

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1192

September Term, 2016

PGMC IV, LLC *ET AL.*

v.

BE UTC DEWEY PARCEL, LLC

Kehoe,
Berger,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: July 12, 2017

This is an appeal from a judgment of the Circuit Court for Prince George's County, the Honorable Sean D. Wallace, presiding, which declared that property owned by BE UTC Dewey Parcel LLC (“Dewey”) is no longer encumbered by a ground lease to PGMC IV, LLC (“PGMC”). The trial court granted summary judgment based upon its conclusion that the undisputed facts showed that PGMC had abandoned the ground lease.

To this Court, PGMC asserts that the circuit court’s judgment was wrong for a variety of reasons. Its contentions focus upon discrete portions of the trial court’s analysis. However, when Judge Wallace’s reasoning is considered in light of all of the evidence before him, it is clear that he was correct. We will affirm the court’s judgment.

Background

This case originates from a dispute over a ground lease executed on October 30, 2001 between Dewey, LC and PGMC. The lease had a term of 35 years at an annual rent of at least \$12,000 for use as a parking lot. Under the lease, parking was restricted to the tenants of the Metro IV Building, which at the time was owned by PGMC. (The building is apparently across the street from the leasehold premises.) The lease was recorded in the land records of Prince George’s County on November 28, 2001. It is undisputed that the following events have occurred since the lease was executed:

- (1) In 2004, PGMC ceased making rent payments.
- (2) In 2006, PGMC leased all or part of a newly-constructed parking garage for its tenants.
- (3) At about the same time, the Metro IV tenants stopped using the leased property for parking.

(4) In 2009, Dewey LC lost its interest in the parking lot property through foreclosure. The ultimate purchaser of the property from the trustees was Hyattsville Property Holdings LLC. (Dewey acquired HPH's interest while this litigation was pending.)

(5) On April 11, 2014, PGMC's ownership interest in the Metro IV building was foreclosed by a creditor. The ultimate purchaser of the property from the trustees was JPMCC 2003-C1 Toledo Office LLC. Toledo has disclaimed any interest in the leasehold property.

With this as background, in September and October of 2014, counsel for HPH and PGMC exchanged a series of progressively more acrimonious letters and emails concerning the ground lease. In summary, HPH asked PGMC to acknowledge that it had abandoned the ground lease and PGMC refused to do so.

HPH then filed a complaint in the Circuit Court for Prince George's County, Maryland. Count 1 of the complaint sought to quiet title in the leasehold property in HPH's name on the grounds that PGMC had abandoned the ground lease and had no interest in the property. In Count 2, HPH requested a declaratory judgment to that effect. While the motion was pending, HPH transferred the fee simple interest in the ground lease property to Dewey and Dewey was substituted as plaintiff.

The parties filed cross motions for summary judgment. After a hearing, the circuit court granted Dewey's motion. The court decreed that Dewey held title to the property

free and clear of any claim by PGMC arising out of the ground lease. This appeal followed.

Analysis

“Summary judgment is appropriate where there is no genuine dispute as to any material fact and the party in whose favor judgment is entered is entitled to judgment as a matter of law.” *Crickenberger v. Hyundai*, 404 Md. 37, 45 (2008) (quotation marks and citations omitted). In undertaking appellate review of summary judgment motions, “we consider the facts, and any reasonable inferences drawn from those facts, in the light most favorable to the non-moving party.” *Norris v. Ross*, 159 Md. App. 323, 329 (2004) (quoting *Bell v. Heitkamp, Inc.*, 126 Md. App. 211, 221-22 (1999)). We review the court’s grant of such motions *de novo*. *Crickenberger*, 404 Md. at 45.

PGMC’s contentions that the circuit court erred in granting summary judgment are without merit. “As a general rule, an abandonment of leased premises occurs when the lessee leaves the premises vacant with the clear intention not to pay rent or to be bound by the terms of the lease.” *Italian Fisherman, Inc. v. Middlemas*, 313 Md. 156, 167–68 (1988); *see also tenBraak v. Waffle Shops, Inc.*, 542 F.2d 919, 924 (4th Cir. 1976). The undisputed facts are that: (1) PGMC has not used the property for its only permitted use since 2006; (2) PGMC has not made the required rent payments since 2004; (3) PGMC has made no attempt to make any rent payments, even after the present dispute arose; and (4) PGMC lost title to the office building in 2014 through foreclosure.

The only affirmative obligation imposed upon PGMC by the ground lease was to pay rent; PGMC’s intention not to be bound by that provision of the lease has been rendered crystalline by its refusal to pay rent for twelve years prior to the entry of judgment by the circuit court. Likewise, PGMC’s intention to vacate the property is clear—it has not used the property for ten years prior to the court’s judgment. Indeed, at the present, PGMC cannot use the property. Although it asserts that it might acquire title to the office building at some point in the future, but there is nothing in the record that suggests that it is attempting to do so. PGMC’s claims that it has not abandoned the lease crumble in the face of these undisputed facts. *See Benik v. Hatcher*, 358 Md. 507, 532 (2000) (Parties are presumed to know the law and are further “presumed to intend the necessary and legitimate consequences of their actions in its light”). The trial court did not err in granting summary judgment.

It is true that PGMC contends that the rule enunciated in *Italian Fisherman* does not apply to it. But it offers no colorable reason as to why the rule isn’t applicable, much less legal authority to support its nebulous contentions.

**THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S
COUNTY IS AFFIRMED. APPELLANTS TO PAY COSTS.**