Circuit Court for Montgomery County
Case No. 465986-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0390

September Term, 2020

OPTIMUM CONSTRUCTION, INC., ET AL.

v.

REMAX REALTY CENTRE, INC., ET AL.

Fader, C.J.,
Berger,
Zic,

JJ.

Opinion by Zic, J.

Filed: February 2, 2022

This case arises from two commercial subleases. Appellants, Optimum Construction, Inc. ("Optimum") and Amr Elrahimy, rented an office space and an event hall located within a retail building. Appellants' relationship with their landlord deteriorated and they subsequently filed suit against appellees Remax Realty Centre, Inc. ("Remax"), Buffington Enterprises II, LLC ("Buffington LLC"), Joseph Buffington, and Elizabeth Buffington, asserting breach of the leases in addition to other claims. Remax filed a counterclaim against appellants, alleging breach of contract. After a bench trial, the Circuit Court for Montgomery County determined that appellants failed to establish their claims and entered judgment in favor of appellees. Appellants subsequently appealed.

QUESTIONS PRESENTED

Appellants present the following three questions,[1] which we have slightly rephrased:

[1] Appellants pose three questions for review:

I. Whether the trial court erroneously denied appellants' motion to dismiss the counterclaim for breach of lease because it lacked subject matter jurisdiction pursuant to § 4-401(4) of the Maryland Annotated Code, Courts & Judicial Proceedings Article?

II. Whether the trial court erroneously found that appellees did not breach the leases when they changed the locks and denied access to appellants without providing notice that the leases were being terminated?

III. Whether the trial court erroneously found that appellees did not interfere with appeallants' [sic] quiet enjoyment of the Clarksburg Room Banquet Hall by denying appellant the right to serve food supplied by outside vendors?

1. Did the court err in denying appellants' motion to dismiss Remax's counterclaim for lack of subject matter jurisdiction pursuant to § 4-401(4) of the Courts and Judicial Proceedings Article?

2. Did the court err in finding that appellees did not breach the subleases when they changed the locks without providing notice?

3. Did the court err in finding that appellees did not interfere with appellants' quiet enjoyment of the Clarksburg Room by denying appellants the right to serve food supplied by outside vendors?

For the following reasons, we hold that the circuit court did not err and affirm the court's judgment.

BACKGROUND

Buffington LLC is a Maryland limited liability company that is owned exclusively by Mr. and Mrs. Buffington. Buffington LLC owns rental property within a retail building located in Clarksburg, Maryland. Mr. and Mrs. Buffington also exclusively own another entity, Remax, which is based in Maryland. On July 15, 2012, Buffington LLC and Remax entered into a "Master lease" agreement where Buffington LLC leased part of the rental property to Remax.

Mr. and Mrs. Buffington retained office space within the property to use as a place of business for Remax. Additionally, Bennigan's, a restaurant franchise that serves Irish pub fare, rented space on the property. Bennigan's was owned and operated by Buffington Enterprises III, LLC,[2] another entity owned exclusively by Mr. and Mrs. Buffington.

[2] Buffington Enterprises III, LLC is not a party to this case.

On November 21, 2016, Remax and Mr. Elrahimy entered into a five-year sublease agreement for office space, about 1,000 square feet, located within the building ("Office Lease"). Mr. Elrahimy used the space as his principal office for his company, Optimum, of which he is the sole owner and president. Mrs. Buffington executed the sublease on behalf of Remax. The Office Lease began on December 1, 2016 at a fixed rent of $107,661.27, plus $32,346.60 in additional rent for common area maintenance, utilities, insurance, and property tax.[3]

During the summer of 2018, Mr. Elrahimy approached Mrs. Buffington about the possibility of leasing the Clarksburg Room, an event hall of about 3,100 square feet that was located within the building. The parties met several times to discuss the opportunity and Mr. Elrahimy informed Mrs. Buffington that he could market and promote the Clarksburg Room as an event space. Mr. Elrahimy testified that it "could . . . bring in a lot of business to [Mrs. Buffington] . . . because Bennigan's is downstairs" and it is "so much easier for [him] to cater through Bennigan's." According to Mr. Elrahimy, he wanted Bennigan's to be the "preferred" caterer for events at the Clarksburg Room and "to give Bennigan's all of the alcohol packages" because he does not deal with alcohol directly due to his religious beliefs.

[3] The fixed rent was divided over five years and payable in monthly installments due on the first day of each month. The rent for each year of the Office Lease contained a 3% annual increase and was as follows: (1) $20,280.00; (2) $20,880.40; (3) $21,515.05; (4) $22,160.50; and (5) $22,825.32. Additional rent was due 30 days after Remax provided notice of the amount due.

Mrs. Buffington, however, testified that the parties agreed that Bennigan's would be the "exclusive" caterer of food and alcohol for every event at the Clarksburg Room. She explained that due to this arrangement, she agreed to lease the Clarksburg Room at a discounted "warehouse rent" rate, which was significantly lower than the price per square foot rental rate for the Office Lease. This understanding, according to Mrs. Buffington, was a "win-win" because Mr. and Mrs. Buffington would profit from use of Bennigan's as the exclusive caterer. She further testified that she "never would've rented to [Mr. Elrahimy] if [she] knew that he was going to have outside caterers because it just wouldn't work in that space. It's a conflict of interest." The circuit court found Mrs. Buffington's testimony to be credible.

On August 29, 2018, Remax and Optimum entered into a five-year sublease agreement for the Clarksburg Room ("Clarksburg Room Lease"). Mr. Elrahimy guaranteed the Clarksburg Room Lease for and executed the sublease agreement on behalf of Optimum. Mr. Buffington executed the sublease on behalf of Remax. The Clarksburg Room Lease began on October 1, 2018 at a fixed rent of $150,312.58, plus $98,571.00 in additional rent.[4] Importantly, there is no provision in the Clarksburg Room Lease regarding Bennigan's or catering requirements.

[4] The fixed rent was divided over five years and payable in monthly installments due on the first day of each month. The rent for each year contained a 3% annual increase and was as follows: (1) $28,285.80; (2) $29,134.37; (3) $30,008.40; (4) $31,048.09; (5) $31,835.92. Additional rent was due 30 days after Remax provided notice of the amount due.

After executing the Clarksburg Room Lease, Mr. Elrahimy began transforming the Clarksburg Room into an event hall business. The relationship between Mr. Elrahimy and the Buffingtons, however, began to deteriorate due to a variety of troubles, such as maintenance issues, disputes over the parties' duties under the subleases, and disagreements concerning whether Bennigan's was the exclusive caterer for the Clarksburg Room.

In October 2018, Mrs. Buffington discovered that Mr. Elrahimy intended to use other caterers besides Bennigan's for events at the Clarksburg Room and Bennigan's would not be the exclusive alcohol supplier. On November 1, 2018, there was a contentious meeting, which was attended by Mr. Elrahimy and his wife, the Buffingtons, Jennifer Rowan, Bennigan's manager, and Bobby Smith, Optimum's office manager. At the meeting, Mrs. Buffington explained that Bennigan's was to be the exclusive caterer for all food and alcohol at the events and no other caterer could be used because, under Montgomery County regulations, only one alcohol license was permitted per address, which was held by Bennigan's. Mr. Elrahimy denied making such an agreement and stated he would use other caterers in addition to Bennigan's. Mrs. Buffington then offered to rescind the Clarksburg Room Lease, but Mr. Elrahimy rejected the offer and said he would continue his tenancy under the sublease. The parties left the meeting with no agreement on whether Bennigan's would cater events.

Mr. Elrahimy then changed the Clarksburg Room to an alcohol-free banquet hall and hosted between eight and fourteen events over the next several months, such as a

family baby shower and a "Donuts for Dads" breakfast for a neighboring elementary school. None of the events hosted at the Clarksburg Room were catered by Bennigan's.

On April 23, 2019, appellants filed a Petition to Establish and Enforce Mechanic's Lien and Complaint for Damages in the Circuit Court for Montgomery County, which was subsequently amended. Appellants then stopped paying rent for both the Office Lease and the Clarksburg Room Lease. On May 23, 2019, Mrs. Buffington emailed Mr. Elrahimy, stating: "Hello Omar, We have not yet received your May rent payments for either your office or the Clarksburg Room. A late fee has been added to both[.] Please remit payments now." Appellants did not pay May or June rent. On or about June 11, 2019, Mrs. Buffington changed the locks to the office and Clarksburg Room and retook possession of the premises.

Remax individually filed a counterclaim on June 20, 2019, alleging that Mr. Elrahimy breached the Office Lease and that both Mr. Elrahimy and Optimum breached the Clarksburg Room Lease. Remax sought to recover unpaid rent from May and June 2019 for both subleases.

Appellants filed a second amended complaint on June 28, 2019, alleging breach of lease and unjust enrichment. Appellants also withdrew their petition to establish a mechanic's lien. Remax filed a counterclaim on July 22, 2019, alleging the same breach of contract claims but seeking unpaid rent from May, June, and July 2019. On December 9, 2019, appellants moved to dismiss Remax's counterclaim for lack of subject matter

jurisdiction. Appellees then filed an opposition to the motion to dismiss on December 10, 2019. On December 19, 2019, the court denied the motion to dismiss.

On December 9, 2019, appellants filed a third amended complaint alleging breach of lease, unjust enrichment, trespass, intentional misrepresentation, tortious interference with prospective advantage, and tortious interference with economic relations. In response, Remax filed a counterclaim, again alleging the same breach of contract claims in addition to seeking unpaid rent from May to December 2019.

After a three-day bench trial, the court entered an order and accompanying memorandum opinion on May 14, 2020. The court concluded that appellants failed to establish their claims against appellees and were not entitled to any recovery. Regarding Remax's counterclaim, the court found that Mr. Elrahimy breached the Office Lease and that Mr. Elrahimy and Optimum breached the Clarksburg Room Lease by failing to pay rent. Mr. Elrahimy was ordered to pay $19,614.35 and Optimum was ordered to pay $4,200.00. The order was entered as a final judgment.

Appellants then noted this appeal. Remax filed a cross-appeal, which was later withdrawn. We shall include additional facts as necessary in our discussion of the issues.

STANDARD OF REVIEW

On appeal from a bench trial, we "review the case on both the law and the evidence." Md. Rule 8-131(c). Rule 8-131(c) provides that this Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous[] and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses."

A court's factual findings are "not clearly erroneous if 'any competent material evidence exists in support.'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). We decide, in a light most favorable to the prevailing party, whether the court's factual findings were supported by substantial evidence in the record. *Plank*, 469 Md. at 608. The clearly erroneous standard, however, "does not apply to [the] court's determinations of legal questions or conclusions of law based on findings of fact." *Webb*, 433 Md. at 676 (quoting *Heat & Power Corp. v. Air Prods. & Chems., Inc.*, 320 Md. 584, 591 (1990)). Instead, the court's legal conclusions are reviewed de novo. *Plank*, 469 Md. at 569.

Similarly, we review the denial of a motion to dismiss de novo. *Blackstone v. Sharma*, 461 Md. 87, 110 (2018). The interpretation of a contract is also reviewed de novo. *See B & P Enters. v. Overland Equip. Co.*, 133 Md. App. 583, 605-06 (2000).

DISCUSSION

I. THE CIRCUIT COURT'S DECISION TO DENY APPELLANTS' MOTION TO DISMISS REMAX'S COUNTERCLAIM WAS LEGALLY CORRECT.

Appellants assert that the circuit court erred by denying their motion to dismiss Remax's counterclaim for lack of subject matter jurisdiction. They argue that the District Court instead had exclusive original jurisdiction pursuant to § 4-401(4) of the Courts and Judicial Proceedings Article. Appellees maintain that the circuit court properly had jurisdiction over the counterclaim and correctly denied the motion to dismiss.

We first note that the District Court is a court of limited jurisdiction. *See* Md. Const. art. IV, § 41A ("The District Court shall have the original jurisdiction prescribed

by law."). Section 4-401(4) specifies that "the District Court has exclusive original civil jurisdiction in . . . action[s] *involving landlord and tenant*, distraint, or wrongful detainer, regardless of the amount involved." Md. Code Ann., Cts. & Jud. Proc. § 4-401(4) (emphasis added). Here, the parties dispute the meaning of "[a]n action involving landlord and tenant" under § 4-401(4).

Specifically, appellants argue that the District Court had exclusive original jurisdiction pursuant to § 4-401(4) because the case "involved" a landlord forcibly repossessing the premises by changing the locks. Conversely, appellees contend that § 4-401(4) does not vest exclusive original jurisdiction in the District Court for all disputes between landlords and tenants. Instead, appellees argue that the District Court's jurisdiction over landlord-tenant actions is limited to possessory lawsuits. They maintain that breach of contract or breach of lease actions seeking money damages, even though between a landlord and tenant, are not subject to the District Court's exclusive original jurisdiction when the amount in controversy exceeds the statutory maximum for monetary awards.

Maryland caselaw provides guidance on the types of actions that "involv[e] landlord[s] and tenant[s]" under § 4-401(4). The Court of Appeals first addressed the meaning of this phrase in *Greenbelt Consumer Services, Inc. v. Acme Markets, Inc.*, 272 Md. 222 (1974). In *Greenbelt*, the landlord brought a claim to recover unpaid rent against the tenant who already vacated the subleased premises. *Id.* at 223. After conducting a statutory construction analysis of this provision, the Court determined that

actions "involving landlord and tenant" encompasses "only those possessory in rem or quasi in rem actions that provide[] a means by which a landlord might rapidly and inexpensively obtain repossession of his [or her] premises situated in this State or seek security for rent due from personalty located on the leasehold." *Id.* at 227-29 (noting that if the statute instead stated "an action involving *a* landlord and *a* tenant," "the District Court's jurisdiction would be practically limitless" and reasoning that the phrasing "an action involving the *landlord-tenant relationship*" would render the separate mention of actions for distraint, forcible entry, and detainer superfluous (emphasis added)). The Court then held that § 4-401(4) includes possessory actions such as those authorized by (1) summary ejectment actions under § 8-401 of the Real Property Article; (2) distraint actions authorized by §§ 8-301 to 8-332 of the Real Property Article; and (3) actions for forcible entry and detainer, including actions with respect to holdover tenants, authorized by § 8-402(b) of the Real Property Article. *Id.* at 230. The Court concluded that the District Court does not have subject matter jurisdiction "to render a judgment in excess of the [jurisdictional monetary] limit when it is instituted in a contract claim independent of one of the possessory actions" previously described. *Id.* at 230-31.

In *Williams v. Housing Authority of Baltimore City*, 361 Md. 143 (2000), the Court of Appeals also addressed the meaning of "involving landlord and tenant." The Court stated that the list of actions "involving landlord and tenant" set forth in *Greenbelt* was incomplete. *Williams*, 361 Md. at 157. The Court determined that rent escrow actions, regardless of whether in rem or quasi in rem, are "property-specific and

must be brought in the District Court." *Id.* at 158 (explaining that such an action may lead to abatement of rent and payment of rent into escrow). Similarly, the Court concluded that actions for breach of the implied warranty of habitability, regardless of the amount of damages, must be brought in the District Court because the action is "tied to the property and the lease" and provides a similar remedy to rent escrow actions. *Id.* Thus, rent escrow actions and breach of warranty claims also fall within the District Court's jurisdiction under § 4-401(4). *Id.*

In *Ben-Davies v. Blibaum & Associates, P.A.*, 457 Md. 228 (2018), while conducting a statutory construction analysis of § 11-107(b) of the Courts and Judicial Proceedings Article,[5] the Court of Appeals cited *Greenbelt* as a point of comparison. *Ben-Davies*, 457 Md. at 267-68. In its analysis, the Court reiterated that "§ 4-401(4) does not extend the District Court's jurisdiction to actions for breach of contract between landlords and tenants where the amount in controversy exceeds the District Court's statutory maximum." *Id.* (citing *Greenbelt*, 272 Md. at 230).[6]

[5] Section 11-107 of the Courts and Judicial Proceedings Article details the "different post-judgment rates [that] apply to different types of judgments." *Ben-Davies*, 457 Md. at 231. Pursuant to § 11-107(b), "a post-judgment interest rate of 6% applies to 'money judgment[s] for rent of residential premises[.]'" *Id.* (alterations in original) (quoting Md. Code Ann., Cts. & Jud. Proc. § 11-107(b)).

[6] The Court further discussed the differences between several types of landlord-tenant actions. *Ben-Davies*, 457 Md. at 253-58. For instance, the Court explained that a summary ejectment action is permitted only where a tenant fails to pay rent and a landlord seeks possession of the premises. *See id.* at 253-55. When a tenant breaches a lease in some way besides failing to pay rent, a landlord may initiate an action for breach of lease under Real Property Article § 8-402.1 to recover the premises. *Id.* at 257. A landlord may also initiate an action for breach of contract when a tenant breaches a lease, such as by failing to pay rent or otherwise. *Id.* at 257-58. In a breach of contract action,

Based on the precedent discussed above, Maryland caselaw establishes that actions for breach of contract between a landlord and tenant, where the amount in controversy exceeds the District Court's statutory maximum, must be brought in circuit court. *See Ben-Davies*, 457 Md. at 267-68; *Greenbelt*, 272 Md. at 230. Conversely, "[w]hen a landlord seeks to regain *possession* of a property from a tenant for the tenant's failure to pay rent, the landlord is required to file an action in the District Court." *Uthus v. Valley Mill Camp, Inc.*, 472 Md. 378, 395 (2021) (emphasis added).

In the instant case, appellants assert that because the appellees breached the subleases by "forcibly regaining possession of the premises," Remax's counterclaim falls under the District Court's jurisdiction. This is without support. When deciding whether a case is "[a]n action involving landlord and tenant" under § 4-401(4), the key consideration is the type of cause of action, not the alleged factual scenario in the case. *See Ben-Davies*, 457 Md. at 267-68; *Greenbelt*, 272 Md. at 229 (determining that "the General Assembly was denoting a particular form of action" when it used the phrase "[a]n action involving landlord and tenant" "just as it had when it mentioned 'distraint' and 'forcible entry and detainer'").

Here, the circuit court properly had subject matter jurisdiction over Remax's counterclaim because it asserted breach of contract claims and sought monetary damages exceeding the statutory maximum for the District Court. In its counterclaim, Remax

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the landlord may recover unpaid rent in addition to other contract damages caused by the tenant's breach. *See id.*

alleged two counts for breach of contract to recover unpaid rent. In Count I, Remax alleged that Mr. Elrahimy breached the Office Lease by failing to pay rent in the amount of $7,345.89. In Count II, against both Optimum and Mr. Elrahimy, Remax alleged that Optimum breached the Clarksburg Room Lease by failing to pay rent in the amount of $12,600.00. In each count's ad damnum clauses, Remax sought damages "in an amount in excess of $75,000 or such other amount as may be shown by the evidence" to compensate Remax for the breach of the subleases. Remax's requested damages exceeded the District Court's statutory maximum of $30,000. Cts. & Jud. Proc. § 4-401(1). And it did not seek possession of the premises as a remedy. Thus, the court did not err in denying appellants' motion to dismiss Remax's counterclaim for lack of subject matter jurisdiction.

II. THE CIRCUIT COURT'S FINDING THAT APPELLEES DID NOT BREACH THE SUBLEASE AGREEMENTS WHEN THEY CHANGED THE LOCKS WAS NOT CLEARLY ERRONEOUS.

Appellants assert that the circuit court erred by finding that appellees did not breach the subleases when they changed the locks and repossessed the premises. Appellants argue that Section 24(a) of the subleases "clearly and unambiguously required the [a]ppellee[s] to provide advance written notice of the date of termination" before retaking the premises and that, pursuant to Section 36, such notice must be served on the appellants in person, by Federal Express, or by certified mail. They assert that the court's finding that the May 23, 2019 email constituted constructive notice of termination was unsupported by any evidence. They claim that appellees failed to comply with the notice

provisions and, consequently, the court was clearly erroneous in finding that appellees were not required to provide written notice of default with a specific date of termination.

Appellees counter that, pursuant to Section 24(a), they were not required to provide notice to appellants before repossessing the premises for failure to pay rent. They contend that repossession is not contingent upon termination of the subleases and thus no notice of termination was required prior to repossessing the premises.[7] Appellees also assert that the May 23, 2019 email constituted actual notice that the appellants breached the subleases and that, in any event, appellants knew they were in default when they failed to pay rent.

A. Relevant Provisions of the Sublease Agreements

We begin by looking to the relevant provisions in the Office Lease and the Clarksburg Room Lease regarding the notice requirements and default.[8] In Section 2,

[7] During oral argument, appellees also argued:

> It is also important for [this Court] to understand that [the Buffingtons] did not take possession of the premises until . . . appellants had departed both the office and the Clarksburg Room. They left. They stopped paying rent and they left. There's no need at that point to give some sort of notice of termination of the lease. . . . [A]ppellants are in absolute default.

While we appreciate appellees' argument, we note that while the issue of whether appellants left the premises was contested at trial, the court made no finding or conclusion as to whether appellants abandoned the premises.

[8] The Office Lease and the Clarksburg Room Lease are almost identical. Except for the different rent amounts, the subleases use the same section headings, paragraph structure, content, and format. We discuss the terms of the sublease agreements together without specific reference to the Office Lease or the Clarksburg Room Lease.

titled "Payment and Performance," the subleases state that "[a]ll Rental payable [under] this Lease shall be paid in full by Tenant, *without notice* or demand and without deduction, abatement, recoupment or setoff of any kind." (emphasis added).

Section 24, titled "Bankruptcy and Default," details the events that constitute default and the remedies that may be taken by the landlord as a result of default:

> (a) [(i)] *If Tenant shall default in the payment of any of the Rental reserved herein when due*; . . . then and in any such event (hereinafter referred to as an "Event of Default"), this Lease and the Term hereof shall *at Landlord's sole option* (upon the date specified by Landlord in a *notice* to Tenant; which date shall be not less than three (3) days after the date of mailing of such notice by Landlord to Tenant) *wholly cease and expire*, with the same force and effect as though the date so specified were the date hereinabove first set forth as the date of expiration of the Term (but Tenant shall remain liable to Landlord as hereinafter provided). *Upon such default*, or at any time thereafter, *Landlord may reenter the Premises either by force or otherwise* and have the possession of the same as of its former estate, and/or may recover possession thereof in the manner prescribed by the statute relating to summary proceedings, or similar statutes (but Tenant shall remain liable to Landlord as hereinafter provided), it being understood that *no demand for the rent and no reentry for condition broken and no notice to quit possession or other notices prescribed by statute shall be necessary to enable Landlord to recover such possession*, but that all right to any such demand, any such reentry, and any notice to quit possession or other statutory notices or prerequisites are hereby expressly waived by Tenant.

(emphasis added).

Section 36 of the subleases, titled "Notices," provides the requirements for notices sent by either the tenant or landlord:

> *Every notice*, demand or other communication given by either party to the other with respect hereto or to the Premises or the Project shall be in writing and shall be (i) served personally, (ii) delivered by courier service such as Federal Express, or (iii) deposited with the U.S. Postal Service, first-class postage prepaid, sent by certified mail, return receipt requested; addressed, if to Tenant, at the address set forth in Item 14(b) of Article 1 above, and if to Landlord, at the address set forth in Item 14(a) of Article 1 above, or such other address or addresses as Tenant or Landlord may from time to time designate by notice given as above provided. . . . Notices not sent in accordance with the foregoing shall be of no force or effect until received by the foregoing parties at such addresses required herein.

(emphasis added). For the "Notice Addresses" in Article 1, the tenant's address is left blank for both the Office Lease and the Clarksburg Room Lease.

B. Section 24(a) Does Not Require Appellees to Provide a Notice of Termination Before Repossessing the Premises.

Before determining whether the circuit court's factual finding that appellees "complied with the notice requirements of Section 24" was clearly erroneous, we address the court's interpretation of the sublease agreements. Specifically, the court determined that "[u]nder Section 24 of both leases, . . . if either Mr. Elrahimy or Optimum defaulted on any of their rent payments, then Mr. and Mrs. Buffington, *after providing at least three days[] notice, could cancel the lease and retake the premises*." (emphasis added).

A sublease is a type of contract and is "to be construed by application of the well established rules of contract interpretation." *Chesapeake Bank of Md. v. Monro Muffler/Brake, Inc.*, 166 Md. App. 695, 706 (2006) (quoting *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 65 (2004)). Maryland "follows an 'objective theory of contract

interpretation, giving effect to the clear terms of the agreements, regardless of the intent of the parties at the time of contract formation.'" *Precision Small Engines, Inc. v. City of Coll. Park*, 457 Md. 573, 585 (2018) (quoting *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)). Whether a sublease is ambiguous is a question of law for the court to resolve. *See Precision Small Engines, Inc.*, 457 Md. at 585.

When a sublease's language is unambiguous, "a court shall give effect to its plain meaning and there is no need for further construction by the court." *Id.* (quoting *Walker v. Dep't of Hum. Res.*, 379 Md. 407, 421 (2004)). Our determination of "the meaning of a contract is focused on the four corners of the agreement." *Clancy v. King*, 405 Md. 541, 557 (2008) (quoting *Cochran v. Norkunas*, 398 Md. 1, 17 (2007)). We must give effect "to each clause so that [we do] not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed." *Clancy*, 405 Md. at 557 (quoting *Sagner v. Glenangus Farms, Inc.*, 234 Md. 156, 167 (1964)).

The terms of a sublease are ambiguous "if, when read by a reasonably prudent person, it is susceptible of more than one meaning." *Impac Mortg. Holdings, Inc. v. Timm*, 245 Md. App. 84, 109 (2020) (quoting *Calomiris v. Woods*, 353 Md. 425, 436 (1999)). To determine whether a sublease's language is susceptible of more than one meaning, we consider "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 418 (2014) (quoting *Calomiris*, 353 Md. at 436). Yet, "[a]n

ambiguity does not exist simply because a strained or conjectural construction can be given to a word." *Huggins*, 220 Md. App. at 419 (quoting *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 53 (2013)). The language of an agreement does not "become ambiguous merely because two parties, in litigation, offer different interpretations of its language." *Huggins*, 220 Md. App. at 419.

We conclude that the language of Section 24(a) is unambiguous. Subsection (a) consists of two sentences that describe the events that constitute default and the landlord's remedies if the tenant defaults. The first sentence provides that if the tenant "default[s] in the payment of any of the Rental reserved herein when due," such a failure to pay rent constitutes an "Event of Default." The same sentence further states that upon an Event of Default, the "Lease and the Term hereof shall at *Landlord's sole option* (upon the date specified by Landlord in a *notice* to Tenant; which date shall be not less than three (3) days after the date of mailing of such notice by Landlord to Tenant) *wholly cease and expire*." (emphasis added). The plain language of this provision expressly provides that the landlord has the choice to terminate[9] the sublease when an Event of Default occurs, but to do so, the landlord must provide written notice to the tenant that includes the effective date of termination, which must be at least three days after the notice is mailed.

[9] Our use of "terminate" or "termination" is shorthand for the following language in Section 24(a): "[T]his Lease and the Term hereof shall . . . wholly cease and expire, with the same force and effect as though the date so specified were the date hereinabove first set forth as the date of expiration of the Term . . . ."

The second sentence describes the landlord's right to repossess the premises: "*Upon such default*, or at any time thereafter, *Landlord may reenter the Premises either by force or otherwise* and have the possession of the same as of its former estate . . . ." (emphasis added). The parties' main contention centers on whether the phrase "[u]pon such default" refers to an Event of Default or termination of the subleases, both of which were referenced in the previous sentence.

"[T]o supply contractual language with its 'ordinary and accepted meanings[,]' this Court consults the dictionary definition of such terms." *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 394-95 (2019) (second alteration in original) (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985)). Black's Law Dictionary defines "default" as "[t]he omission or failure to perform a legal or contractual duty." *Default*, *Black's Law Dictionary* 526 (11th ed. 2019). Similarly, the Merriam-Webster Dictionary defines "default" as a "failure to do something required by duty or law." *Default*, *Merriam-Webster Dictionary* 186 (2016). "Termination" is defined as "[t]he act of ending something." *Termination*, *Black's Law Dictionary* 1774 (11th ed. 2019); *see also Credible Behav. Health, Inc.*, 466 Md. at 395 (stating that Webster's Dictionary defines "terminate" as "[t]o bring to an end or a halt" or "[t]o occur at or form the end of: conclude" (first alteration in original)).

Giving the words their ordinary meaning, "[u]pon such default" means upon the tenant's omission or failure to perform a contractual duty. Even though the phrase uses the word "default" instead of "Event of Default," it is referring to the types of default

listed in the previous sentence. If the parties intended for "[u]pon such default" to mean upon termination of the sublease, they could have easily written "upon such termination" or "upon such an Event of Default resulting in the termination of the lease," which instead would indicate an action taken by the landlord. The words "terminate" or "termination," however, are not mentioned in Section 24(a). There is no requirement that the landlord provide a notice of termination *before* repossessing the premises.

Furthermore, Section 24(a) provides that the landlord is not required to provide notice before engaging in self-help to repossess the property. That section states that "no demand for the rent and no reentry for condition broken and no notice to quit possession or other notices prescribed by statute shall be necessary to enable Landlord to recover such possession" and the tenant expressly waives "all right to any such demand, any such reentry, and any notice to quit possession or other statutory notices or prerequisites." Before reentering and engaging in self-help, the landlord is not required to alert the tenant that the landlord would be changing the locks. *See Nickens v. Mount Vernon Realty Grp., LLC*, 429 Md. 53, 73 (2012) (holding that "notice is not required in order to exercise peaceable self-help"), *superseded by statute*, Md. Code Ann., Real Prop. § 7-113; *Donegal Assocs., LLC v. Christie-Scott, LLC*, 248 Md. App. 448, 472 (2020) ("[A] commercial landlord is permitted, although it is not encouraged, to resort to self-help to repossess premises and property within the premises in the following circumstances: (1) the tenant is in breach of a lease; (2) that authorizes the remedy of repossession; and (3) the repossession can be done peacefully.").

We conclude that the court's central finding that is challenged on appeal—that the Buffingtons "did not violate Section 24 . . . and no breach of the agreements occurred"[10]—was supported by substantial evidence in the record.[11] As explained, appellees were not required to provide a notice of termination before repossessing the

[10] The court found that the Buffingtons "complied with the notice requirements of Section 24." In making that finding, the court determined that the May 23, 2019 email, in which Mrs. Buffington informed Mr. Elrahimy that May rent was not received for either the office or the Clarksburg Room, constituted a "notice of default." Neither the Office Lease nor the Clarksburg Room Lease, however, require the landlord to provide a "notice of default" when the tenant fails to pay rent. Instead, all rent owed under the subleases was to "be paid in full by Tenant, without notice or demand."

Furthermore, it appears that the court considered the subleases "terminated" when Mrs. Buffington changed locks, determining that "[o]n or about June 11, 2019, almost twenty days after the default notice was sent and pursuant to her authority under Section 24, Mrs. Buffington terminated the leases and retook possession of the Office and the Clarksburg Room." The court, however, did not conclude whether the Buffingtons sent a notice of termination, but instead stated the following:

> While Mrs. Buffington's notice of default did not specifically state that Mrs. Buffington was terminating the lease agreements, Mr. Elrahimy is deemed to have had constructive notice of the leases terminating due to the fact he purposefully avoided his obligation to pay rent and filed a lawsuit against Mr. and Mrs. Buffington.

It is not clear what the court meant by this statement and there are no cites to any legal authority. Because we determine that repossession was not premised upon notice of termination, we need not address whether Mrs. Buffington's May 23, 2019 email constituted a notice of termination or whether appellants had constructive notice.

[11] Under the clearly erroneous standard, we do not have to rely on the same grounds as the circuit court; instead, we need only determine whether the court's factual finding—that the Buffingtons did not breach the sublease agreements under Section 24—was supported by substantial evidence in the record. *See Plank v. Cherneski*, 469 Md. 548, 568 (2020) ("A trial court's findings are not clearly erroneous if '*any* competent material evidence exists in support of the trial court's factual findings.'" (emphasis added) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013))).

premises pursuant to Section 24(a) of the subleases. Instead, appellees were permitted to repossess the premises. Appellants did not pay May or June rent and thus they were in default, which was conceded by appellants during oral argument. Thus, there was substantial evidence in the record to support the court's finding that the Buffingtons did not violate Section 24.

III. THE CIRCUIT COURT'S FINDING THAT APPELLEES DID NOT INTERFERE WITH APPELLANTS' RIGHT TO QUIET ENJOYMENT OF THE CLARKSBURG ROOM WAS NOT CLEARLY ERRONEOUS.

Appellants contend that the court erred by finding that appellees' refusal to permit use of outside caterers did not interfere with appellants' right to quiet enjoyment of the Clarksburg Room pursuant to the Clarksburg Room Lease. Mr. Elrahimy marketed the Clarksburg Room to various groups of people and planned to offer an assortment of caterers to provide international cuisines. Appellants argue that the Bennigan's requirement interfered with the "ability to conduct a lawful business as . . . promised" because Bennigan's, which is an "Irish Hospitality" restaurant, could not provide such international cuisine. Conversely, appellees contend that they did not substantially interfere with the use of the premises or appellants' business activities and thus did not breach the covenant of quiet enjoyment.[12]

[12] In their brief and at oral argument, appellees argue that the circuit court "found as a matter of fact that M[r]s. Buffington and Mr. Elrahimy entered into a verbal, extra-contractual agreement that Bennigan's would be the exclusive caterer for events held at the Clarksburg Room in exchange for reduced rent" and that the Bennigan's requirement "was part and parcel of the parties' agreement vis-à-vis Optimum's use of the Clarksburg Room." In other words, appellees believe that the circuit court found that the Bennigan's requirement was a separate contract from the Clarksburg Room Lease.

Pursuant to Section 32, titled "Quiet Enjoyment," of the Clarksburg Room Lease, appellants had the right to "peaceably and quietly enjoy" the Clarksburg Room without "any interference" from appellees:

> Subject to all of the other provisions of this Lease, and to liens, encumbrances, restrictions, covenants and all other matters of record. Landlord covenants and agrees with Tenant that, upon Tenant's paying the Rental and observing and performing all the terms, conditions and covenants on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises from any interference by Landlord.

In Maryland, a tenant's claim for breach of the covenant of quiet enjoyment may be shown by actual or constructive eviction by the landlord. *See Legg v. Castruccio*, 100 Md. App. 748, 777-82 (1994).[13] "[I]n the absence of an actual or constructive eviction,"[14] a tenant has a claim for a breach of the covenant of quiet enjoyment when the landlord's conduct "*strikes at the essence of its obligations under the lease*." *Nationwide Mut. Ins. Co. v. Regency Furniture, Inc.*, 183 Md. App. 710, 734 (2009) (emphasis

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It is unclear, however, whether the circuit court made such a finding. In its opinion, the court determined that Mrs. Buffington's testimony was credible and that the parties agreed that Bennigan's was to be the exclusive caterer. The court did not make a specific finding that the Bennigan's agreement was an oral contract, though it did conclude that the agreement was not part of the Clarksburg Room Lease.

[13] "[A] constructive eviction occurs when the acts of a landlord cause serious or substantial interference with the tenant['s] enjoyment of the property which results in the tenant vacating the premises." *Legg v. Castruccio*, 100 Md. App. 748, 778-79 (1994) (alterations in original) (quoting *Stevan v. Brown*, 54 Md. App. 235, 240 (1983)).

[14] In this case, the circuit court found that there was no act or omission that constituted a constructive eviction of Mr. Elrahimy and Optimum. This finding is not challenged on appeal.

added) (explaining that "there may be a breach of the covenant of quiet enjoyment even when the tenant remains in possession of the premises"). In other words, "[t]he scope or magnitude of the [landlord's] interference necessary to constitute a breach . . . must be such as *goes to the essence of what the landlord is to provide*." *Id.* (emphasis added).[15] "[T]here must be evidence that the landlord substantially interfered with the tenant's *use* of the premises, to the tenant's injury." *Id.* at 734-35 (upholding trial court's finding that there was no breach of the covenant of quiet enjoyment because there was no evidence that the tenant "was deprived, actually or constructively, of the use of the . . . [p]remises, so that there was a difference in value between the . . . [p]remises as actually received under the [l]ease and as should have been received").

The circuit court found that the Buffingtons' "conduct did not substantially interfere with Mr. Elrahimy's use of the premises and did not interfere with Mr. Elrahimy's business activity."[16] This factual finding was not clearly erroneous as

[15] In *Stevan v. Brown*, 54 Md. App. 235, 247-48 (1983), this Court adopted the Supreme Judicial Court of Massachusetts' view expressed in *Charles E. Burt, Inc. v. Seven Grand Corp.*, 163 N.E.2d 4 (1959) regarding the covenant of quiet enjoyment. This Court explained that when tenants lease space in a commercial building to conduct a business, a landlord's failure to provide light, heat, power, and elevator services goes to "the essence of what the landlord is to provide." *Stevan*, 54 Md. App. at 247-48 (quoting *Charles E. Burt, Inc.*, 163 N.E.2d at 6). Such failure to provide these services deprives tenants "of a vital part of what the landlord knows the lessee must have in order to carry on his business" and constitutes a breach of the covenant of quiet enjoyment. *Stevan*, 54 Md. App. at 247-48 (quoting *Charles E. Burt, Inc.*, 163 N.E.2d at 6).

[16] In making this finding, the court considered whether several incidents amounted to a violation of the covenant of quiet enjoyment, such as maintenance issues, the Bennigan's catering disagreement, parking restrictions, alleged violations of the alcohol policy, alleged violations of the use and occupancy limit, and the weekend entry into the

appellants failed to prove that appellees' conduct substantially interfered with their use of the Clarksburg Room.

Under a section entitled "Tenant's Use of the Premises," the Clarksburg Room Lease details that the Clarksburg Room was to be used as a "Catering/Meeting Room." Consequently, the "essence" of what the Buffingtons were to provide under the Clarksburg Room Lease was a space for appellants to use as a catering or event hall. While Mr. Elrahimy testified that he lost clients and his business was affected, he presented no evidence establishing that he was deprived of his use of the Clarksburg Room. Despite the disagreement over the Bennigan's requirement, Mr. Elrahimy continued to use the Clarksburg Room as an alcohol-free banquet hall and hosted between eight and fourteen events that were not catered by Bennigan's. Appellants were not substantially deprived of their ability to use the Clarksburg Room to host events or deprived of an essential service inhibiting their use of the premises—the record does not show that there was any difference in value between the Clarksburg Room as actually received under the lease and as should have been received. *See Nationwide*, 183 Md. App. at 734-35 (affirming the trial court's finding that the tenant did not present adequate proof of a breach of the covenant of quiet enjoyment because the landlord did not substantially interfere with or deprive the tenant of the use of the premises when the landlord removed items from the tenant's property); *cf. Schuman v. Greenbelt Homes,*

Optimum office, among other events. As appellants only contend that the court erred in relation to the Bennigan's requirement, our discussion is limited to that issue.

Inc., 212 Md. App. 451, 474-75 (2013) (explaining that the landlord's failure to stop a tenant's neighbor from smoking did not go to the essence of the landlord's obligations because the smoking did not amount to a nuisance, which was prohibited under the agreement); *Q C Corp. v. Maryland Port Admin.*, 68 Md. App. 181, 195-99 (1986) (reversing motion for judgment when there was enough evidence "to permit, although not to compel" a finding of breach of the covenant of quiet enjoyment where the commercial lease limited the tenant's use of the premises to a chemical processing plant, hazardous waste that blew from the landlord's property into the tenant's property created a "hazard to the safety of [the tenant's] employees and the integrity of its product," and customers would no longer purchase the product if they became aware of possible contamination), *rev'd in part on other grounds*, 310 Md. 379 (1987). The Bennigan's requirement did not substantially interfere with appellants' ability to use the space as a catering or event hall.

Moreover, the parties contemplated that the Clarksburg Room would not only be used as an event space, but as an office space. The Clarksburg Room Lease provides that "[i]n the event that the Clarksburg Room does [not] work out financially, the tenant will have the right to change the use to office use subject to Montgomery County approval." Mr. Elrahimy confirmed that he would use the Clarksburg Room as an office space when he emailed Mrs. Buffington on January 22, 2019, stating that "[t]he Clarksburg [R]oom serves us great as an extension of our [O]ptimum office for meeting & additional work space, therefore we do not mind using it for the duration of the lease only serving our office and staff as additional space for [O]ptimum [C]onstruction operations."

For the reasons outlined above, the record supports the court's finding that appellants failed to prove that appellees' conduct substantially interfered with their use of the Clarksburg Room and thus constituted a breach of the covenant of quiet enjoyment. The court did not err in finding that the Buffingtons did not violate Section 32 of the Clarksburg Room Lease.

CONCLUSION

We hold that the circuit court did not err in (1) denying appellants' motion to dismiss, (2) finding that appellees did not breach the subleases when they changed the locks, and (3) finding that appellees did not breach the covenant of quiet enjoyment. Therefore, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.