

COURT OF APPEALS OF VIRGINIA

Record No. 0654-24-1

PATRICK J. KENNEDY
v.
KEVIN S. ALMOND, ET AL.

Present: Judges Malveaux, Friedman and Lorish

Argued at Norfolk, Virginia

Opinion Issued September 29, 2026

FROM THE CIRCUIT COURT OF YORK COUNTY

Michael E. McGinty, Judge Designate

Jonathan M. Young (Tidewater Trial Lawyers, P.C., on brief), for appellant.

Ahmed E. Mohamed Khalil (Mark A. Short; Kaufman & Canoles, P.C., on brief), for appellees.

PUBLISHED OPINION BY JUDGE FRANK K. FRIEDMAN

The unique facts of this case demonstrate that even a seemingly clear and well-crafted standardized real estate contract can devolve into confusion when unforeseen events occur. Appellant Patrick Kennedy contracted with Kevin Almond and Peninsula Realty, LLC (collectively, the sellers) to purchase a property in Seaford, Virginia. In the event that the purchase price exceeded the reasonable value of the property (as determined by an appraisal), the purchase agreement gave Kennedy the option to (1) walk away from the deal; or (2) “proceed[] with the consummation of th[e] Agreement without regard to the amount of the reasonable value.” After the appraisal revealed that the purchase price did, in fact, exceed the reasonable value of the property, Kennedy opted to proceed and renegotiate with the sellers for a better price.

The renegotiation produced an addendum that resulted in a lower purchase price that still exceeded the appraised value of the property. The addendum noted that, aside from the reduced price, the other terms of the agreement “shall remained unchanged.” Less than two weeks after renegotiating the purchase price, Kennedy backed out of the deal. After the sellers sued, the trial court found Kennedy in breach of the contract.

Finding no error, we affirm the trial court’s judgment.

BACKGROUND¹

The Contract Terms

On April 3, 2021, Kennedy entered into a standard REIN contract² with the sellers. The original purchase price for the property was \$845,000. Kennedy planned to finance the purchase with a loan from the Department of Veterans Affairs (VA). Section 11(A) of the contract states:

It is expressly agreed that, notwithstanding any of the provisions of this Agreement, Buyer shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described by the Agreement if the agreed purchase price or cost exceeds the reasonable value of the Property established by the Veterans Administration. Buyer shall, however, have the privilege and option of proceeding with the consummation of this Agreement without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

The VA explains on its website that it will cap its home loans at the lesser of the agreed-upon purchase price or the reasonable value. *VA Escape Clause*, U.S. Dep’t of Veterans Affs. (Jan. 14, 2026), <https://www.benefits.va.gov/homeloans/escape-clause.asp>; see Code § 8.01-388 (“The court shall take judicial notice of the contents of all official publications . . . of the United States

¹ “We review the evidence in the light most favorable to the prevailing party, in this instance the [sellers].” *W. Refin. Yorktown, Inc. v. County of York*, 292 Va. 804, 808 (2016).

² The contract is a Real Estate Information Network, Inc. (REIN) Standard Purchase Agreement.

... and of the political subdivisions and agencies of each published within those jurisdictions.”). So, this “escape clause” protects buyers from having to pay more than the VA will loan them.³

About two weeks after the parties entered into the contract, the VA appraised the property at \$750,000. After some negotiation, the parties executed an addendum to the contract on April 22, 2021. The addendum reduced the purchase price from \$845,000 to \$781,000—still \$31,000 greater than the property’s reasonable value, per the appraisal. The addendum also stated that, “[e]xcept as expressly set forth above, all of the other terms and conditions of the Agreement not modified above, shall remain unchanged and in full force and effect.” The amended agreement provided for a settlement date in early May, with the sellers to “keep possession of the home through 5pm on 5/10/2021.”

Kennedy Walks Away from the Deal Leading to Litigation

After inspecting the property further, Kennedy backed out of the deal. At his instruction, his agent sent a notice of termination on May 4, 2021, explaining only that “Buyer decided not [to] move forward [b]ased on Paragraph 11 A.” In short, relying on the first sentence of § 11(A), Kennedy took the position that he could scuttle the deal at any time as long as the purchase price remained above the appraised value.

Two weeks later, counsel for the sellers sent a letter demanding that Kennedy close on the property within 10 days. Kennedy did not close, so the sellers filed suit. They alleged that Kennedy breached the contract. Almond sought damages for the difference between the price he had negotiated with Kennedy and the significantly lower amount he ultimately received after selling the property to a different buyer. Peninsula Realty sought lost brokerage fees. And all

³ The provision at issue in this case is not unique to REIN contracts. Rather, it is a mandatory part of any VA home loan purchase contract, with language dictated by federal regulation. See 38 CFR § 36.4303(k)(4); *VA Escape Clause*, U.S. Dep’t of Veterans Affs. (Jan. 14, 2026), <https://www.benefits.va.gov/homeloans/escape-clause.asp>.

the sellers sought attorney fees. Kennedy, in turn, filed a counterclaim, seeking the return of his earnest money deposit and attorney fees.

The central issue of the case was (and still is, on appeal) the interpretation of § 11(A). Kennedy contended that § 11(A) authorized his termination of the deal because the renegotiated purchase price still exceeded the appraised property value. The sellers argued that Kennedy gave up any right to rely on the “escape clause” a second time by renegotiating the price after he learned the appraisal value. They argued that after the appraisal came in below the original purchase price, § 11(A) presented Kennedy with a choice: rescind or proceed. Kennedy elected to proceed by signing an addendum for the renegotiated price, so, according to the sellers, he could not take advantage of § 11(A)’s contingency again after the appraised value was known to him.

Extrinsic Evidence is Introduced at Trial Without Objection

At trial, without objection, Dale Chandler, the principal broker at Peninsula Realty and a member of the REIN sale management advisory committee, was certified as an expert in residential real estate brokerage and REIN forms. He testified that, despite having worked in real estate for many years using these standard REIN contracts, this was the first time he had ever experienced a buyer attempting to use § 11(A) to back out of a deal *after* renegotiating the price with the seller. He said that he had seen buyers use the contingency in § 11(A) “[h]undreds of times” and that, in every case, “the parties either renegotiated the price or . . . the VA buyer had just walked.”

Charles Dunlap, the principal broker for Garrett Realty Partners (GRP), also testified without objection and was certified as an expert in residential real estate brokerage and REIN forms. GRP had represented Kennedy as his agent before he backed out of the sale. Dunlap testified that it was his view that once a buyer decides to proceed with a purchase despite a low

appraisal, he cannot then use the escape clause to renege. He also testified that he explained this interpretation to Kennedy and told him that he could not back out of the deal after renegotiating the price; Kennedy then terminated his representation agreement with GRP.

Kennedy, on the other hand, testified that he never intended to waive or abandon his ability to terminate the agreement when he signed the addendum. He interpreted the addendum's language, which purported to keep all of the unmodified terms of the original agreement in place, to mean that his option under § 11(A) was still in effect.⁴

The Trial Court's Ruling

At the conclusion of the bench trial, the court ruled for the sellers. The court first acknowledged that this was a novel issue, saying “there’s nothing really directly on point on this.” It then held that under § 11(A), “you have two option[s]. You can walk away or you can proceed with the agreement and negotiate or renegotiate.” Section 11(A), said the court, does not give a buyer endless “bites at the apple.” The court reasoned that by renegotiating and agreeing to the addendum after the appraisal came in, Kennedy had opted to proceed with the “consummation of this Agreement,” and had given up his right to “walk away” without consequences thereafter. Accordingly, the court found Kennedy in breach of the contract and ordered him to pay \$96,000 to Almond, \$46,860 to Peninsula Realty, and \$37,474 in attorney fees. It also denied Kennedy’s counterclaim. Kennedy appeals seeking to overturn the judgment, regain his earnest money deposit, and recover his attorney fees.

⁴ Notably, emails Kennedy sent to GRP on May 4, 2021 may also provide insight into why he decided to back out of the deal. The emails stated, “From my walk through and engineering report, it is clear the home is in disrepair and the seller/owner/contracting company owner/real estate listing agent did not disclose those details. They can’t force me to buy and they can’t sue for a home in disrepair. They can disagree but documented and photographic evidence will prevail,” and, “As my lead broker, I need you to help me get out of this.”

ANALYSIS

I. Standard of Review

Interpretation of a contract is a question of law that we review de novo. *Palmer & Palmer Co., LLC v. Waterfront Marine Constr., Inc.*, 276 Va. 285, 289 (2008). When interpreting a contract, we look to the “intention of the parties as expressed by them in the words they have used.” *Schuiling v. Harris*, 286 Va. 187, 192 (2013) (quoting *Wilson v. Holyfield*, 227 Va. 184, 187 (1984)). “The search for . . . plain meaning does not myopically focus on a word here or a phrase there.” *Erie Ins. Exch. v. EPC MD 15, LLC*, 297 Va. 21, 28 (2019). Rather, the “contract must be construed as a whole and the intention of the parties is to be collected from the entire instrument and not from detached portions.” *Sweely Holdings, LLC v. SunTrust Bank*, 296 Va. 367, 376-77 (2018) (quoting *Babcock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. 165, 180 n.8 (2016)); *see also Schuiling*, 286 Va. at 193 (“We construe the contract as a whole, giving terms their ordinary meaning unless some other meaning is apparent from the context.”).⁵

II. The Trial Court Correctly Interpreted the Contract

The parties agree that if the addendum had lowered the price to \$750,000 (the appraised value) or less, there would be no issue and Kennedy would be bound by the agreement. The problem here is that the renegotiated price still exceeded the appraised value. So, the main

⁵ Only when a contract is ambiguous can a court consider information outside of the four corners of the document. *See Robinson-Huntley v. George Wash. Carver Mut. Homes Ass’n.*, 287 Va. 425, 429 (2014) (“When an agreement is plain and unambiguous on its face, the Court will not look for meaning beyond the instrument itself.”). “Contract language is ambiguous when ‘it may be understood in more than one way or when it refers to two or more things at the same time.’” *Eure v. Norfolk Shipbuilding & Drydock Corp.*, 263 Va. 624, 632 (2002) (quoting *Granite State Ins. Co. v. Bottoms*, 243 Va. 228, 234 (1992)). But “[a] contract is not ambiguous merely because the parties disagree as to the meaning of the terms used.” *TM Delmarva Power, L.L.C. v. NCP of Va., L.L.C.*, 263 Va. 116, 119 (2002). If ambiguity exists, it “must appear on the face of the instrument.” *Video Zone, Inc. v. KF&F Props., L.C.*, 267 Va. 621, 626 (2004). Further, “[t]he issue whether a contract provision is ambiguous presents a question of law, not of fact,” so we review the question de novo. *Id.* at 625.

question is: In the event that the purchase price continues to exceed the reasonable value of the property, is § 11(A) a one-time fork in the road for the buyer, or is it an ongoing option—an escape hatch that remains open until the buyer closes on the property? The sellers argue for the former interpretation, while Kennedy argues for the latter. We agree with the sellers.

A. The Parties' Diverging Interpretations

Under the sellers' interpretation of § 11(A), if the VA's appraisal comes in below the purchase price, § 11(A) gives the buyer a choice: he can either terminate the contract and walk away unscathed, or he can "proceed[] with the consummation of" the agreement. This is a one-time option. And crucially, renegotiating and agreeing on a new price is considered "proceeding with the consummation" of the agreement—even if the renegotiated price still exceeds the appraisal value. To use the trial court's language, § 11(A) creates a fork in the road; once the buyer secures a renegotiated price on the "consummation" path with full knowledge of the appraisal and resulting financial consequences, he cannot backtrack.

Kennedy has a different understanding of the contract. He suggests that § 11(A) gives the buyer a continuous right to terminate the agreement whenever the purchase price is above the reasonable value of the property as determined by the VA. According to Kennedy, the second sentence of § 11(A) simply *allows* the buyer to close on the property even if the purchase price exceeds the appraisal value; it never *requires* the buyer to do so. So, under Kennedy's reading, even if the parties renegotiate the purchase price after the property is appraised, the buyer can still terminate the agreement so long as the purchase price exceeds the property's value.

Kennedy also points out that the addendum at issue states that "[e]xcept as expressly set forth above, all of the other terms and conditions of the Agreement not modified above, shall remain unchanged and in full force and effect." This addendum provision, says Kennedy, shows that the parties intended for him to retain the right to terminate the agreement, under § 11(A), even after

the price was reduced to \$781,000. If all terms of the original agreement “remain unchanged” after the price was reduced, he reasons that the “escape clause” in § 11(A) remains open to him.

B. The Terms of the Agreement are Unambiguous—Albeit Complicated—and Support the Seller’s Reading

Here, the trial court determined that the contract language created a one-time option for the buyer in the event that the appraised value was less than the purchase price. By corollary, the court found that the parties did not intend to give Kennedy the right to walk away from the deal at any time so long as the purchase price exceeded the appraised value. We find the trial court’s reading of the language to be the only plausible interpretation of the provision, particularly considering Section 11(A)’s purpose in the context of the entire contract.

Again, Section 11(A) provides:

It is expressly agreed that, notwithstanding any of the provisions of this Agreement, Buyer shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described by the Agreement if the agreed purchase price or cost exceeds the reasonable value of the Property established by the Veterans Administration. Buyer shall, *however*, have the privilege and *option of proceeding* with the *consummation* of this Agreement *without regard to the amount of the reasonable value* established by the Department of Veterans Affairs.

(Emphases added).

The trial court observed that Kennedy’s interpretation of the contract placed great emphasis on the first sentence of § 11(A)—but gave short shrift to the second sentence which states that the buyer “shall, however, have the privilege and option of proceeding with the consummation of this Agreement” regardless of the low appraisal. The “option and privilege” is to proceed with the consummation of the purchase. This language is most clearly read to provide that once the buyer has secured a price reduction and elected to proceed in spite of a low appraisal, the wheels of consummation have been set in motion and the buyer no longer has the

choice to back out of the purchase under § 11(A). Moreover, the second sentence goes on to state that if the buyer elects to exercise the “option of proceeding,” then he does so “without regard” to the appraised value. This undercuts Kennedy’s suggestion that he remains free to renege if the renegotiated appraised value is above the purchase price—if he proceeds, the amount of the appraisal or reasonable value no longer matters.⁶

The sellers’ reading of § 11(A) is consistent with the language employed by the parties; the first sentence allows a buyer to walk away without consequences if the purchase price exceeds the property’s appraised value. This is important because, as noted above, the VA caps its home loans at the lesser of the agreed-upon purchase price or the appraised value. If the appraised value is below the purchase price, the buyer will need to dig deeper into his own pocket to buy the property. Thus, sentence one of Section 11(A) provides an escape clause in that unforeseen setting; but sentence two allows the purchaser to proceed with—and *consummate*—the deal if he chooses to do so with full knowledge of the appraisal.

In sum, § 11(A) protects the buyer from having to pay more than the VA will loan him. It does not grant the buyer the right to back out of the deal at the last second.⁷ When the VA’s appraisal comes in below the purchase price, § 11(A) allows the buyer to either proceed or walk away. It does not allow him to do both.

⁶ Ultimately, adopting Kennedy’s interpretation would essentially render the second sentence in the paragraph superfluous, and courts ordinarily resist a reading of a contract that would render the terms meaningless or inconsequential. *D.C. McClain, Inc. v. Arlington County*, 249 Va. 131, 135-36 (1995) (“No word or clause in the contract will be treated as meaningless if a reasonable meaning can be given to it, and there is a presumption that the parties have not used words needlessly.”).

⁷ Neither the contract nor the federal regulations appear to state how much time a buyer has to exercise the cancellation option after receiving a low appraisal. We need not address this potential uncertainty here, however, because Kennedy opted not to cancel the deal, but to execute the addendum after reviewing the appraisal.

Kennedy suggests that the addendum somehow revitalizes § 11(A) and permits him to renege on the renegotiated deal right up to the time of the closing. This proposition is not supported by the contract language—and represents a fundamental misunderstanding of § 11(A)’s purpose. Here, § 11(A) provided an escape clause in the event that the appraisal turned out to be lower than the purchase price. Upon receiving that information, the buyer could walk away—but if he, with knowledge of the appraised value, renegotiates a new purchase price still above the appraised value, he does so with eyes wide open. Section 11(A) offers an escape clause against unexpected risk—but there is no surprise during the renegotiation after the appraised value has been firmly established. Put another way, nothing in the addendum operates to transform § 11(A)’s right to walk away after receiving a low appraisal into an ongoing escape clause permitting the buyer to back out of the renegotiated deal which the buyer undertook with full knowledge of the property’s appraised value.⁸

We conclude that the circuit court properly interpreted § 11(A) and rejected Kennedy’s efforts to escape the deal. We affirm the circuit court’s reading of the contract language and its ruling that Kennedy breached the agreement.

⁸ Broader policy concerns also militate against Kennedy’s suggestion that, after signing the renegotiated deal, § 11(A) still allows him to walk away at any time prior to closing. As a practical matter, under Kennedy’s interpretation, owners and real estate agents would face an unreasonable choice when contracting with buyers using VA home loans. The sellers would essentially be forced to choose between selling their property for the amount at which the VA appraises it (or less) or remaining in a sort of limbo until the date of closing, always unsure whether the buyer would honor the deal or renege on it. This would be particularly problematic given the nature of real estate transactions. Sellers often go to significant expense to rectify defects in, or otherwise improve, property in order to consummate a sale. Furthermore, as was the case here, sellers sometimes agree to purchase other properties while the deal to sell their house is pending, relying upon the knowledge that the buyer must complete the sale or face legal consequences.

III. The Issue of Extrinsic Evidence

This case is complicated by the fact that, although both parties contended that the contract was unambiguous, extensive expert testimony was introduced by sellers—without objection. On appeal, Kennedy suggests the experts’—Chandler’s and Dunlap’s—testimony contained impermissible conclusions of law, in violation of Code § 8.01-401.3(B). Again, however, Kennedy did not object to the testimony on this basis at trial either, so the issue is not preserved. Rule 5A:18.⁹

In fact, “[w]here parties have reduced their contract to a writing [that] imposes a legal obligation in clear and explicit terms[,] the writing shall be the sole memorial of that contract, and it is conclusively concluded that the writing contains the whole contract, and is the sole evidence of the agreement.” *Harris v. Joplin*, 304 Va. 338, 348 (2025) (second and third alterations in original) (quoting *Jim Carpenter Co. v. Potts*, 255 Va. 147, 155 (1998)). Thus, when dealing with unambiguous contracts, extrinsic evidence as to the meaning of the writing generally should not be considered. *Id.*; see also *Pyramid Dev. v. D&J Assoc.*, 262 Va. 750, 754 (2001) (unambiguous deed).

The trial court, despite admitting the extrinsic evidence below, seemed to base its decision on the contract terms rather than the expert testimony. We, likewise, rule based on the unambiguous contract language. Thus, even if Kennedy’s challenges to the expert testimony had been preserved, which they were not, they would not alter the outcome here. See *Doswell P’ship v. Va. Elec. Power*, 251 Va. 215, 223 (1996) (ignoring extrinsic evidence on appeal where the

⁹ Of course, that does not mean that we would be bound by whatever legal conclusions Chandler and Dunlap may have made. See *Rahnema v. Rahnema*, 47 Va. App. 645, 658-59 (2006) (“A litigant’s failure to raise an evidentiary objection cannot, *ipso facto*, enhance the probative weight of evidence that is otherwise incompetent as proof of a particular fact in controversy.” (quoting *Exxon Corp v. United States*, 45 Fed. Cl. 581, 692 (Ct. Cl. 1999))).

contract is unambiguous and finding that any error in considering parol evidence below would be inconsequential).

IV. The Circuit Court Properly Rejected Kennedy's Claims for Return of His Deposit and Attorney Fees

Because we agree with the trial court's interpretation of the contract, we need not address Kennedy's remaining assignments of error regarding his deposit and attorney fees. Kennedy is not entitled to the return of his earnest money deposit because he breached the contract. And he is not entitled to attorney fees because he is not the "prevailing party." *See Prevailing Party, Black's Law Dictionary* (12th ed. 2024) ("[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded").

CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.