

Circuit Court for Prince George's County
Case No. CAL 17-00212

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 587

September Term, 2018

BALTIMORE AVENUE, LLC

v.

ALBERTO RAUDA

Meredith,
Kehoe,
Berger,

JJ.

Opinion by Kehoe, J.

Filed: November 8, 2019

*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. *See* Md. Rule 1-104.

This appeal arises from dispute between Baltimore Avenue, LLC and Alberto Rauda, doing business as Standard Leasing & Auto Sales, LLC, over damages incurred by Mr. Rauda's alleged holding over of a leased premises. The Circuit Court for Prince George's County, the Honorable Peter K. Killough presiding, found that the commercial lease between the parties was not a valid contract and that Rauda did not remain on the premises past the termination of the lease. Consequently, the circuit court ruled that Baltimore Avenue was not entitled to damages or attorney's fees. However, the court did award Baltimore Avenue \$3,000 for one month of past due rent under a theory of unjust enrichment.

Unsatisfied with the judgment, Baltimore Avenue appealed and presents five issues, which we have consolidated, reordered, and rephrased as follows:

1. Did the trial court err in finding that Appellee was not in possession of the lease premises after August 31, 2015?
2. Did the trial court err in ruling that Appellee did not owe Appellant additional rent, operating expenses, and attorney's fees under the terms of the lease?
3. Did the trial court err in finding that Appellee was not contractually liable to Appellant under the terms of the Lease?

We will affirm the judgment. Our answer to the first two questions is "no," and it is not necessary for us to address the third contention.

Background

Alberto Rauda owns and operates Standard Leasing & Auto Sales, LLC (“Standard”). Baltimore Avenue, LLC, owns real property at 4720 and 4722 Baltimore Avenue in Hyattsville, Maryland, that comprises several commercial spaces (the “Property”).

In October 2014, Baltimore Avenue and Standard entered into a commercial lease (the “Lease”) for a 600 square foot office space on the Property. To distinguish it from the Property, we will refer to the 600 sq. ft. space leased by Standard as the “Premises.” The Lease provided that Standard would pay \$3,000 in monthly rent for the Premises. Standard was also responsible for paying twenty percent of all operating expenses for the Property, called common area maintenance, or “CAM,” charges. Article 1.2 of the Lease provided that:

Notwithstanding anything to the contrary contained in this Lease, [Baltimore Avenue] has the absolute exclusive right to terminate this Lease at any time upon 30 days advance notice to [Standard], in which event the Lease term shall end at such date as set forth in such notice.

The Lease was signed by Rauda as “owner” of Standard Leasing, and by Meir Duke as “owner” of Baltimore Avenue. At the time the Lease was executed, Standard was not registered with the Maryland State Department of Taxation (“SDAT”).

On July 16, 2015, Baltimore Avenue, through counsel, notified Standard that it was terminating the Lease effective August 31, 2015. Whether Standard vacated the Premises by August 31 is an issue we review in this appeal.

In a separate but related matter, on September 14, 2015, Baltimore Avenue filed a tenant holding over action pursuant to Md. Code (1974, 2015 Repl. Vol.), Real Property Article (“Real Prop.”), § 8-402, against Standard, Rauda, and John Doe in the District Court of Maryland, sitting in Prince George’s County, seeking \$23,430.97 in damages as well as attorney’s fees (hereinafter, the “THO Action”). At a hearing held on November 2, 2015, the District Court found that Standard remained in possession of the Premises after August 31. However, the court denied Baltimore Avenue damages and attorney’s fees. On April 13, 2016, a warrant of restitution was apparently served on Standard by the Prince George’s County Sheriff.

Just over a year later, on January 5, 2017, Baltimore Avenue filed a complaint in the Circuit Court for Prince George’s County that serves as the basis for this appeal. In contrast to the THO Action, the complaint listed Rauda, and not Standard, as the defendant. Baltimore Avenue asserted two claims against Rauda. First, it argued that Rauda breached the terms of the Lease because he did not pay monthly rent between September 1, 2015, and April 13, 2016, when he was allegedly still in possession of the Premises. Second, Baltimore Avenue claimed that it was entitled to damages under a theory of unjust enrichment for Rauda’s holding over of the Premises between September 1, 2015, and April 13, 2016. Baltimore Avenue sought \$57,034.96 in damages, as well as \$8,555.24 in attorney’s fees.

On April 30, 2018, a bench trial was held. Baltimore Avenue argued that Standard remained on the Premises from August 31, 2015 until April 13, 2016; that as a result of Standard's holding over, it was entitled to damages in the form of monthly rent, operating expenses, and attorney's fees; and that Rauda was personally liable for these damages because Standard was not in existence at the time the Lease was executed.

Steven Enslow was Baltimore Avenue's only witness. Through his company, Commercial Realty Management, Enslow has provided property management services to the Property, including the Premises leased by Standard, since December 2014. Enslow provided a tenant ledger for Standard. The ledger showed that Standard paid rent from March 2015 through August 2015, except for one rent payment in July which was returned. Each rent check was made to Baltimore Avenue by "J.R. Rauda's Body Shop." The ledger also indicated that Standard owed rent payments and operating expenses from September 2015 through April 19, 2016. Finally, the ledger included attorney's fees "incurred by the landlord as a result of actions the landlord had to take to eventually evict Rauda from the leasehold interest from the premises." Enslow also testified that "within a week or two" after Baltimore Avenue obtained the writ of restitution on April 4, 2016, Standard was evicted from the premises.

Enslow also testified about Magic Benz Services, LLC, another tenant which occupied space on the Property adjacent to Standard. He testified that, pursuant to a lease agreement with Baltimore Avenue dated June 10, 2015, Magic Benz would occupy its original space

on the Property as well as the 600 square foot Premises already occupied by Standard. This agreement was signed by Duke on behalf of Baltimore Avenue, LLC and by William Yemele and Yared Tucho on behalf of Magic Benz. Enslow testified that despite receiving two separate checks for rent for the Premises from Magic Benz, dated July 8, 2015, and August 8, 2015, those checks were never deposited and the lease agreement was never acted upon.

On cross-examination, Enslow stated that he did not know when or how Rauda originally gained access to the Premises, but that he visited the Property eight to ten times since 2015. Enslow was questioned about the operating expenses Standard allegedly owed. He testified that his practice is to “sit down on a monthly basis if a tenant is late on a payment or delinquent,” and “send them a reminder notice.” However, Enslow did not produce or testify to any documents evidencing that Rauda or Standard received such notice.

At the close of Baltimore Avenue’s case-in-chief, defense counsel made a motion for judgment. The court denied the motion because, in reviewing the evidence in a light most favorable to the plaintiff, it found that “(a) there was a contract, and (b) that there was non-payment, which constitutes a breach.”

Rauda’s position was that he had vacated the Premises as of August 31, and that, in any event, he could not be held personally liable under the Lease because there was no agreement that he was personally guaranteeing anything on behalf of Standard. He

theorized that Baltimore Avenue had “double rented” the Premises to Standard and Magic Benz, and so Baltimore Avenue had not acted in good faith.

The defense called Enslow as its first witness. Regarding the various tenants on the Property, Enslow clarified that in addition to Standard, which occupied “Structure A” of the Property, two other tenants were present: Magic Benz occupied “Structure B,” and another business owned by “Tavaras and Carbaras” occupied space “S” within Structure A. Enslow testified that he visited the Premises in December 2014, and saw employees of Magic Benz within Structure A.

Then, Rauda himself testified. He stated that he was a member of Baltimore Avenue, along with Meir Duke and John Laseese, and that the three formed Baltimore Avenue for the purpose of purchasing the Property.

Rauda testified that he occupied the Premises from April 1, 2015, until August 31, 2015. Rauda explained the parties chose April 1 because he did not file the required paper work with SDAT to form Standard until March 2015, and so he was prohibited from conducting business until he did so. When Rauda moved into the Premises, he received the keys from Laseese, who acted as the property manager for the Property at that time. He explained that at some point in May 2015, Laseese was relieved of his role as property manager, and died in March 2018.

Rauda recalled an incident in June 2015 when he arrived at the Premises and found two persons, Mr. Yemele and Mr. Tucho in his office, as well as their vehicles parked in

his designated spaces. An argument broke out over who was leasing the Premises, and Tucho showed Magic Benz's lease agreement with Baltimore Avenue to Rauda. Rauda testified that, at this point, he realized he had lost, and would never regain, possession of the Premises. After receiving the termination notice at the end of July 2015, Rauda began removing any remaining property on the Premises, and removed his last vehicle from the Premises on August 20, 2015. Rauda stated that, between June and August 2015 while removing his property, he did not use the office space because he "couldn't do any business because the other persons had most of the space in there so[,] I couldn't do any business so I moved on." Rauda testified that, on or about August 31, he handed the keys to the Premises to Messrs. Yemele and Tucho as they were in possession of the Premises at that time.

Finally, Rauda testified that, although he surrendered possession of the Premises on August 31, he visited the Property every day in his capacity as a member of Baltimore Avenue. His purpose in visiting was to turn the parking lot lights on and off and to unlock the gate to the Property because he had the only set of keys for this task. He explained that this had been his practice for the previous two years, and that he did not mind doing it because he owned a separate property behind the Premises.

At the conclusion of the trial, the trial court issued its ruling from the bench. First, the court found that the evidence was "sufficient to establish that, as a technical matter, Standard Leasing and Auto, LLC never existed" at the time the Lease was executed.

Second, the court found that no agreement existed between the parties, and that this was a “fundamental flaw” in Baltimore Avenue’s case. The court indicated that “[n]owhere in [the Lease] does Rauda agree to personally guarantee anything respective to Standard Leasing and Auto Sales. Rauda is an individual, he is not a party to this agreement. So the Court holds that [the Lease] . . . is not a valid agreement.” Additionally, the court ruled that the Lease also failed because Rauda did not pay rent on behalf of Standard. Rather, the rent checks were made on behalf of an entity called “J.R. Rauda’s Body Shop” and Baltimore Avenue accepted checks as payment.

Based on Rauda’s testimony, which it characterized as uncontradicted, the court found that he vacated the Premises on August 31 and only returned to turn on and off the lights and open the gate as a member of Baltimore Avenue. The Court pointed out that Baltimore Avenue, as the plaintiff, bore the burden of proving that Rauda and his business remained on the Premises after August 31, 2015, and that Baltimore Avenue had not met this burden. Consequently, the court denied Baltimore Avenue damages for its breach of contract claim.

The court also denied Baltimore Avenue’s claim for attorney’s fees. First, the court noted that some of the attorney’s fees contained in Mr. Enslow’s tenant ledger pertained to an action against Messrs. Carbaras and Tavaras. Second, the court concluded that the attorney’s fees incurred by Rauda’s alleged holding over were incurred after Rauda vacated the premises on August 31. Thus, because it had already found, as a factual matter, that

Rauda was not present on the Premises after August 31, the court ruled that Baltimore Avenue was not entitled to attorney's fees incurred after that date.

Then the court denied Baltimore Avenue's claim for unpaid operating expenses. The court observed that "[t]here was remarkably little evidence presented during the case regarding so-called CAM charges." Although it found Enslow's testimony credible, the court did not "see any evidence regarding any demands made of Rauda or his entity to pay CAM income" and that "there's no documentation to reflect . . . that any of these demands were made to Rauda."

Finally, the court ruled on Baltimore Avenue's claim for unjust enrichment. The Court found that Rauda and his business occupied the Premises and paid rent for the months of April, May, June, and August 2015, but that Rauda's rent payment for July 2015 was returned for insufficient funds. Consequently, the court identified only \$3,000 of damages owed to Baltimore Avenue, embodying the July rent that was not paid to Baltimore Avenue.

Standard of Review

We review an action, tried without a jury, on both the law and the evidence. We "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." Md. Rule 8-131(c). We review the evidence in a light most favorable to the prevailing party. *Ryan v. Thurston*, 276 Md. 390, 392 (1975). "If there is any competent

evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). This deference, however, does not extend to the trial court’s conclusions of law. *Turner v. Bouchard*, 202 Md. App. 428, 442 (2011).

1.

Baltimore Avenue presents three arguments in support of its assertion that the trial court erred by finding that Rauda vacated the Premises on August 31, 2015. First, Baltimore Avenue points to April 13, 2016, as the date Rauda vacated the Premises, as that is the date Rauda was served with the writ of restitution from the THO Action. Thus, Baltimore Avenue maintains that the District Court had already decided this issue.

Second, Baltimore Avenue contends that Rauda did not surrender the Premises on August 31 when he gave the keys to the Premises to Messrs. Yemele and Tucho. Baltimore Avenue argues that because Messrs. Yemele and Tucho are owners of Magic Benz, they were not authorized to accept the keys to the Premises on behalf of Baltimore Avenue.

Third, Baltimore Avenue argues that it never formally accepted Rauda’s surrender of the premises. According to Baltimore Avenue, Rauda’s failure to pay rent and return the keys after August 31 constituted abandonment of the Premises. Baltimore Avenue suggests that an “abandonment” by the tenant constitutes only an offer to surrender, and that it never accepted Rauda’s offer to surrender the Premises. None of these contentions are persuasive.

After a bench trial, the court found Rauda’s testimony was “uncontradicted” that he left the Premises on or about August 31, and only returned to turn on and off the lights and open the gate as a member of Baltimore Avenue. There was certainly evidence, in the form of Rauda’s testimony, to support this finding. Enslow, Baltimore Avenue’s property manager and sole witness in the case, did not provide any evidence that Rauda remained on the Premises past August 31. Nor was the trial court required to credit Enslow’s vague testimony about his visits to the Premises to assist Baltimore Avenue in this regard. In fact, Baltimore Avenue’s only evidence on this issue is the writ of restitution that was executed in April 2016. To this point, the trial court found by the time that the writ was executed, “[Rauda] seemed [to have] already gone.”

To be sure, the evidence was controverted but what is dispositive is that the court’s findings were supported by evidence in the record. There is no basis for us to conclude that the trial court’s findings were clearly erroneous.

2.

Baltimore Avenue next asserts that the trial court erred by denying it additional rent, operating expenses, and attorney’s fees. According to Baltimore Avenue, all three of these expenses were incurred after August 31 and were caused by Rauda’s holding over. But, as we have already discussed, the trial court’s finding that Rauda vacated the Premises by August 31 was not clearly erroneous. As such, there is no legal or factual basis to mulct Rauda for any damages incurred after August 31.

3.

Finally, Baltimore Avenue contends that the trial court erred in finding that Rauda was not personally liable for Standard's obligations under the Lease. Baltimore Avenue's premise is incorrect. The court *did* enter judgment against Rauda personally on Baltimore Avenue's unjust enrichment claim. The court concluded, correctly in our view, that Baltimore Avenue was owed one month's rent because the check for the July rent was not honored by the payor bank. Rauda does not assert that the court erred in this regard. We have already held that Baltimore Avenue is not entitled to any of the additional damages that it is seeking. Therefore, any suppositional error on the trial court's part as to the conceptual basis of Rauda's personal liability would be harmless. There is no need for us to address the issue further.

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