Circuit Court for Charles County
Case No. C-08-CV-21-000250

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1986

November Term, 2022

GREENMARK PROPERTIES, LLC

v.

PARTS, INC., ET AL.

Nazarian,
Tang,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: November 21, 2023

*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 case is about the validity of two contracts for the sale of real estate owned by Parts, Inc. ("Parts").[1] Appellant Greenmark Properties, LLC ("Greenmark") executed one contract, and appellees Harold B. Garner Jr. and Harold B. Garner III ("Garners") later executed the other. Greenmark filed a complaint against the Garners and Parts seeking a declaration that its contract was valid, and that the latter was not.

Greenmark and the Garners filed motions for summary judgment regarding the validity of their respective contracts. The Circuit Court for Charles County denied Greenmark's motion, concluding that its contract was invalid, and it granted the Garners' motion, concluding that their contract was valid. On appeal, Greenmark challenges the court's rulings on these motions. For the reasons below, we affirm the judgment of the circuit court.

BACKGROUND

Parts is a Maryland corporation that operated an automotive parts business. It owns about 130 acres of agricultural farmland ("Farm") located in Mt. Victoria, Maryland. By 2019, Parts ceased its business operation and existed in name only with the Farm as its sole asset.

Parts is governed by an amended charter and by-laws.[2] Generally, these governing documents authorize the board of directors to manage the business and sell Parts's

[1] Parts was a defendant in the action from which this appeal arises, but it did not participate in the appeal.

[2] These documents represent the universe of Parts's governing documents that are available in the record.

property, subject to decisions that are reserved to the stockholders by statute and the governing documents. Decisions reserved to the stockholders require a majority of shareholder votes cast at a duly constituted meeting, except as otherwise provided by statute or the governing documents. At any time, the president or the board of directors can call a special meeting of the board of directors and stockholders.

Puckett Estates

Parts had been owned largely by husband and wife, James Puckett Sr. ("James") and Anne Puckett ("Anne"). One of their children, Brian Puckett ("Brian") owned 5% of the stock, resided on the Farm, and served as president of Parts.[3]

James and Anne passed away in 2012 and 2017, respectively. James had devised his shares of stock in Parts to Anne. Anne then devised her shares, including those she would receive from her husband, to Brian. Her last will and testament provide the following:

> 1. With respect to my stock ownership interest in the Stock of Parts, Incorporated including the shares that I will inherit from my late husband, my son Brian S. Puckett is to acquire all voting rights at the time of my death whether or not he elects to act as Personal Representative. This would include all of the shares that I have inherited from my late Husband.
>
> 2. I hereby give devise and bequeath all of my stock in Parts, Incorporated and any other assets which I may own or be entitled to receive at the time of my death to my beloved son Brian Scott Puckett[.]

[3] Brian passed away during the pendency of the action before the circuit court.

In 2018, Matthew Simpson, Esq. ("Personal Representative") began serving as the personal representative of James's and Anne's estates, both of which remained open during the underlying action in the circuit court. It is undisputed that the Personal Representative held title to James's and Anne's shares of stock in Parts during the administration period. *See* Maryland Code, Estates & Trusts ("ET") § 1-301(a) (1974, 2017 Repl. Vol.) ("All property of a decedent . . . upon the person's death shall pass directly to the personal representative, who shall hold the legal title for administration and distribution[.]"). As we later explain, Greenmark and the Garners disagree as to whether Brian or the Personal Representative acquired the estates' voting rights during that time.

Greenmark Contract

On July 30, 2019, Greenmark and Brian, as president of Parts, signed a contract for the sale of the Farm for $850,000 ("Greenmark Contract"). The contract provided for seller financing where Greenmark was to pay $85,000 at closing and finance the rest in the form of a note secured by a purchase money deed of trust. The contract also included a leaseback provision that allowed Brian to continue residing at the Farm for five years. It provided for closing within 120 days, or by November 27, 2019.

Parts did not hold a shareholder meeting to approve the sale to Greenmark, and the Personal Representative did not learn of the contract until after it had been executed. Afterward, Greenmark had various discussions with the Personal Representative about approving or acquiescing to the contract. But the Personal Representative refused to do so unless certain conditions were met. These conditions included increasing the cash payment

from $85,000 to $200,000 or $300,000 so the Personal Representative could pay the debts and liabilities of the estates. The Personal Representative required that Greenmark satisfy the conditions by December 2019.

In March 2020, Greenmark presented to Brian an amendment to the contract that extended the closing date to May 2020 and increased the cash made at closing to $150,000. Brian, however, did not sign the amendment. Over the next year, Greenmark corresponded with the Personal Representative and Brian, demanding that Parts consummate the closing under the contract. But Parts never proceeded to settlement.

Garner Contract

In the meantime, the Garners had expressed interest in purchasing the Farm for $1 million in cash. In April 2021, the Garners forwarded to Parts a proposed contract for the purchase of the Farm.

On May 12, 2021, Parts approved the sale of the Farm to the Garners by corporate resolution that memorialized the following:

> WHEREAS, [Parts's] majority shareholders are the Estate of Anne H. Puckett and/or the Estate of James R. Puckett, Sr. with Matthew T. Simpson, Esq. having been appointed by the Orphans['] Court of Charles County, Maryland as personal representative of each of the said Estates;
>
> WHEREAS, at a duly called meeting of the Board of Directors of [Parts], the Board of Directors of [Parts] approved the sale of [the Farm] to Harold Brent Garner, Jr. (or such entity as he may want to contract under) for $1,000,000.00 pursuant to proposed written contract of sale (the "Garner Contract");

IT IS THERFORE RESOLVED:

1. That Matthew T. Simpson in the capacity of Authorized Signor of [Parts] is hereby authorized to execute the Garner Contract on behalf of [Parts] and to thereafter execute any and all documents required by the title company to effectuate the Closing of the Garner Contract to include but not limited to: Settlement Statements, Deed, 1099, and Seller Title Affidavit.

PARTS, INCORPORATED
By:
/s/
Estate of James R. Puckett, Sr.
By: Matthew T. Simpson, Personal Rep.

/s/
Estate of Anne H. Puckett
By: Matthew T. Simpson, Personal Rep.

In accordance with the resolution, the Personal Representative signed the Garner Contract as authorized signor for Parts.[4]

Underlying Proceedings

After learning about the Garner Contract, Greenmark filed a complaint against the Garners and Parts seeking a declaration that the Greenmark Contract was valid, and that the Garner Contract was void. It also sought specific performance of the Greenmark Contract.

After discovery was conducted, Greenmark and the Garners filed motions for summary judgment, each arguing that their respective contract was valid, and that the other

[4] The Personal Representative did not arrange for the meeting where the Garner Contract was approved and signed. Rather, it was handled at Brian's "behest" and the Personal Representative "didn't solicit anything" in that regard.

was not. Greenmark argued that Brian had the authority to execute the Greenmark Contract and sell the Farm because he was the president of Parts. It acknowledged that the Personal Representative held title to nearly all shares of stock in Parts, but it asserted that Brian, rather than the Personal Representative, held all voting rights under Anne's will. On this premise, Brian could approve and sign the Greenmark Contract. Greenmark added that the Personal Representative had treated its contract as a valid contract when he told the Orphans' Court, at a hearing in March 2021, that the contract had been extended and was "ripe for settlement."

The Garners disagreed. They argued that Brian, acting alone, did not have the authority to bind Parts to the Greenmark Contract. The Personal Representative held title to shares of stock belonging to James and Anne along with their attendant voting rights, and the estate shareholders did not approve the Greenmark Contract. Relying on *Downing Development Corp. v. Brazelton*, 253 Md. 390 (1969), they maintained that the Greenmark Contract was void *ab initio*[5] because it was executed without the required approval of Parts shareholders in violation of Maryland Code, Corporations & Associations ("CA") § 3-105 (1975, 2014 Repl. Vol.). Unlike the Greenmark Contract, the Garner Contract was valid because Parts complied with the corporate formalities required by the statute.[6]

[5] A contract that is void *ab initio* is "null from the beginning and nothing can cure it." *Julian v. Buonassissi,* 183 Md. App. 678, 695 (2009), *vacated on other grounds,* 414 Md. 641 (2010).

[6] The Garners added that the Greenmark Contract did not reflect a meeting of the minds and in any event had expired. As to specific performance, the Greenmark Contract

At a hearing in October 2022, the circuit court ruled that the Greenmark Contract was valid because the Personal Representative had "approved the contract" through his conduct. But before entering an order to that effect, the court reconsidered its oral ruling and concluded that it was mistaken and had made "the wrong decision."[7]

At another hearing in November 2022, the court explained that its initial ruling was incorrectly premised on "a normal contract situation," and it had "attribut[ed]" the Personal Representative's consent to the Greenmark Contract based on "things he did." In the end, the court concluded that the Greenmark Contract was invalid, and the Garner Contract was valid. The court read into the record its written opinion, explaining:

> It is clear that the Corporations and Associations Article and the *Downing* case require the statutory procedure to be followed when a corporation is proposing to transfer all of its assets. It is also undisputed that the required procedure was not followed to approve the Greenmark [C]ontract. Although Brian may have had the authority to sign the Greenmark [C]ontract, it could not become a valid and binding contract until the necessary procedure occurred. There is no provision in the statute or the caselaw to provide for an informal, behavioral approval by the shareholders, and [the Personal Representative's] undisputed testimony is that he did not hold a meeting or

was impossible to perform, and requiring performance would be unconscionable. Greenmark argued that its contract did not expire or terminate, it did not contain a time-is-of-the-essence clause, and Greenmark remained ready, willing, and able to perform under the contract. Its contract contained all necessary terms to consummate the sale, and performance was not impossible or unconscionable. In opposition to Greenmark's motion, Parts argued that disputes of material fact existed as to the issue of reasonable time and ability to perform under the Greenmark Contract. Ultimately, the circuit court did not address these "secondary" arguments because it focused on whether Parts complied with CA § 3-105 as to each contract in dispute, as explained later.

[7] *See Billman v. Maryland Deposit Ins. Fund Corp.*, 312 Md. 128, 132 (1988) ("Between the oral ruling and the entry of judgment the trial court may change its mind in whole or in part.").

> even prepare minutes to indicate that his vote was cast to approve the contract. In fact, his testimony is clear that he did not approve the contract.
>
> As a result, the court will deny Greenmark's Motion for Summary Judgment and declare the Greenmark [C]ontract to be invalid and unenforceable.
>
> Furthermore, as a result of [the Personal Representative's] undisputed testimony that he did follow the required procedure to validate the Garner [C]ontract, this court will grant Garners' Motion for Summary Judgment and declare the Garner [C]ontract to be valid and enforceable.

Before the court entered its written opinion and order, Greenmark moved to revise the court's rulings under Maryland Rule 2-534, raising certain arguments for the first time. First, it argued that its contract was valid because Parts conceded as much when Parts failed to assert an *ultra vires*[8] defense to Greenmark's complaint; and Parts purportedly acknowledged, in discovery responses, that Brian could bind Parts to the Greenmark Contract.

Second, Greenmark argued that the Garners lacked standing to enjoin enforcement of the Greenmark Contract under CA § 1-403 (the *ultra vires* statute).[9] It claimed that the

[8] As applied to a corporation, "*ultra vires*" means "simply an act that is beyond the powers conferred upon the corporation by its charter, statutes, or common law." *Steele v. Diamond Farm Homes Corp*., 464 Md. 364, 377–78 (2019).

[9] CA § 1-403 provides, in pertinent part:

> (a) Unless a lack of power or capacity is asserted in a proceeding described in this section, an act of a corporation or a transfer of real or personal property by or to the corporation is not invalid or unenforceable solely because the corporation lacked the power or capacity to take the action.

statute provides "safe harbor" to innocent third parties like Greenmark from having its contract declared invalid and unenforceable by non-stockholders like the Garners. In other words, an action to defeat the validity of the Greenmark Contract on the ground of *ultra vires* rests solely with Parts's shareholders, and not the Garners.

On January 3, 2023, the court entered its written opinion and order on the motions for summary judgment. On January 16, Greenmark filed a notice of appeal. On January 30, the court denied Greenmark's motion to revise.

STANDARD OF REVIEW

The standard of review for a trial court's grant or denial of a motion for summary judgment is a question of law subject to *de novo* review on appeal. *Haas v. Lockheed Martin Corp*., 396 Md. 469, 479 (2007). "In reviewing a grant of summary judgment under Md. Rule 2-501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Id.*

(b)(1) Lack of corporate power or capacity may be asserted by a stockholder in a proceeding to enjoin the corporation from doing an act or from transferring or acquiring real or personal property.

DISCUSSION

I.

The Greenmark Contract is Invalid

"As a general rule, contracts that violate statutes will not be enforced." *McGinley v. Massey*, 71 Md. App. 352, 356 (1987). "Such contracts when executed by a corporation are illegal and not merely *ultra vires.*" *Id*. (citing *Downing*, 253 Md. at 398–400 and 7A *Fletcher Cyclopedia of the Law of Private Corporations* §§ 3400, 3580–83 (1978)). While "[p]arties are ordinarily left free to contract," "they will not be permitted to do so in violation of statute regulations." *Downing*, 253 Md. at 399 (citation omitted).

If a Maryland stock corporation sells all or substantially all its assets, it must satisfy the statutory requirements under CA § 3-105. *See Downing*, 253 Md. at 396. Subsection (b) of CA § 3-105 provides that the board of directors shall adopt a resolution declaring that the proposed sale is advisable on the terms and conditions set forth in the resolution and direct the proposed sale be submitted for consideration at a special meeting of the stockholders. Subsection (c) deals with notice to the stockholders of the meeting, and subsection (e) requires that the proposed sale "shall be approved by the stockholders of each corporation by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter."

In *Downing Development Corp. v. Brazelton*, a country club entered into four contracts for the sale of all, or substantially all, of its assets, consisting of 700 acres of land. 253 Md. at 392–93. The club refused to honor the contract with one buyer because the

club failed to follow the statutory requirements of § 66 of Article 23, the predecessor to CA § 3-105; and the buyer disregarded certain terms specified in the contract. *Id*. at 393.

The buyer sought a declaratory judgment seeking a determination that its contract represented the only valid agreement of the four contracts. *Id*. at 392. The trial court dismissed the claim, holding that the buyer's contract with the club was invalid *ab initio*. *Id*. at 394. Consequently, it was unnecessary to delve into whether the buyer complied with and performed certain terms specified in the contract. *Id*.

The Supreme Court of Maryland affirmed the court's declaration of the contract's invalidity. *Id*. at 401. There was no dispute that the sale embraced substantially all the assets of the club, a Maryland corporation, thus implicating the requirements of the statute. *Id*. at 395. The club had 250 charter members, which were considered the same as stockholders insofar as the requirements of the statute were concerned. *Id*. In concluding that the contract between the buyer and the club was invalid and of no legal effect, the Court explained there was no evidence that the club complied with the statutory requirements. *Id*. at 397.

Similarly, the parties here do not dispute that the Farm constitutes all or substantially all Parts's assets and that CA § 3-105 applies. Nor do they dispute that Parts did not hold a shareholder meeting to approve the sale of the Farm to Greenmark. But Greenmark argues that *Downing* is distinguishable mainly because of the "ample undisputed evidence" demonstrating shareholder approval of the Greenmark Contract. According to Greenmark, Brian's execution of the contract signified shareholder approval because Brian was Parts's

sole director, officer, and living stockholder. And Brian had acquired "the right to vote 100% of the stock of the corporation" during the administration period under Anne's will. *See* ET § 7-101(a)(2)(ii) (personal representative shall use the authority conferred by terms of will); ET § 7-401(a)(2) (personal representative powers include right to vote "except as validly limited by the will"); 7 A.L.R.3d 629 (1966) ("Where the decedent's will specifically provides that a certain person, or class of persons, should exercise the power to vote stock outstanding in his name, courts have usually given effect to the testamentary direction.").

For this discussion, we shall assume without deciding that Brian acquired the estates' voting rights during the administration period. Notwithstanding this assumption, Brian's authority to exercise all voting rights and execute the Greenmark Contract did not amount to compliance with CA § 3-105. Nor did such authority exempt Parts from complying with the statute or render compliance unnecessary.

In *Downing*, the Court dealt with a similar attempt to justify compliance with the statute. 253 Md. at 396–97. There, the buyer argued that the club's corporate resolution authorized the directors to sell club property and vested its president with the power to negotiate the terms of sale with the buyer. *Id*. Adopting the trial court's reasoning, the Court rejected the argument:

> The patent inadequacy of this resolution to qualify as compliance with the statutory requirements was well expressed by the [trial court] below:
>
> > This resolution, in the [trial court's] opinion, amounted to nothing more than a general authorization to the Directors to sell a "group of lots" at some future indeterminable time; *but there is no indication*

> *that an offer to purchase had been submitted to the Directors—which is the number one requirement set forth in [CA § 3-105] in order to establish a basis for the required resolution.*

Id. at 397 (emphasis added). The Court added:

> [T]here is not the slightest evidence in the record that any notice setting forth the purpose of a membership meeting, at which the resolution would be presented to the membership for their vote, was ever given; nor does the record reveal any minutes showing any tally of the number of voting members present at the annual meeting or what the vote may have been on the proposed resolution purportedly authorizing the sale[.]

Id.

The Greenmark Contract suffers from the same deficiencies notwithstanding Brian's authority to exercise all voting rights and execute the contract. As in *Downing*, there is not the slightest evidence in the record that Parts held a meeting and that the estate shareholders approved the Greenmark Contract. We thus conclude that the court did not err in determining that the Greenmark Contract was invalid.

Greenmark underscores that neither Parts nor its stockholders sought to invalidate the sale; the Garners did. It contends that the Garners lacked standing to challenge the validity of the Greenmark Contract under CA § 1-403. The standing issue, however, was neither raised nor decided below when the court ruled on the motions for summary judgment. It was raised for the first time in Greenmark's motion to revise. Because the standing argument is not preserved for our review, we decline to consider it. *See* Md. Rule 8-131(a); *Law Offs. of Taiwo Agbaje, P.C. v. JLH Props., II, LLC*, 169 Md. App. 355, 372 (2006) (holding that application of statute in opposition to summary judgment was not

preserved when appellant raised it for the first time in revisory motion under Rule 2-534); *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002) ("[W]e will not allow appellant's reference to raising the issue in a post-trial motion to serve as a smokescreen obscuring the earlier and fatal non-preservation.").

II.

The Garner Contract is Valid

Unlike the Greenmark Contract, the evidence established that Parts approved the Garner Contract. The corporate resolution indicates that a meeting was called to consider the sale of the Farm to the Garners for $1 million, and the Garner Contract was approved by the estate shareholders of Parts. The court therefore did not err in concluding that the Garner Contract was valid.

Greenmark, however, contends that the court erred because the Garner Contract was not signed, or approved by Brian, the only living officer, director, and shareholder who held the right to vote all the shares of stock in Parts. It suggests that the Personal Representative's execution of the Garner Contract was *ultra vires* because he was not authorized to sell the Farm. Greenmark, however, overlooks that the resolution by Parts expressly authorized the Personal Representative to "execute the Garner Contract on behalf of the Company." Indeed, the amended charter empowers the board to delegate signing authority to another on behalf of the corporation (the "Board of Directors of the Corporation is hereby specifically authorized and empowered from time to time in its

discretion" to "determine who shall be authorized to sign on the Corporation's behalf . . . contracts, and documents").

Greenmark also claims that the resolution executed by the Personal Representative did not comply with Parts's governing documents or the statute because the resolution purports to memorialize only a meeting of the Board of Directors of Parts, not a meeting or vote of the stockholders, and the Personal Representative was never a director. This point was not raised below and is not preserved. *See* Md. Rule 8-131(a); *Baltimore Cnty. v. Aecom Servs., Inc.*, 200 Md. App. 380, 421 (2011) (argument not raised in opposition to motion for summary judgment is not preserved for appellate review). In any event, the Personal Representative did not sign the resolution as a director of Parts; the estate shareholders signed the resolution indicating their consent to the sale, by and through their Personal Representative.

For the reasons stated, the circuit court did not err in denying Greenmark's motion for summary judgment and concluding that its contract was invalid. Nor did it err in granting the Garners' motion for summary judgment and concluding that their contract was valid.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.