir. 2007) (quoting *Goodman v. Resol. Trust Corp.*, 7 F.3d 1123, 1126 (4th Cir. 1993)).

A.

Entities Subject to Agreement

Appellants contend that, because Mr. Boyer signed the Settlement Agreement on behalf of Athens Healthcare Management, Inc., *a Pennsylvania* corporation, Appellant Athens Healthcare Management, Inc., a *Maryland* corporation, was not a party to the Settlement Agreement, and therefore, it is not bound to its release provision. As explained below, we disagree.

Initially, we note that it is undisputed that the Promissory Notes executed on April 1, 2006, the Notes that are the subject of the complaint instituted by appellant, Athens MD, are the same Notes that are discussed in the Settlement Agreement. The Settlement Agreement, however, which was signed by Mr. Boyer, in his personal capacity and as President of Athens PA, refers to the Notes as executed between Mr. Gibbs and Athens PA.[10] The circuit court noted that, if the reference to Athens in the Notes and Settlement Agreement was to Athens PA, a corporation separate from Athens MD, then appellant,

[10] The Notes identify Athens merely as Athens Healthcare Management, Inc., without giving a state of incorporation, but they state that the Notes are governed by Maryland law. The Settlement Agreement refers to Athens as a Pennsylvania Corporation, but Mr. Boyer stated in his answers to interrogatories that he formed Athens as a Maryland corporation, and that the Notes were held by Athens MD. In his answer to why he then signed the Settlement Agreement on behalf of Athens PA, he stated that he did not draft the Settlement Agreement. The record also contains documents showing that Athens was incorporated in Maryland in 2005, its charter was forfeited in 2007, and the Maryland Department of Assessments and Taxation revived its charter in 2014.

Athens MD, would have no standing to seek payment on the Notes. Given that, it is puzzling that appellants are challenging the court's ruling that the reference to Athens PA was a mistake.

In any event, we agree with Mr. Gibbs that, regardless of whether the Settlement Agreement listing Athens as a Pennsylvania corporation was a mistake, summary judgment was appropriate. As Mr. Gibbs notes, the clear and unambiguous preamble language in the Settlement Agreement provided that Mr. Boyer bound himself and *any and all related healthcare entities* that he owned or had an interest in. Mr. Gibbs argues that this language bound Athens, a healthcare related entity.

Appellants disagree. They note that "healthcare related entity" was not defined in the Settlement Agreement, and they argued below that Athens was not a healthcare entity because it "was formed only to make the loan to Gibbs." They contend that this is a disputed issue of fact, which does not warrant summary judgment.

The circuit court determined that the contract bound Athens MD because the reference to Athens as a Pennsylvania corporation was a mistake, and therefore, it did not address the issue whether Athens was bound by the Agreement as a healthcare related entity. Although we ordinarily affirm a grant of summary judgment only on the grounds relied upon by the circuit court, when an "alternative ground is one that [the circuit court] would have had no discretion to reject," we may affirm on that ground. *Dehn Motor Sales, LLC v. Schultz*, 212 Md. App. 374, 392 n.26 (2013), *aff'd,* 439 Md. 460 (2014) (court did not err in granting summary judgment where it "could have and should have also granted [defendants'] motion on [alternate] grounds"). *Accord Amalgamated Transit Union, Local*

1300 v. Md. Transit Admin., 244 Md. App. 1, 12 (2019) ("Although our analysis differs from that of the circuit court, we ultimately reach the same conclusion [that summary judgment was proper]."), *cert. denied,* 468 Md. 222 (2020).

Under the plain meaning of the Settlement Agreement, Athens MD is a health care related entity.[11] The Settlement Agreement states that Mr. Boyer "formed Athens . . . for the original purpose of providing management services to Ashton Healthcare. Athens currently acts as a lending source to related entities." The Agreement further states that Athens loaned money to Mr. Gibbs "in connection with his purchase of" Ivy Hall, a long-term-care facility in Baltimore.

Under these circumstances, an objective reading of the term "healthcare related entity" includes Athens. Accordingly, the circuit court properly found, as a matter of law, that Athens was bound by the release provisions in the Settlement Agreement.

B.

Release Provision

Appellants next contend that the circuit court erred in ruling that the Settlement Agreement extinguished Mr. Gibbs' payment obligations under the Notes. They argue the court's interpretation "frustrates the true up" intention of the parties to the Settlement Agreement. Appellants assert that, because the Boyer Option contained in the Notes

[11] "Healthcare" is defined as "people and organizations" that make "efforts [ ] to maintain, restore, or promote physical, mental, or emotional well-being when performed by trained and licensed professionals." *Healthcare,* Merriam-Webster, available at https://perma.cc/46BE-SA3D (last visited May 31, 2024). "Related" means "connected by reason of an established or discoverable relation." *Related,* Merriam-Webster, available at https://perma.cc/VG5K-ERLV (last visited May 31, 2024).

"survived" the Settlement Agreement, the parties could not have intended to release the related payment obligation. Instead, appellants assert that the parties intended to "impose an additional condition on the ability to exercise the conversion opinion." As explained below, we disagree.

The circuit court concluded that the Settlement Agreement extinguished Mr. Gibbs' liability on the Notes, stating that the language of the release provision provided that the parties released each other from "any and all" manner of liabilities, including "contracts" and "promises."[12] The court stated that the "common usage" of the terms "any and all" indicated that "the parties intended to forever release one another from each and every actual or potential liability, connected to the partnership" and "[t]his omnibus language does not leave room for a competing interpretation that other liabilities, such as the . . . Notes, were excluded from the release provision." The court stated that, if the parties had intended that Mr. Gibbs would remain liable on the Notes after execution of the Settlement Agreement, "a reasonable person in their position would have explicitly exempted such from liability." We agree with the court's reasoning in this regard. *See Giaccone v. Canopius U.S. Inc. Co.*, 133 F. Supp. 3d 668, 675 (D.N.J. 2015) ("it is a bedrock principle of contract interpretation that the 'phrase "any and all" allows for no exception'") (internal citation omitted); *Wald v. Honey*, 969 N.W.2d 163, 166 (N.D.

[12] It is clear that promissory notes are both "contracts" and "promises." *See Jenkins v. Karlton*, 329 Md. 510, 525 (1993) ("A demand promissory note is, as between the parties to it, a contract."); *Shepherd v. Burson*, 427 Md. 541, 551 (2012) (a "promissory note . . . embodies the promise to repay a loan").

2022) (word "any" means "all" or "every" and "its meaning is comprehensive in scope and inclusive in range").

We are not persuaded by appellants' argument that the court's interpretation of the Agreement was inconsistent with the "true up" intention of the parties. The Agreement states that the parties entered into a partnership to seek out and purchase long-term care facilities and share equally in any benefits. Despite that agreement, Mr. Boyer purchased Ashton Healthcare and received dividend payments of $2,737,738.63, and when he sold Ashton Healthcare, he and Mr. Gibbs each held 37.5% voting interests in the new company, but Mr. Boyer additionally received $4.3 million worth of nonvoting shares in the company. Meanwhile, Mr. Gibbs purchased Ivy Hall, using, in part, money loaned to him by Athens and secured by the Gibbs Notes. The Agreement stated: "The Gibbs Notes gave Boyer the option of converting a portion of the outstanding sums owed under the notes into a 43.75% ownership interest in Ivy (the Boyer Option.)."

The Settlement Agreement made provisions to equalize monies previously received by the parties, including: (1) Mr. Boyer giving Mr. Gibbs 50% of his ownership in Athens Healthcare Management; (2) Mr. Gibbs would receive dividend payments from Ivy Hall until he received the equivalent of the $2,737,738.63 dividend payments that Mr. Boyer earlier received from Ashton Healthcare ("Gibbs Distribution"); (3) Mr. Boyer "shall not be able to exercise the Boyer Option until such time as the Gibbs Distribution is paid in full"; (4) after the anticipated sale of Ivy Hall, which would occur after full payment of the Gibbs Distribution, Mr. Gibbs would receive $4.3 worth of non-voting share in the purchasing entity; and (5) Mr. Gibbs waived any interest in the facility "Michaux Manner."

As the circuit court properly found, "a reasonable person in the same position as the parties" would view the language, "Boyer shall not be able to exercise the Boyer Option until such time as the Gibbs Distribution is paid in full," as allowing the Boyer Option to survive the Settlement Agreement, but "instead of being retrospectively connected to the . . . Notes, it was prospectively connected to the Gibbs Distribution."[13]

An objective person would construe the Agreement to release all liabilities between the parties, including the Notes, and give Mr. Boyer a percentage of Ivy Hall after the "true up," when the proceeds from the partnership had otherwise been equalized. The circuit court properly granted summary judgment in favor of Mr. Gibbs.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[13] We agree with the court that, if Athens was still owed the outstanding debt under the Gibbs Notes, it would not make sense to condition the earlier established option to satisfy that debt (the Boyer Option) on the payment of *further sums* (the Gibbs Distribution) to the person owing the debt.