

Circuit Court for Howard County  
Case No. C-13-CV20-000605

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 229

September Term, 2021

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SHRI SAI, LLC, *ET AL.*

v.

CASCADE MONTPELIER, LLC

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

JJ.

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Opinion by Nazarian, J.

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Filed: July 28, 2022

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal turns on whether the COVID-19 pandemic rendered a restaurant’s performance under its commercial lease impossible or impracticable. Shri Sai, LLC, along with its guarantors Tarun Chhabra and Deeksha Chhabra (collectively “Shri Sai”), a commercial tenant, appeals a summary judgment entered by the Circuit Court for Howard County in favor of Cascade Montpelier, LLC (“Cascade”), the landlord, for breach of contract. Shri Sai concedes that it failed to make timely rent payments, but asserts that a genuine issue of material fact remains as to whether impossibility and impracticability excused its breach of the lease. We agree with the circuit court that Shri Sai failed to provide admissible evidence to defeat summary judgment and we affirm the judgment.

## I. BACKGROUND

On November 15, 2010, Shri Sai entered into a lease agreement with Cascade to rent commercial property in Laurel to operate an Indian restaurant known as the Tandoori Grill. Section 6.1 of the lease permitted Shri Sai to operate an Indian restaurant or a coffee house:

[S]uch occupancy shall be for the sole and exclusive purpose of a coffee house, Indian restaurant, and for no other purpose whatsoever.

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[Shri Sai] shall at all times observe and comply with any and all laws, rules, regulations and ordinances of legally constituted authority relating to the use or occupancy of the Premises.

Shri Sai operated an Indian restaurant with sit-down dining, a bar area, and carry-out.

The lease obligated Shri Sai to pay monthly rent, their fair share of common area costs, and a share of taxes per month. In the event of a breach, the lease provided for late

fees, pre-judgment interest, reasonable attorneys’ fees, costs, and expenses incurred in pursuit of remedies. Finally, the lease contained a guaranty, signed by Tarun and Deeksha Chhabra, guaranteeing “full, prompt, and complete payment by [Shri Sai] of the rent and all other amounts payable by [Shri Sai] accruing during the term of [the] Lease.”

As we know all too well by now, the COVID-19 pandemic upended life in the United States, officially beginning in March 2020. On March 5, 2020, Governor Hogan declared a “State of Emergency and Existence of Catastrophic Health Emergency” in Maryland. On March 12, 2020, the Governor issued a second executive order that ordered bars and restaurants to close by 5:00pm on March 16, 2020, except for carry-out, drive-through, and delivery services “in accordance with any social-distancing recommendations of the Maryland Department of Health . . . .” The restrictions were relaxed on May 29, 2020 to allow restaurants to serve food to outdoor patrons, and on June 12, 2020 to allow indoor food and beverage services at 50% maximum capacity.

As a result of the restrictions, Shri Sai struggled to make timely rental payments. On August 12, 2020, Cascade sued Shri Sai, Tarun, and Deeksha for breach of contract in the Circuit Court for Howard County. Cascade alleged that Shri Sai had failed to make full rental payments from February 2020 through November 2020, ultimately owing an outstanding balance of \$11,993.39. Cascade sought unpaid rents, pre-judgment interest of \$932.78, and attorneys’ fees of \$7,845. On January 25, 2021, Cascade moved for summary judgment, and attached an affidavit that supported all damages claimed by Cascade from Shri Sai’s breach.

In response, Shri Sai asserted the defenses of impossibility, impracticability, and frustration of purpose, claiming it was unable to operate the restaurant under the State executive orders and that the “strict lockdowns and shutdowns” of restaurants and bars made performance under the lease impossible. Shri Sai contended that “[w]hile the Governor did not completely shut down restaurants, the Governor’s order mandated that restaurants could not seat any patrons and restaurants could only serve carry out meals.” This “was devastating on [Shri Sai’s] business[,]” which relied primarily on indoor seating, and a bar. As a result, Shri Sai’s “business volume shrank dramatically and they had a difficult time paying the rent” on time and paid Cascade what they could through sporadic payments. Shri Sai’s arguments were supported by documents (including the lease), but no affidavit.

The court held a hearing on Cascade’s motion for summary judgment on March 22, 2021, and took judicial notice of the Governor’s pandemic-related executive orders. Shri Sai claimed that Cascade failed to show that it was entitled to judgment as a matter of law, stating that “it is a question of fact” whether “the intervening event of the shutdown related to the pandemic interfered with [Shri Sai’s] business” to the extent that it discharged its obligations under the lease. Shri Sai argued further Cascade’s attorneys’ fees request should be “dramatically reduced” according to Maryland Rule 2-703 because the fees requested were unreasonable.

In response, Cascade argued that Shri Sai failed to present any evidence in support of its defense, and thus Cascade’s affidavit “is effectively uncontroverted that the money

is owed” and Shri Sai remains liable. Cascade contended that the state of emergency never required restaurants and bars to close completely, so at no point in time was Shri Sai not allowed to operate as a matter of law. From March 12, 2020, through May 27, 2020, restaurants were allowed to provide carry-out and delivery options, which also included, due to the pandemic, the sale of alcoholic beverages. As such, Cascade argued, there are no facts in dispute and Shri Sai failed to establish its legal defense of impossibility and impracticability.

The circuit court granted summary judgment to Cascade. In the course of ruling, the court stated that “[b]asically, the defense of impossibility or the defense of impracticability are not defenses to Motion for Summary Judgment. Neither one of them are.” The court awarded Cascade the unpaid principal balance of \$11,993.39 and pre-judgment interest of \$932.78, reduced the request for attorneys’ fees from \$7,845 to \$5,845 “in light of all the circumstances[.]” and directed Shri Sai to pay court costs and post-judgment interest.

Shri Sai now appeals. We discuss additional facts as necessary below.

## II. DISCUSSION

Shri Sai and Cascade both phrased the sole Question Presented in this appeal as follows: “Did the trial court err by granting [Cascade’s] motion for summary judgment and awarding attorneys’ fees in light of the government shutdown of restaurants by reasoning that the defense of impossibility is not applicable to a motion for summary judgment?” We review *de novo* a trial court decision granting summary judgment, *Piscatelli v. Smith*, 197 Md. App. 23, 36 (2011), and “only upon the grounds relied upon by the trial

court.” *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (citations omitted). We “review independently the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law.” *Tyler v. City of Coll. Park*, 415 Md. 475, 498–99 (2010).

Shri Sai concedes that it failed to make timely rental payments, but argues the pandemic shutdowns “discharge[d] their obligations” by making performance impossible, or at least “materially change[d] the inherent nature of the parties’ obligations to become substantially more difficult, complex, or challenging.” Shri Sai argues that a factfinder must determine whether performance under the contract was still possible amidst the COVID-19 “lockdown” of restaurants.

The circuit court held correctly on this record that Shri Sai’s impossibility and impracticability were not supported, and thus could not defeat Cascade’s otherwise established right to summary judgment. “Under the doctrine of legal impossibility, ‘if a contract is legal when made, and no fault on the part of the promisor exists, the promisor has no liability for failing to perform the promised act, after the law itself subsequently forbids or prevents the performance of the promise.’” *Harford Cnty. v. Town of Bel Air*, 348 Md. 363, 384–85 (1998) (quoting *Wichhusen v. Am. Med. Spirits Co.*, 163 Md. 565, 572–73 (1933)). “In order to succeed under this theory, however, performance under the contract must be objectively impossible.” *Id.* at 385 (citations omitted). Shri Sai cites to Maryland Civil Pattern Jury Instructions 9:27(a)(1)–(2), which defines the legal defense of “[i]mpossibility” as follows:

(1) Performance is excused if it is impossible or impracticable because of the extreme and unreasonable difficulty, expense, injury or loss which would result from its performance;

(2) A contract is *not* impossible to perform *if the party has the choice of performing it in several ways and at least one of the options is possible.*

(Emphasis added.)

But under Maryland Rule 2-501(b), Shri Sai had the burden of contesting Cascade’s motion with an affidavit:

A response to a motion for summary judgment 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.*

(Emphasis added.) No such affidavit was offered and without one, Shri Sai failed in this case to generate a material issue of genuine fact. By the very definition of impossibility Shri Sai cites, performance under the lease was neither objectively impossible nor impracticable. The lease permitted Shri Sai to adhere to the Governor’s order, including operating its restaurant through carry-out or delivery, and even under the stricter order that shut down restaurants and bars on March 16, 2020, performance was not objectively impossible. Shri Sai needed more to generate a genuine dispute of material fact.

Shri Sai also cites *Baltimore Luggage Co. v. Ligon*, which described the impossibility defense as requiring proof of “‘extreme and unreasonable difficulty, expense,

injury or loss involved.” 208 Md. 406, 417–18 (1955) (*quoting* Restatement (First) of Contracts § 454 (Am. Law Inst. 1932)). In *Baltimore Luggage*, the Court of Appeals found that a contractor was excused from performance when the contractor would have to trespass on another’s property to fulfill the contract. *Id.* The Court explained that “[t]he contractor was . . . justified in refusing to perform acts which would have been illegal.” *Id.* at 417. This case doesn’t help Shri Sai, though, because the executive order restrictions left options for Shri Sai to operate the restaurant, including carry-out and delivery throughout the pandemic, and indoor dining starting at 50% occupancy in late May 2020. Shri Sai never proved the losses it suffered as a result of the COVID-19 pandemic through monthly reports, balance sheets, or other admissible evidence that might have established “extreme and unreasonable difficulty” as a result of the COVID-19 pandemic. And in any event, the pandemic restrictions did not order a complete shutdown of Shri Sai’s business.

There is no doubt that the pandemic challenged Shri Sai’s ability to operate its business and meet its financial obligations. But pointing to executive orders that made it more difficult for Shri Sai to operate its restaurant cannot, without more, generate a genuine dispute of material fact on an impossibility or impracticality defense. In the absence of admissible evidence proving that performance was in fact impossible or impractical, the trial court granted Cascade’s motion for summary judgment and awarded attorneys’ fees in accordance with the lease properly.

We also hold that the circuit court awarded attorneys’ fees properly. “[A] decision whether to award attorneys’ fees is reviewed under an abuse of discretion standard . . . .”



*Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 414 (2016) (citations omitted). Shri Sai asserts that the attorneys’ fees should be excused due to impossibility defense. But since the impossibility defense fell short on the merits of the breach of contract claim, Cascade was entitled to collect them, leaving only the question of whether the trial court abused its discretion in awarding fees in the amount of \$5,845. Shri Sai argues that the trial court failed to follow Rule 2-703(f)(3), that “[t]he attorneys’ fees sought by [Cascade] is unreasonable on its face,” and that the reasonableness of attorneys’ fees must be determined by a factfinder at trial. This last point is refuted directly by the Rule itself, which provides that “the *court* shall apply the standards set forth in . . . this Rule and determine the amount of the award.” Md. Rule 2-703(f)(2) (emphasis added). As for the amount, the circuit court reduced the fees Cascade requested “in light of all the circumstances” and Shri Sai produced no evidence to rebut Cascade’s evidence of its actual attorneys’ fees or to establish what fees would be reasonable under the circumstances. We see no abuse of discretion in the fee award on this record.

**JUDGMENT OF THE CIRCUIT COURT  
FOR HOWARD COUNTY AFFIRMED.  
APPELLANT TO PAY COSTS.**