MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

M-B-C Corp.,
Appellant-Plaintiff,

v.

C&R Shambaugh Family, LLC,
Appellee-Defendant.

May 11, 2023

Court of Appeals Case No. 22A-PL-2671

Appeal from the Allen Superior Court

The Honorable Jennifer L. DeGroote, Judge

Trial Court Cause No. 02D03-2203-PL-80

Memorandum Decision by Judge Riley
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, M-B-C Corp. (MBC), appeals the trial court's summary judgment in favor of Appellee-Defendant, C&R Shambaugh Family, LLC (C&R), on MBC's Complaint for breach of contract.

[2] We affirm and remand for further proceedings.

ISSUES

[3] MBC presents this court with five issues, which we consolidate and restate as the following single issue: Whether a genuine issue of material fact exists that a settlement agreement signed by the two sole shareholders of MBC, who were also its owners and officers, released all claims between MBC and C&R and operated as a bar to the lawsuit filed by MBC against C&R.

[4] C&R raises one issue on appeal, which we restate as: Whether C&R is entitled to appellate attorney fees pursuant to the terms of the settlement agreement.

FACTS AND PROCEDURAL HISTORY

[5] Rebecca Shambaugh (Becky) and her sister, Cynthia Armbruster (Cindy), were the owners and sole shareholders of MBC and C&R. In August 2019, Becky filed a suit against Cindy and C&R for judicial dissolution of C&R and injunctive relief for the enforcement of the operating agreement that governed C&R. Cindy's husband, Greg Armbruster (Greg), joined in the litigation through a cross-claim. MBC was not a party in the litigation. To settle the dispute, the parties entered into a settlement agreement on April 22, 2020 (2020

Settlement). The 2020 Settlement detailed the process for selling C&R and provided for "the resolution of any and all disputes involving them, C&R, MBC, C&B, and any other entities in which the parties have a joint ownership interest[.]" (Appellee's App. Vol. II, p. 41). To effectuate this intent, the 2020 Settlement included a comprehensive release provision, which stated:

> Release of all Claims. Becky, Cindy and Greg release any and all claims among and between themselves, C&R, MBC, C&B, and any other entities owned jointly by the parties at the time of the execution of this Agreement.
>
> a. This Release includes the Parties and their successors, heirs, personal representatives, assigns, and attorneys, and applies to any and all claims, demands, liabilities, causes of action, agreements, damages, and liabilities, whether known or unknown, foreseen or unforeseen, contingent or actual, legal or equitable, liquidated or unliquidated, which the Parties had, have or may have had up to the date on which this Agreement is signed, including but without limitation, on account of, arising out of, or related to the Parties' employment with or ownership of C&R, C&B, MBC, or any other entity, the matters, issues, or allegations discussed in the Recitals, any issues that were raised or could have been raised as part of the Lawsuit, and all other matters occurring of any kind prior to the date on which this Agreement is signed.
>
> b. This release does not apply to claims related to or arising out of this Agreement.
>
> c. The intent of this release is to be global, comprehensive, and to end litigation and claims between the parties so that they can put this dispute behind them and move forward.

(Appellee's App. Vol. II, p. 46). Cindy and Becky each signed the 2020 Settlement above a signature block stating, "Individually and as a member of C&R and as shareholder of C&B and MBC." (Appellee's App. Vol. II, pp. 48-49). At that time, Cindy and Becky were the sole members of C&R and the sole shareholders of MBC, with each owning 50% of each entity.

[6] Shortly after the execution of the 2020 Settlement, on May 4, 2020, Cindy and Becky, as shareholders, signed the "Action by Unanimous Written Consent of the Shareholders of M-B-C Corp" (Unanimous Consent), which provided, in pertinent part,

> Pursuant to the provisions of the Indiana Business Corporation Law, the following unanimous action was taken by the undersigned, being all of the shareholders of the Corporation, without a meeting and by means of unanimous written consent, effective as of the 4th Day of May:
>
> **RESOLVED,** that the shareholders of Corporation hereby ratify and approve, the assignment by [Becky] of all her shares of [MBC] to [Cindy] effective May 4, 2020 (the Assignment) pursuant to the terms of [2020 Settlement] dated April 22, 2020 between [Cindy] and [Becky].
>
> **[ ]**
>
> **RESOLVED,** that all actions taken by any of the directors, shareholders, officers, agents, and employees of Corporation in connection with the transactions described or referred to in these resolutions, whether previously or subsequently done or performed, which are in conformity with the intent and purposes of these resolutions and agreements and documents referred to

herein, shall be, and the same hereby are, ratified, confirmed, and approved in all respects.

(Appellee's App. Vol. II, pp. 123-24).

[7] Sometime in 2021, disputes arose between the parties, which resulted in mediation and a second settlement agreement (2021 Settlement). The 2021 Settlement included a release provision, indicating that "Becky, Cindy, and Greg agree to release each other from any claims that have accrued from April 22, 2020 to the present, including any claims against MBC, C&R, or C&B Realty, Inc." (Appellee's App. Vol. II. p. 59). The 2021 Settlement also clarified that prior agreements, including the 2020 Settlement, were not superseded by the 2021 Settlement, and "survived in all respects except as modified by [the 2021 Settlement]." (Appellee's App. Vol. II, p. 60).

[8] On March 9, 2022, MBC filed its Complaint against C&R to collect an open account, which had accrued on March 10, 2016, pursuant to either an oral or written contract. On June 23, 2022, C&R filed its motion for summary judgment, designation of evidence, and memorandum in support, claiming that the 2020 Settlement barred the institution of the lawsuit. On July 25, 2022, MBC filed its response with a designation of evidence. On August 10, 2022, the trial court conducted a hearing on the summary judgment motion and granted C&R's motion on September 9, 2022, finding that no genuine issue of material fact existed that would preclude MBC from being bound by the 2020 Settlement and by the release clause of that agreement, which unambiguously stated that MBC had released all relevant claims against C&R. The trial court

granted C&R's request for attorney fees on October 6, 2022. On October 10, 2022, MBC filed a motion to correct error, which was denied by the trial court on October 21, 2022.

[9] MBC now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *2020 Settlement*

[10] MBC contends that the trial court erred in concluding that the 2020 Settlement released all claims between C&R and MBC and barred the lawsuit between the companies.

A. *Standard of Review*

[11] In reviewing a trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. *First Farmers Bank & Trust Co. v. Whorley,* 891 N.E.2d 604, 607 (Ind. Ct. App. 2008), *trans. denied*. Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id.* at 607-08. In doing so, we consider all of the designated evidence in the light most favorable to the nonmoving party. *Id*. at 608. A fact is 'material' for summary judgment purposes if it helps to prove or disprove an essential element of the plaintiff's cause of action; a factual issue is 'genuine' if the trier of fact is required to resolve an opposing party's different version of the underlying facts. *Ind.*

Farmers Mut. Ins. Group v. Blaskie, 727 N.E.2d 13, 15 (Ind. Ct. App. 2000). The party appealing the grant of summary judgment has the burden of persuading this court that the trial court's ruling was improper. *First Farmers Bank & Trust Co.*, 891 N.E.2d at 607.

[12] We observe that, in the present case, the trial court entered findings of fact and conclusions of law thereon in support of its judgment. Generally, special findings are not required in summary judgment proceedings and are not binding on appeal. *AutoXchange.com. Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 48 (Ind. Ct. App. 2004). However, such findings offer a court valuable insight into the trial court's rationale and facilitate appellate review. *Id*.

B. *Validity of the 2020 Settlement*

[13] Focusing on MBC's bylaws which stipulate that "all contracts, leases, commercial paper and other instruments in writing and legal documents" are to be "signed by the president and attested by the secretary," unless the board of directors provides otherwise, MBC contends that it is not bound by the 2020 Settlement, as Cindy and Becky only signed as shareholders of MBC and not in their respective capacities of president and secretary. (Appellant's App. Vol. II, p. 38).

[14] Even if Becky and Cindy, as MBC's sole shareholders, lacked the capacity to execute the 2020 Settlement, as contended by MBC, Cindy and Becky signed the Unanimous Consent which "ratified, confirmed, and approved in all respects" the 2020 Settlement. (Appellee's App. Vol. II, p. 124). The

Unanimous Consent transferred Becky's shares of MBC to Cindy, who was appointed as MBC's sole director. As the sole director, Cindy had authority to ratify the 2020 Settlement and bind MBC through the Unanimous Consent.

[15] Even without the Unanimous Consent, MBC is bound by the 2020 Settlement. Pursuant to Indiana statute, except in specified circumstances, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act. Specifically, Indiana Code section 23-1-22-5 specifies:

> (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
>
> (b) A corporation's power to act may be challenged:
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> (1) In a proceeding by a shareholder against the corporation to enjoin the act;
>
> (2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
>
> (3) In a proceeding by the attorney general under [I.C. §] 23-1-47-1.

In *Goebel v. Blocks & Marbles Brand Toys, Inc.*, 568 N.E.2d 552, 555 (Ind. Ct. App. 1991), this court concluded that Indiana Code section 23-1-22-5 prevented Blocks & Marbles from challenging the validity of an employment agreement

entered into between Blocks & Marbles and the employee, Goebel. In *Goebel*, Goebel attempted to enforce an arbitration clause in his employment contract but Blocks & Marbles contended that the employment agreement never existed because it was an *ultra vires* act entered into in violation of the corporation's bylaws. *Id*. This court concluded that Blocks & Marbles' challenge failed because the situation did not fall under one of the three exceptions outlined in section (b) of the statute. *Id*. Although we noted that Blocks & Marbles could have brought litigation against the individual who had caused Blocks & Marbles to enter into the employment contract with Goebel, it could not use the alleged invalidity of the employment agreement as a defense to Goebel's suit. *Id*.

[16] Here, using the invalidity of the 2020 Settlement as a sword, MBC contends that the shareholders' execution of the 2020 Settlement amounted to an *ultra vires* act which violated the corporation's bylaws and which now prevents C&R's enforcement of the release clause. *See, e.g., Citizens' State Bank v. Hawkins*, 71 F. 369, 370 (7th Cir. 1896) ("An act is *ultra vires* in a corporation when it is beyond and outside of the scope of the powers conferred by its founders,--when the corporation is without authority to perform it under any circumstances or for any purpose."); *see also Indus. Scavenger Serv., Inc. v. Speedway State Bank*, 202 N.E.2d 289, 296 (Ind. Ct. App. 1964) (a corporate president acted *ultra vires* when he signed an instrument on behalf of the corporation that he had not been authorized to sign). Generally, courts do not look with favor upon the *ultra vires* defense, and it has long been held that,

where a contract has been executed and fully performed by the corporation or the party with whom it contracted, neither party is permitted to insist the contract was not within the power of the corporation. *See Frank Bird Transfer Co. v. Massachusetts Bonding & Insurance Co.,* 153 N.E. 816, 818-19 (Ind. Ct. App. 1926). Just as in 1926, and again in *Goebel*, likewise here, MBC cannot avail itself of the *ultra vires* theory because MBC not only executed the 2020 Settlement but also ratified it through the Unanimous Consent. Furthermore, MBC has not brought suit against Becky, Cindy, or any other "former director, officer, employee, or agent of the corporation[;]" rather MBC brought suit against C&R, an unaffiliated and separate business entity. *See* I.C. § 23-1-22-5(b). Therefore, as this proceeding is not one which falls within any of the exceptions outlined in Indiana Code section 23-1-22-5(b), MBC cannot dispute the validity of the 2020 Settlement.

[17] MBC now suggests that Indiana Code section 23-1-22-5 is inapplicable because Becky's and Cindy's lack of authority as shareholders to act on MBC's behalf meant that MBC never actually took corporate action or entered into the 2020 Settlement at all and therefore no *ultra vires* act exists. This argument is unpersuasive. First, this is precisely the argument considered and found without merit in *Goebel*. Blocks & Marbles argued that, because the employment contract was not properly executed, it never even existed, but the court rejected that argument and ruled that Indiana Code section 23-1-22-1(a) prevented any challenge to the validity of the employment contract. *See Goebel*, 568 N.E.2d at 555. Second, if such an argument were successful, it would rob

the statute of any conceivable purpose. If a corporation could always challenge any action taken without proper authority by simply claiming that the lack of authority meant the corporate action never took place at all, there would be no situation left in which Indiana Code section 23-1-22-5 would apply. Therefore, as the statute applies to the instant action and no statutory exceptions are present, MBC is barred from challenging the validity of the 2020 Settlement.

[18] Even if Indiana Code section 23-1-22-5 does not apply, MBC is still bound by the 2020 Settlement. Although the 2020 Settlement was signed by the shareholders in apparent violation of MBC's bylaws, Cindy and Becky were the only shareholders of the corporation. When all of a corporation's shareholders are aware of a transaction, the corporation cannot later be heard to complain that the transaction was not authorized. *See G & N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227, 238 (Ind. 2001) ("In this case, the shareholders knew of Goldsmith's connection with Edgecumbe and appear to have approved the deals, over Boehm's objections. We think ratification by formal vote is not required for a corporation with only a few shareholders, and in which all the shareholders are involved in management and are clearly aware of the material facts over a period of years."); *Iterman v. Baker*, 15 N.E2d 365, 370 (Ind. 1938) ("It is undoubtedly true that corporations are liable under their *ultra vires* executed, or partially executed, contracts . . . where all of the stockholders of the corporation had knowledge of the contract.") As Becky and Cindy were the only shareholders of MBC and had undisputedly full knowledge of the 2020 Settlement, MBC is bound by the terms of the 2020 Settlement.

C. *Release Language*

[19] In a related argument, MBC contends that even if the 2020 Settlement is valid, the agreement did not release any claims because MBC is not a subject of the sentence in the 2020 Settlement release clause. Specifically, MBC maintains that "Becky, Cindy, and Greg are the only persons who have released any claims under the [2020 Settlement]. MBC is a separate legal person that must take action on its own and may not be conflated with the individuals who run it." (Appellant's Br. p. 39).

[20] "[R]elease documents shall be interpreted in the same manner as any other contract document, with the intention of the parties regarding the purpose of the document governing." *Evan v. Poe Assocs.*, 873 N.E.2d 92, 98 (Ind. Ct. App. 2007). "Our supreme court has stated that upholding releases serves an important public policy because it facilitates the orderly settlement of disputes." *Zollman v. Geneva Leasing Assocs., Inc.*, 780 N.E.2d 387, 392 (Ind. Ct. App. 2002). "Releases are not merely to pay the releasor the first installment on what he should have, leaving the matter open for the releasor to come back for more later. On the contrary, a settlement is made, and a general release taken for the purpose of foreclosing further claims." *Haub v. Eldridge*, 981 N.E.2d 96, 101 (Ind. Ct. App. 2012).

[21] The Preamble to the 2020 Settlement expressed the intent that Cindy, Becky, and Greg entered into the agreement "individually and as members, shareholders, officers, employees, or representatives of entities in which any of

them have a joint membership interest, including without limitation [C&R], [] and [MBC]." (Appellee's App. Vol. II, p. 40). In its recitals, the 2020 Settlement affirmed that Becky and Cindy were the only owners of MBC. The agreement continued to state that the "Parties" have "reached an agreement that includes . . . the resolution of any and all disputes involving them, C&R, MBC, C&B and any other entities in which the parties have a joint ownership[.]" (Appellee's App. Vol. II, p. 41). The agreement then clarified that "Becky, Cindy and Greg"—who entered into the agreement as members, shareholders, officers, employees, or representatives of the entities they own—"release any and all claims among and between themselves, C&R, MBC, C&B and any other entities owned jointly by the parties[.]" (Appellee's App. Vol. II, p. 46). Reviewing the document in its entirety and mindful of the parties' intent, it is clear that the fact that MBC was—grammatically speaking—not a subject in the sentence that releases claims is of no importance; Cindy and Becky were acting as shareholders and officers of MBC when executing the 2020 Settlement, had the authority to release claims held by MBC, and did so accordingly through the release provision. *See Hyperbaric Oxygen Therapy Sys., Inc. v. St. Joseph Med. Ctr. of Ft. Wayne, Inc.*, 683 N.E.2d 243, 249 (Ind. Ct. App. 1997) (courts must read contracts as a whole and not look at particular words or phrases in isolation). As the 2020 Settlement was validly executed and the release language binds MBC, there is no genuine issue of material fact that MBC is barred from instituting the current lawsuit against C&R based on an alleged debt between the companies.

II. *Appellate Attorney Fees*

[22] The 2020 Settlement included a provision for attorney fees, which stipulated that "[t]he prevailing party of any legal proceedings based on or arising out of this Agreement shall be entitled to recover from the opposing party or parties reasonable attorneys' fees, costs, and expenses[.]" (Appellee's App. Vol. II, p. 47). The trial court awarded C&R attorney fees, which are not appealed by MBC. C&R is now also requesting an award of appellate attorney fees.

[23] We have previously held that when a contract provision provides that attorney fees are recoverable, appellate attorney fees may also be awarded. *Humphries v. Ables*, 789 N.E.2d 1025, 1036 (Ind. Ct. App. 2003). As it is undisputed here that the 2020 Settlement provides for attorney fees in the event that C&R prevails in these legal proceedings, and that C&R has prevailed on appeal, we grant C&R's request and remand to the trial court for a determination of a reasonable attorney fee award.

CONCLUSION

[24] Based on the foregoing, we hold that no genuine issue of material fact exists that the 2020 Settlement signed by the two sole shareholders of MBC, who were also its owners and officers, released all claims between MBC and C&R and operated as a bar to the lawsuit filed by MBC against C&R. As the 2020 Settlement awarded appellate attorney fees to C&R, we remand to the trial court for determination of a reasonable fee award.

[25] Affirmed and remanded for further proceedings.

[26] Altice, C. J. and Pyle, J. concur