Circuit Court for Prince George's County
Case No. CAL15-04348

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0700 & 2350

September Term, 2017

BRADLEY HILLS, LLC

v.

MABLE MCKAY

Kehoe,
Leahy,
Reed,

JJ.

Opinion by Reed, J.

Filed: July 7, 2020

On January 26, 2012, Appellee and Cross-Appellant Mable McKay ("Ms. McKay") sued Appellant and Cross-Appellee, Bradley Hills, LLC ("Bradley Hills"), in the Circuit Court for Prince George's County. Ms. McKay alleged in her Complaint that Bradley Hills was liable for breach of lease, wrongful eviction, and conversion following a fire that occurred in an apartment leased by Ms. McKay. At the conclusion of the trial, Bradley Hills made a motion for judgment, a motion on which the trial court reserved judgment. The jury returned a verdict in favor of Ms. McKay on all three issues, awarding Ms. McKay damages in the amount of $20,000.00 for breach of lease, $15,000.00 for wrongful eviction, and $25,000.00 for conversion.

Pursuant to Maryland Rules 2-532 and 2-533, Bradley Hills filed timely post-trial motions for Judgment Notwithstanding the Verdict ("JNOV") and a new trial, which were opposed by Ms. McKay. Following a hearing, the trial court denied Bradley Hills' motion for a new trial and granted the JNOV in part, granting the motion on the wrongful eviction claim, sustaining the award regarding conversion, and reducing the awarded damages for breach of lease to $6,325.84.[1] On request and after a review of Ms. McKay's Affidavit for Attorney's Fees, the trial court also awarded Ms. McKay $3,500.00 in attorney's fees. Both parties petitioned this Court for review.

In bringing its appeal, Bradley Hills presents three questions for our review:

[1] $6,325.84 represented a pro-rata return of Ms. McKay's March 2012 rental payment in the amount of $775.84 and damages for the failure to return Ms. McKay's security deposit in the amount of $5,500.00, plus interest and attorney's fees pursuant to Md. Code Ann., Real Property, § 8-203(h)(3)(i).

I. Did the trial court erroneously deny Bradley Hills' Motion for Judgment Notwithstanding the Verdict on Count III of the complaint for conversion?
II. Did the trial court erroneously deny Bradley Hills' Motion for Judgment Notwithstanding the Verdict on Count I of the complaint for breach of lease?
III. Did the trial court abuse its discretion in denying Bradley Hills' Motion for a New Trial?

In her reply brief and cross-appeal, Ms. McKay denies any trial court error regarding the issues presented by Bradley Hills. She presents one compound question for our review, which we have expanded and rephrased for clarity:[2]

I. Did the trial court err in reducing the jury's award on the breach of lease claim?
II. Did the trial court err in its determination of the amount of attorney's fees due to Ms. McKay after remitting and reducing the jury's award on the breach of lease claim?

For the following reasons, we affirm the decision of the Circuit Court for Prince George's County.

[2] Ms. McKay presents the following questions for appellate review, three of which directly contradict the questions presented by Bradley Hills in its appeal:

1. Whether the Trial Court was correct in determining that there was sufficient evidence presented to allow the conversion claim to be submitted to the jury for determination.
2. Whether the Trial Court was correct in determining that there was sufficient evidence presented to allow the breach of contract claim to be submitted to the jury for determination.
3. Whether the Trial Court erroneously determined the amount of attorney's fees due to the Appellee after remitting and reducing the jury's award on the breach of contract claim.
4. Whether the Trial Court was correct in denying the Appellant's request for a new trial.

FACTUAL AND PROCEDURAL BACKGROUND

On June 10, 2010, Mable McKay ("Ms. McKay") and her co-tenant, Carroll Pollard ("Mr. Pollard"), leased an apartment from Bradley Hills, LLC ("Bradley Hills") at the Kings Square apartment complex for $925.00 per month. On March 5, 2012, a faulty plug-in air freshener used by Ms. McKay ignited and caused a fire in her apartment. The fire burned for two hours before firefighters were able to extinguish the flames. Soon thereafter, Bradley Hills' property manager secured the apartment so no one could get into the property until the apartment unit was inspected.

After the fire, Ms. McKay never entered the apartment unit. Instead, Ms. McKay stayed in a motel for several days before being admitted to the hospital for surgery unrelated to this case. On March 9, 2012, Mr. Pollard returned to the apartment to retrieve some personal belongings. Per the property manager's instructions, a crew of employees were present when Mr. Pollard walked through the apartment. These employees informed Mr. Pollard that they would help him remove the items he wanted, but the remaining items would be taken to the dump to be disposed of. Mr. Pollard eventually collected approximately three (3) bags of items, including but not limited to smoke-damaged clothing. Bradley Hills staff later disposed of the remaining property left in the apartment.

On March 5, 2012, Bradley Hills made the determination to terminate its lease with Ms. McKay, citing the nature and extent of the fire damage to the apartment and deeming the apartment uninhabitable. Bradley Hills claims that it was authorized to make this decision pursuant to Paragraph 25 of the lease, which states in part:

> FIRE DAMAGE: If said Premises become uninhabitable by

> reason of fire (or other unavoidable casualty) not caused by the negligence of the Lessee, his/her agents or servants, the rental herein reserved shall be suspended until the same shall have been restored to a habitable condition. The Lessor is not obliged, however, to rebuild or restore said Premises. In the event that said Premises are uninhabitable, the Lessor may at its sole discretion terminate this lease without liability to the Lessee.

Bradley Hills also determined that Ms. McKay was not eligible for a refund of her security deposit in the amount of $1,850.00 and $176.85 in interest. Bradley Hills reasoned that the fire resulted in $2,026.85 worth of damage to the apartment, so there was no refund and no balance owed by Ms. McKay. Bradley Hills sent written notice of this decision to Ms. McKay at her last known address on March 27, 2012. However, Ms. McKay moved to the District of Columbia on or about March 17, 2012 and failed to make arrangement with the U.S. Postal Service to have her mail forwarded to her new address until April 2012. Nonetheless, Ms. McKay received actual notice from her attorney that her security deposit was not going to be refunded due to the fire damage in the apartment.

Ms. McKay filed a complaint in the Circuit Court for Prince George's County alleging that Bradley Hills was liable for breach of lease, wrongful eviction, and conversion of Ms. McKay's personal property. At trial, over Bradley Hills' objection, the trial court permitted Ms. McKay to testify regarding the pre-fire value of her personal property contained in the apartment. Initially, Ms. McKay was unable to determine the dollar value of her property. However, after a bench conference and a 32-minute recess, Ms. McKay determined that the pre-fire value of her property was $25,000.00. She stated that she did not know which of her personal items remained in her apartment following the fire or

whether any items sustained fire or water damage. Furthermore, Ms. McKay did not offer any testimony regarding the post-fire value of her property.

At the close of all evidence, Bradley Hills made a motion for judgment, which the court reserved after hearing arguments. The trial court then instructed the jury to decide whether Bradley Hills breached the lease after the fire, whether Bradley Hills evicted Ms. McKay wrongfully, and whether Bradley Hills converted the property of Ms. McKay, and if the response was in the affirmative, to determine damages on each issue. The jury answered each question in the affirmative and awarded Ms. McKay $20,000.00 for the breach of lease, $15,000.00 for wrongful eviction, and $25,000.00 for conversion.

Bradley Hills then filed a motion for a new trial and a motion for JNOV. The trial court granted the JNOV motion with regard to the wrongful eviction claim, denied the motion on the conversion claim, and reduced the award for breach of lease to $6,325.84. This amount represented a pro-rata return of Ms. McKay's March 2012 rental payment and an award of treble damages in the amount of $5,500.00 for Bradley Hills' failure to return Ms. McKay's security deposit pursuant to Md. Code Ann., Real Property, §8-203(h)(3)(I). The trial court also ordered that Ms. McKay could submit a request for attorney's fees and interest regarding this statutory claim. Bradley Hills' motion for a new trial was denied. Subsequently, Bradley Hills filed an appeal.

On January 3, 2018, Ms. McKay submitted a request for attorney's fees and interest pertaining to her statutory claim. She provided an Affidavit for Attorney's Fees, opposed by Bradley Hills, requesting $13,400.00, or 40% of the total damages awarded to her. However, the trial court subsequently awarded Ms. McKay only $3,500.00 in attorney's

fees. Ms. McKay, in addition to opposing Bradley Hills' appeal, brings a cross-appeal regarding the trial court's decision to reduce the jury award and its determination of attorney's fees.

DISCUSSION

i. Motion for JNOV – Conversion & Breach of Lease

A. Parties' Contentions

1. Conversion

Bradley Hills contends that the trial court erred in denying Bradley Hill's motion for JNOV on the conversion claim. First, Bradley Hills argues that Ms. McKay failed to establish the necessary elements for a conversion claim because Ms. McKay provided no evidence that Mr. Pollard was acting without her consent when he failed to gather all of her belongings during his walkthrough.

Second, Bradley Hills claims that the trial court erred in allowing Ms. McKay to testify about the pre-fire condition and value of her personal property. Instead, Bradley Hills claims that any alleged conversion would have occurred after the fire, thus rendering the pre-fire value of her property irrelevant. Furthermore, Bradley Hills contends that Ms. McKay lacked the required knowledge to testify as to her property's post-fire condition and value because she failed to return to the apartment after the fire. Bradley Hills also argues that the $25,000 price tag Ms. McKay placed on the property allegedly converted was "pure conjecture and speculation" and should not have been admissible.

Ms. McKay first argues that Mr. Pollard's actions during the walkthrough not only failed to constitute permission for Bradley Hills to discard Ms. McKay's property, but that

Mr. Pollard's actions cannot bind Ms. McKay from bringing a conversion claim.

Ms. McKay then rebuts Bradley Hills' assertions that the trial court committed reversible error in allowing her to testify regarding her property's condition and value. Relying on Maryland case law, Ms. McKay contends that as the owner of the property, she is allowed to provide opinion testimony regarding the value of allegedly converted property without being qualified as an expert. Ms. McKay also asserts that the condition of her property pre- and post-fire were nearly identical because the fire was not nearly as severe as Bradley Hills' claims. In doing so, Ms. McKay points to the fire marshal's report, which stated that the fire damage was limited "to the bathroom and part of the living room only," and the fact that her fish and some delicate paperwork survived the fire.

Ms. McKay also alleges that Bradley Hills is attempting to benefit from its own wrongdoing. She argues that by taking affirmative steps to deny Ms. McKay the opportunity to access her property, including changing the locks and failing to alert her that it'd be disposing of her property within days of the fire, Bradley Hills effectively prevented Ms. McKay from determining the post-fire condition and value of her belongings. As such, Ms. McKay asserts that accepting Bradley Hills' argument and deeming her testimony inadmissible would undermine public policy and be contrary to the interest of justice. We agree.

2. Breach of Lease

Bradley Hills contends that while the trial court correctly struck the jury verdict regarding Ms. McKay's wrongful eviction claim, the trial court failed to strike the entire jury verdict regarding the breach of lease claim. In doing so, Bradley Hills argues that it

complied with the statutory requirements regarding the return of the security deposit. Bradley Hills asserts that it properly "sent notice to [Ms. McKay's] last known address within 45-days after the termination of the tenancy [with] a written list of the damages claimed." Furthermore, Bradley Hills claims that "fire damages" was sufficient to serve as the list of damages claimed, and that Ms. McKay provided no evidence that she sought to be present at an inspection of the premises when determining the cost of fire damage in the apartment.

Additionally, Bradley Hills claims *in arguendo* that even if failure to return the security deposit was improper, the trial court erred in awarding treble damages and attorney's fees to Ms. McKay because such damages cannot be awarded under Md. Code Ann, REAL PROP. 8-203(h)(3)(ii) and because there was no eviction nor abandonment of the premises by Ms. McKay.

Finally, Bradley Hills argues that the trial court's assumption that the jury found an unlawful failure to return the security deposit is pure speculation. Bradley Hills states that the jury award of $20,000.00 does not indicate the jury made such a finding or that the amount included treble damages and/or attorney's fees. As such, Bradley Hills contends that the trial court's decision to deny Bradley Hills' motion for JNOV was legally incorrect.

Ms. McKay asserts that Bradley Hills unlawfully refused to return her security deposit. Specifically, she states that the evidence proves she was not responsible for the fire and, therefore, cannot be denied a return of her security deposit according to Md. Code Ann, REAL PROP. 8-203(f)(1)(i). Additionally, Ms. McKay argues that Bradley Hills failed to provide her proper notice by not itemizing the damages caused and by failing to follow

procedure by failing to schedule an inspection in Ms. McKay's presence.

Contrary to Bradley Hills' belief, Ms. McKay contends the trial court's citation to the incorrect provision in the Real Property Code was harmless error. Furthermore, Ms. McKay asserts that under either provision, she is permitted to recover treble damages and attorney's fees if her security deposit was improperly withheld.

Finally, Ms. McKay states that there was sufficient evidence to support the trial court's conclusion regarding the jury's award of $20,000.00. She first notes that Bradley Hills never objected to the verdict sheet nor the jury instructions, so Bradley Hills' argument regarding the jury award is effectively waived. She also argues that it is clear that the jury did not include conversion damages in its calculation for breach of lease damages. Specifically, she notes that the damages requested by her counsel included the security deposit, the interest earned, the treble damages, and $13,400 in attorney's fees, totaling almost $19,725.85. As such, Ms. McKay asserts that the almost identical damages of $20,000.00 awarded by the jury proves the jury included treble damages and attorney's fees in its award for the breach of lease claim. We agree.

B. Standard of Review

Upon review of a trial court's grant or denial of a motion for JNOV, made pursuant to Maryland Rule 2-532, we review whether the trial court's decision was legally correct. *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349 (2013). We must "resolve all conflicts in the evidence in favor of the [non-moving party] and must assume the truth of all evidence as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover." *Id.* (quoting *Smith v. Bernfeld*, 226 Md. 400, 406 (1961)).

"If the non-moving party offers competent evidence that rises above speculation, hypothesis, and conjecture, the judgment notwithstanding the verdict should be denied." *Cooper v. Rodriguez*, 443 Md. 680, 707 (2015) (quoting *Barnes v. Greater Balt. Med. Ctr., Inc.*, 210 Md. App. 457, 480 (2013)).

.C. Analysis

1. Conversion

Conversion, an intentional tort, is "any distinct act of ownership or dominion exerted by one person *over the personal property of another* in denial of his right or inconsistent with it." *Interstate Ins. Co., v. Logan*, 205 Md. 583, 588–89 (1954) (emphasis added). The element of intent that must be proven is the intent to exercise dominion and control over the plaintiff's property in a manner inconsistent with the plaintiff's rights. However, "the intent required is not necessarily a matter of conscious wrongdoing." *Keys v. Chrysler Credit Corp.*, 303 Md. 397, 414 (1985) (citing W. Keeton, *Prosser & Keeton on Torts*, § 15 (5th ed.1984) (footnotes omitted)). In fact, an individual may have the requisite intent "even though he or she acted in good faith and lacked any consciousness of wrongdoing, as long as there was an intent to exert control over the property." *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 262–263 (2004).

The measure of damages in conversion is the fair market value of the property at the time and place of the conversion. "'When the defendant satisfies the judgment in the action for conversion, title to the chattel passes to him, so that he is in effect required to buy it at a forced judicial sale.'" *Staub v. Staub*, 37 Md. App. 141, 144 (1977) (quoting Restatement (Second) of Torts, § 222A, comments c, d (1965)).

In this case, Bradley Hills questions the admissibility of Ms. McKay's testimony regarding the pre-fire value and condition of her property. Typically, the value of converted property must be determined through expert testimony. However, it is well settled in this State that an owner of personal property may express an opinion as to its market value without qualification as an expert. *Bresnan v. Weaver*, 151 Md. 375, 378 (1926); *Bailey v. Ford*, 151 Md. 664, 667 (1927); *Pennsylvania Thresherman & Farmers' Mutual Casualty Ins. Co. v. Messenger*, 181 Md. 295, 302 (1943); *Jackson v. Linthicum*, 192 Md. 272, 276 (1949). This rule does not rest on the fact that the owner has title, but rather on the fact that ordinarily an owner knows the property intimately and is familiar with its value. *Cofflin v.* State, 230 Md. 139, 143 (1962) (citing *Menici v. Orton Crane & Shovel Co.*, 285 Mass. 499 (1934)). Furthermore, although the test for the value of converted goods is market value, "proof of market value 'may be indirect as well as direct.'" *Wallace v. State,* 63 Md. App. 399, 410 (1985) (quoting *Vucci v. State,* 13 Md. App. 694, 701 (1971)).

As the owner of the property, Ms. McKay is presumed to know her property intimately and to be familiar with its value. Though Ms. McKay did not provide an itemized list of valuations for all of her property, she testified in great detail about the belongings allegedly converted by Bradley Hills, thus proving the market value of her property indirectly. From there, it becomes the jury's decision to determine whether Ms. McKay's recollection of her belongings and their value is credible. As such, Ms. McKay's opinion testimony regarding the pre-fire value of her property was proper.

Bradley Hills also argues that the trial court erred in allowing Ms. McKay's testimony regarding the post-fire condition and value of her property because she never

returned to the apartment complex. As such, Bradley Hills says Ms. McKay failed to properly satisfy her burden of proving damages.

As a general rule, damages must be proven with reasonable certainty, or some degree of specificity, and may not be based on mere speculation or conjecture. 8 Maryland Law Encyclopedia, *Damages* § 193 at 159 (1985) (footnotes omitted). As to the degree of certainty required, the Court of Appeals has explained:

> Courts have modified the "certainty" rule into a more flexible one of "reasonable certainty." In such instances, recovery may often be based on opinion evidence, in the legal sense of that term, from which liberal inferences may be drawn. Generally, proof of actual or even estimated costs is all that is required with certainty.
>
> Some of the modifications which have been aimed at avoiding the harsh requirements of the "certainty" rule include: (a) if the fact of damage is proven with certainty, the extent or the amount of therefor may be left to reasonable inference; (b) *where a defendant's wrong has caused the difficulty of proving damage, he cannot complain of the resulting uncertainty*; (c) mere difficulty in ascertaining the amount of damage is not fatal; (d) mathematical precision in fixing the amount of damage is not required; (e) it is sufficient if the best evidence of the damage which is available is produced....

M & R Contractors & Builders, Inc. v. Michael, 215 Md. 340, 348–49 (1958) (emphasis added). *See also David Sloane, Inc. v. Stanley G. House & Associates, Inc.*, 311 Md. 36, 40–41 (1987); *Impala Platinum Ltd. v. Impala Sales, Inc.*, 283 Md. 296, 330–31 (1978); *Stuart Kitchens, Inc. v. Stevens*, 248 Md. 71, 74–75 (1967).

While Bradley Hills contends that Ms. McKay has not satisfied the "reasonable certainty" standard, Ms. McKay argues that Bradley Hills cannot complain of such uncertainty due to the wrongs it committed. Specifically, Ms. McKay alleged that she was never permitted re-entry to retrieve her personal belongings from the apartment.

Furthermore, Ms. McKay testified that Bradley Hills changed the locks to the apartment and failed to provide Ms. McKay with a new set of keys. Finally, Ms. McKay emphasized that Bradley Hills never responded to her requests for her personal belongings or her security deposit.

Here, a jury could have reasonably concluded that Bradley Hills did not afford Ms. McKay the proper opportunity to recover her property prior to disposing of it. Had Bradley Hills done so, it may have been able to properly limit the damages for conversion of Ms. McKay's property. However, "where a defendant's wrong has caused the difficulty of proving damage, he cannot complain of the resulting uncertainty," *M & R Contractors & Builders, Inc. v. Michael,* 215 Md. 340, 349 (1958). Ms. McKay presented evidence that questioned the severity of the fire as well as the fire and smoke damage caused to the apartment unit and the belongings it contained. While Bradley Hills presented testimony from both the property manager and the maintenance supervisor, it was the jury's responsibility as the finder of fact to determine the credibility of the witnesses and strength of the evidence.

Ms. McKay also presented evidence that Bradley Hills had locked her out of the apartment unit and refused to schedule an inspection of the premises with her. Contrary to Bradley Hills' assertion, its treatment towards Mr. Pollard cannot be imputed onto Ms. McKay. Furthermore, the actions of Bradley Hills made it nearly impossible to determine whether Ms. McKay's property had been affected by the fire. As such, Ms. McKay was well within her rights to ask that the jury conclude that all of her property disposed of was in the same condition and of the same value as it had been prior to the fire. And after

weighing the credibility of all parties, the jury reasonably found Bradley Hills liable for conversion.

Accordingly, this Court finds that the trial court did not err in denying Bradley Hills' motion for JNOV in regards to Ms. McKay's conversion claim.

2. Breach of Lease

Bradley Hills contends that the trial court also erred in its denial of Bradley Hills' motion for JNOV regarding the breach of lease claim, arguing that the trial court failed to properly interpret Md. Code Ann., Real Property, §8-203. This section provides guidelines and regulations pertaining to the treatment of security deposits for residential leases. *See generally* Md. Code Ann., Real Property, §8-203. Specifically, §8-203(e)(1) requires that a landlord return a tenant's security deposit, plus simple interest, within 45 days after the end of the tenancy. If a landlord, absent a reasonable basis, fails to return any part of the security deposit within the allotted 45 days, "the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees." Md. Code Ann., Real Property, §8-203(e)(4); *see also Rohrbaugh v. Estate of Stern*, 305 Md. 443, 450 (1986). Section (e), however, is inapplicable if a landlord has a reasonable basis to withhold a tenant's security deposit. Section 8-203(f) describes reasonable grounds for withholding of security deposit and inspection requirements pertaining to such grounds, providing:

> (f)(1)(i) The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or *for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises,* common areas, major appliances, and furnishings owned by the landlord.
> (ii) The tenant has the right to be present when the landlord or the landlord's agent inspects the premises in order to determine if any damage was done to

> the premises, *if the tenant notifies the landlord by certified mail of the tenant's intention to move, the date of moving, and the tenant's new address.*

Here, Bradley Hills contends that it had reasonable grounds to withhold Ms. McKay's security deposit. As there is no evidence that Ms. McKay missed a rent payment or breached the lease, this Court interprets Bradley Hills' argument as claiming Ms. McKay damaged the leased premises by causing the fire. However, Bradley Hills previously determined that Ms. McKay lacked any liability, relying on Paragraph 25 to terminate its lease with her. Paragraph 25 provides, in part:

> FIRE DAMAGE: If said Premises become uninhabitable by reason of fire (or other unavoidable casualty) **not caused by the negligence of the Lessee**, his/her agents or servants, the rental herein reserved shall be suspended until the same shall have been restored to a habitable condition. The Lessor is not obliged, however, to rebuild or restore said Premises. In the event that said Premises are uninhabitable, the Lessor may at its sole discretion terminate this lease **without liability to the Lessee.**

Bradley Hills terminated its lease with Ms. McKay and effectively waived any liability belonging to Ms. McKay. Therefore, Bradley Hills lacked reasonable grounds to withhold Ms. McKay's security deposit under 8-203(f). Because Bradley Hills failed to return the security deposit within 45 days from the termination of the lease, Ms. McKay was proper for bringing an action seeking up to threefold of the withheld amount, plus reasonable attorney's fees, which the jury awarded.

As an aside, had Bradley Hills possessed reasonable grounds for withholding Ms. McKay's security deposit, Bradley Hills would still be liable for failure to provide proper

notice to Ms. McKay. The notice requirements for withholding a security deposit are set in paragraph (g) of §8-203, and provide:

> (g)(1) If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred.
> (2) If the landlord fails to comply with this requirement, the landlord forfeits the right to withhold any part of the security deposit for damages.

Among her many contentions, Ms. McKay argues that Bradley Hills committed bad faith in mailing notice to her former apartment, the unit at the center of this case, knowing that Ms. McKay no longer lived there. However, this Court focuses its attention on the fact that Bradley Hills failed to properly itemize the damages claimed in accordance with §8-203(g)(1). Here, Bradley Hills simply charged Ms. McKay with $2,026.85 for "Miscellaneous 1," detailed as "Fire damages." Such notice is unacceptable. As Bradley Hills failed to comply with such notice requirements, Bradley Hills forfeits the right to withhold Ms. McKay's security deposit.

Finally, Bradley Hills contends that the award of treble damages or attorney's fees was improper. First, Bradley Hills argues that the trial court incorrectly cited to §8-203(f)(4) in the jury instructions seeking treble damages and attorney's fees, as well as §8-203(h)(3)(ii) in its Opinion and Order as its legal basis for granting treble damages and attorney's fees. However, both mistakes are harmless error.

The jury instruction, §8-203(**f**)(4) does not exist; the trial court simply misstated §8-203(**e**)(4), which states that a tenant has an action of up to threefold of the withheld amount,

plus reasonable attorney's fees, if a landlord unreasonably withholds the tenant's security deposit.

With regard to the trial court's Order, the proper citation would be §8-203(e)(1). Section 8-203(h), the provision utilized by the trial court, states:

> (h)(1) The provisions of subsections (e)(1) and (4) and (g)(1) and (2) of this section are inapplicable to a tenant who has been evicted or ejected for breach of a condition or covenant of a lease prior to the termination of the tenancy or who has abandoned the premises prior to the termination of the tenancy.

As Bradley Hills admits, this case involves neither an eviction nor abandonment by Ms. McKay; as such, §8-203(h) is inapplicable. Instead, §8-203(e)(1) applies, which requires that a landlord return a tenant's security deposit, plus simple interest, within 45 days after the end of the tenancy. Because Bradley Hills failed to return any part of Ms. McKay's security deposit within the allotted 45 days, Ms. McKay was eligible to receive treble damages and reasonable attorney's fees under §8-203(e)(4).

Second, Bradley Hills argues that there is no evidence that the jury's $20,000.00 award regarding the breach of lease claim includes treble damages or attorney's fees. Because the jury was not asked to make a specific finding for failure to return the security deposit, Bradley Hills contends the jury award is unclear and should have been deemed so by the trial court. However, Bradley Hills never made any objection to either the verdict sheet or the jury instructions regarding the security deposit. As such, this issue was not preserved and is therefore waived.

ii. Motion for a New Trial

A. Parties' Contentions

If this Court does not reverse the trial court's JNOV ruling for either the conversion or breach of lease claim, Bradley Hills believes a new trial is warranted. Bradley Hills contends that the trial court failed to abide by the evidentiary standards with regards to proving damages for a conversion claim by allowing Ms. McKay to testify as to the pre-fire value and condition of the subject property. Additionally, Bradley Hills asserts that the trial court erred in allowing Ms. McKay to revise her testimony after initially testifying that she did not know the value of her property.

Bradley Hills also argues that a new trial is warranted because the trial court failed to properly distinguish between Ms. McKay's wrongful eviction and breach of lease claims, resulting in an ambiguous verdict. Bradley Hills contends that the trial court should have granted a new trial instead of assuming that the jury found them unlawfully withheld Ms. McKay's security deposit.

Ms. McKay argues that there is no legitimate basis warranting a new trial when taking into consideration the jury's opportunity to review the evidence, hear testimony, and assess the credibility of the parties involved. Specifically, Ms. McKay notes the dispute regarding the extent of the fire and associated damage, as well as the evidence presented showing Bradley Hills "categorically denied Ms. McKay access to her property." Ms. McKay also contends that there was no prejudice created in the trial court's decision to let Ms. McKay testify as to the value of her property after she initially stated she couldn't determine the value. In fact, Ms. McKay argues that a new trial would be warranted had the trial court not allowed her to revise her testimony.

Finally, Ms. McKay argues that sufficient evidence was produced to support the

jury's finding that the terms of the lease were breached and the damages awarded by the jury were not excessive. We agree.

B. Standard of Review

The granting or denial of a motion for new trial is a matter within the sound discretion of the trial court. *I.O.A. Leasing Corp. v. Merle Thomas Corp.*, 260 Md. 243, 249 (1971). Thus, "the standard of review for the denial of a motion for a new trial is abuse of discretion." *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012) (citing *Miller v. State*, 380 Md. 1, 92 (2004)). "[A] claim that the verdict is against the weight of the evidence requires assessment of credibility and assignment of weight to evidence – a task for the trial judge." *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 60 (1992).

C. Analysis

Bradley Hills first contends that the trial court should have ordered a new trial after "erroneously" allowing Ms. McKay to revise her testimony regarding the pre-fire value of her property. However, as this Court stated in its analysis in subsection i.C.1 of this opinion, the trial court ruled properly, allowing Ms. McKay to revise her testimony regarding the pre-fire value of her property.

Bradley Hills also argues that a new trial should have been ordered due to the ambiguity in the jury's verdict regarding Ms. McKay's security deposit. However, Bradley Hills failed to object to either the jury instructions or the jury verdict sheet. As such, Bradley Hills failed to properly preserve this issue for appellate review. Additionally, the

jury's decision to award treble damages and reasonable attorney's fees was proper under Md. Code Ann., Real Property, §8-203(e)(4).

Accordingly, the trial court did not abuse its discretion in denying Bradley Hill's Motion for a New Trial.

iii. Reduction of Jury Award

A. Parties' Contentions

In Ms. McKay's response to Bradley Hills' appeal, Ms. McKay contends that the trial court committed error in reducing the jury's award regarding the breach of lease claim from $20,000.00 to $6,3025.84. Ms. McKay argues that by not awarding her full attorney's fees, she is being subjected to collateral consequences resulting from the wrongful actions of Bradley Hills. Ms. McKay questions the trial court's decision to "partial out" the jury's verdict into attorney's fees on the issue of the security deposit only, stating that the trial court failed to cite any legal authority supporting such a decision. Furthermore, Ms. McKay asserts that such a rule would be difficult to implement, as it would be "impossible" for attorneys to keep track of time spent on matters involving multiple claims. She argues that the trial court's decision to award her 14 hours worth of attorney's fees is wholly arbitrary and constitutes an abuse of discretion.

Ms. McKay notes that the Affidavit of Attorney's Fees (the "Affidavit") filed by her counsel clearly demonstrates that the original jury award of $20,000.00 was not only reasonable, "but also almost precisely what Ms. McKay's actual attorney's fees were." As such, Ms. McKay asks this Court to reverse the trial court's decision to reduce the original award of $20,000.00 and re-enter the original judgment amount or award her total fees

either calculated at 40% contingency of the entire award or per the Affidavit.

Bradley Hills claims that Ms. McKay accepted the remitted award and failed to note a timely award pursuant to Md. Rule 8-202(a) or 8-202(e). As Ms. McKay's request for attorney fees on January 8, 2018, was a collateral issue, the pendency of such a request did not stay Ms. McKay's time to appeal regarding the May 3, 2017 order. Bradley Hills requests that this Court dismiss Ms. McKay's appeal as to her request for re-entry of the original jury award. *In arguendo*, Bradley Hills disagrees with Ms. McKay's claim that the trial court erred in reducing the jury award because the trial court did not award her the full amount of requested attorney's fees. Bradley Hills notes that the decision to reduce the jury award and the decision to award attorney's fees are made at two different points of time, citing to the fact the trial court did not receive the Affidavit prior to its decision to reduce the jury award from $20,000.00 to $6,3025.84. Therefore, Bradley Hills argues that the trial court could not have erred in failing to consider the latter request for attorney's fees when it reduced the jury award.

For the foregoing reasons, we hereby dismiss Ms. McKay's appeal in regard to the trial court's decision to reduce the jury award from $20,000.00 to $6,3025.84 as untimely.

B. Standard of Review

Pursuant to Maryland Rule 8-602(a), "notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The Court of Appeals has stated that the requirements set forth in Md. Rule 8-602(a) are necessary to establish appellate jurisdiction. *See Ruby v. State,* 353 Md. 100, 113 (1999) (stating if a party does not file a notice of appeal within 30 days "the appellate court acquires no jurisdiction to

hear that matter."); *see also Houghton v. County Comm's*, 305 Md. 407, 413 (1986). Regarding cross-appeals, Maryland Rule 8-202(e) requires notice to be filed "within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by [the] Rule." If an appeal is not timely noted pursuant to either Rule 8-202(a) or 8-202(e), we must dismiss the appeal. *Chmurny v. State*, 392 Md. 159, 166 (2006).

C. Analysis

A trial court has the power to order a remittitur if it determines that the verdict awarded by the jury is "'grossly excessive,' or 'shocks the conscience of the court,' or is 'inordinate' or 'outrageously excessive,' or even simply 'excessive.'" *Banegura v. Taylor*, 312 Md. 609, 624 (1988). Technically speaking, in ordering a remittitur, a trial court does not reduce the verdict; rather, the court orders a new trial unless the winning party will agree to accept a lesser sum fixed by the court, instead of the jury verdict. *See id.* Further, a trial court has broad discretion in granting a remittitur and the decision is reviewable, on an abuse of discretion standard, only under extraordinary circumstances. *See Franklin v. Gupta*, 81 Md. App. 345, 362, *cert. denied*, 319 Md. 303 (1990).

On May 3, 2017, the trial court entered judgment granting Bradley Hills' motion for JNOV in part, reducing the jury verdict on the breach of lease claim from $20,000.00 to $6,325.84. In its order, the trial court stated that if the "acceptance of the remittitur is declined, Plaintiff is granted the right to request a new trial as to Question Number One (Breach of Lease) within twenty (20) days of the date of this order. . ." **[E98].** Ms. McKay

did not request a new trial within the allotted 20-day period nor file an appeal of the trial court's decision to reduce the jury award. On June 2, 2017, Bradley Hills filed a timely notice of appeal regarding the issues discussed herein.

On January 3, 2018, Ms. McKay submitted a request for attorney's fees and interest pertaining to her statutory claim. She provided an Affidavit for Attorney's Fees, opposed by Bradley Hills, requesting $13,400.00, or 40% of the total damages awarded to her. However, the trial court subsequently awarded Ms. McKay only $3,500.00 in attorney's fees. On January 24, 2018, Ms. McKay noted an appeal of both the trial court's May 3, 2017 order and the trial court's January 3, 2018 order regarding attorney's fees.

Ms. McKay argues that her appeal of the trial court's decision to reduce the jury award is timely. First, Ms. McKay claims that Bradley Hills waived any objections to the timeliness of Ms. McKay's appeal under Rule 8-603(a). Here, Bradley Hills is claiming that Ms. McKay's appeal is untimely pursuant to Rules 8-202(a) and 8-202(e). Under Rule 8-602(a), this Court may not only dismiss an appeal pursuant to a motion but also on its own initiative. Additionally, Rule 8-602(b) mandates this Court to dismiss an appeal if the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202. As such, the timeliness of Ms. McKay's appeal is subject to dismissal regardless of whether Bradley Hills abided by Rule 8-603(a) if this Court finds Ms. McKay's appeal was untimely.

Ms. McKay also asserts that the trial court's May 3, 2017 order did not fully and completely resolve all issues pertaining to the security deposit. As such, she believes that the issue of attorney's fees in the case at bar is an integral part of the damages calculation

and was not fully decided until the trial court's order on January 3, 2018. She points to numerous distinctions between the legal authority cited by Bradley Hills and the facts of this case.

While Bradley Hills' reliance on *Kunda v. Morse*, 229 Md. App. 295 (2016), is off-base, Ms. McKay's interpretation of the law is incorrect. Maryland case law makes clear that while contractually-based attorney's fees form part of a damages claim and are integral to the claim's adjudication, cases involving the recovery of statutorily-permitted or rules-based attorney's fees are "collateral to or independent from the merits of the action." *Monarc Const., Inc. v. Aris Corp*. 188 Md. App. 377, 393 (2009); *see also Mttvidi Associates Ltd. P'ship v. NationsBank of Virginia*, 100 Md. App. 71 (1994). In this case, attorney's fees are not based on the language of the breached lease, but are statutorily-permitted by Md. Code Ann., Real Property, §8-203(e)(4). As such, Ms. McKay's request for attorney's fees is collateral in nature. As this Court held in *Johnson v. Wright*, 92 Md. App. 179, 182 (1992):

> The pendency of [a] collateral motion for attorneys' fees [does] not stay or enlarge the time for taking an appeal from the judgment. If an appeal is not filed within the time limits prescribed, "the appellate court acquires no jurisdiction and the appeal must be dismissed."

(quoting *Houghton v. County Comm'rs of Kent Co.*, 305 Md. 407, 413 (1986)).

Accordingly, this Court holds that the issue of attorney's fees is a collateral matter. As such, Ms. McKay's appeal regarding the trial court's order from May 3, 2017, is untimely pursuant to Rule 8-202 and is hereby dismissed pursuant to Rule 8-602(b)(2).

iv. Determination of Attorney's Fees

A. Parties' Contentions

Ms. McKay also appeals the trial court's decision to award her $3,500.00 in attorney's fees in its January 24, 2018 order. Ms. McKay again questions the trial court's decision to "partial out" the jury's verdict into attorney's fees on the issue of the security deposit only, stating that the trial court failed to cite any legal authority supporting such a decision. Ms. McKay argues that such a rule would be difficult to implement, as it would be "impossible" for attorneys to keep track of time spent on matters involving multiple claims. Ms. McKay maintains that the trial court's determination that her counsel spent 14 billable hours on the security deposit issue was arbitrary and an abuse of discretion.

Bradley Hills provides alternative arguments. Bradley Hills first contends that the attorney's fee award should be vacated if it is successful on its appeal regarding the breach of lease claim. If unsuccessful, it requests that this Court affirm the trial court's decision to award reasonable attorney's fees in the amount of $3,500.00. In doing so, Bradley Hills argues that Ms. McKay's request for $13,400.00 in attorney's fees is neither reasonable nor appropriate. Specifically, it claims that the itemized billing statement attached to the Affidavit includes items unrelated to the security deposit issue, including work on the conversion claim and time spent on an estate matter involving Mr. Pollard. Furthermore, Bradley Hills argues that Ms. McKay's request for attorney's fees is disproportionate to the award obtained: $6,3025.84. Additionally, Ms. McKay failed to address in her Affidavit a number of factors used by the trial court to determine attorney's fees under Rule 19-301.5(a). Bradley Hills also expresses doubt regarding Ms. McKay's claim that "partial out" the time spent on the security deposit issue was "impossible" for her counsel. We

agree.

B. Standard of Review

A court's decision to award attorney's fees generally is reviewed under an abuse of discretion standard. *Petrini v. Petrini,* 336 Md. 453, 468 (1994) ("Decisions concerning the award of counsel fees rest solely in the discretion of the trial judge."); *Malin v. Mininberg,* 153 Md. App. 358, 435–36 (2003) (The "trial court 'is vested with wide discretion' in deciding whether to award counsel fees and, if so, in what amount.") (quoting *Dunlap v. Fiorenza,* 128 Md. App. 357, 374 (1999)). If the court gives proper consideration to the statutory factors and the circumstances of the case, an award of attorney's fees will not be reversed "'unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong.'" *Collins v. Collins,* 144 Md. App. 395, 447 (2002) (quoting *Petrini,* 336 Md. at 468).

C. Analysis

When a case involves statutory fee awards, Maryland courts make use of the lodestar approach, by which the court simply multiplies the time an attorney spent on a case by a reasonable hourly rate and then adjusts the result up or down to arrive at a reasonable award based on the circumstances of the case and after considering factors such as the eight enumerated in Maryland Rule 19-301.5. *See Friolo v. Frankel,* 373 Md. 501, 528–30 (2003). Maryland Rule 19-301.5 states that an attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses. In determining the reasonableness of a fee, the trial court considers the following factors:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the attorney;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the attorney or attorneys performing the services; and
>
> (8) whether the fee is fixed or contingent.

See Md. Rule 19-301.5 (a).

In situations where some claims were successful while others were not, as is the case here, the court is to apply the "common core of facts" doctrine. The "common core of facts" doctrine acts as a bridge that allows a court to award a fully compensatory fee where an attorney may not have prevailed on each and every claim or defense but still has achieved excellent results. *Friolo*, 373 Md. at 522–25 (discussing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). In *Hensley*, the Supreme Court held that once a plaintiff establishes that he or she is entitled to a fee award, "[i]t remains for the [trial] court to determine what fee is 'reasonable.'" *Henley*, 461 U.S. at 433.

With that said, in the statutory fee-shifting reasonableness inquiry, the lodestar method is merely the starting point. The court must consider the award in the context of the results the plaintiff obtained.

> The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the [trial] court to adjust the fee upward or downward, including *the important factor of the "results obtained." This factor is particularly crucial where a plaintiff is deemed "prevailing" even though he succeeded on only some of his claims for relief.* In this situation two questions must be addressed. First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?

Id. at 434 (emphasis supplied).

Hensley notes, however, that services expended on "distinctly different claims for relief that are based on different facts and legal theories" than the successful claim must be excluded from a fee award. *Id.* at 434–35. Regardless, *Hensley* rendered that "[t]he result is what matters" and "the most critical factor is the degree of success obtained."

> *Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.* Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. *The result is what matters.*
>
> *If, on the other hand, a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff's claims were interrelated, nonfrivolous, and raised in good faith.* Congress has not authorized an award of fees whenever it was reasonable for a plaintiff to bring a lawsuit or whenever conscientious counsel tried the case with devotion and skill. *Again, the most critical factor is the degree of success obtained.*

Id. at 435–36 (emphasis supplied) (footnote omitted).

Finally, the *Hensley* court reiterated that, in cases where the plaintiff achieves less than full success on all claims, the trial court has wide discretion to reduce a fee award accordingly.

> There is no precise rule or formula for making these determinations. The [trial] court may attempt to identify specific hours that should be eliminated, or it *may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment.*

Id. at 436–37 (emphasis supplied). As such, an award of attorney's fees will not be disturbed unless the court "exercised [its] discretion arbitrarily or [its] judgment was clearly wrong." *Danziger v. Danziger*, 208 Md. 469, 475 (1955).

In the case now before us, we cannot say that the trial court abused its discretion in only rewarding Ms. McKay $3,500.00 in attorney's fees. While Ms. McKay achieved success in this case on both the conversion claim and the breach of lease claim, both are distinctly different, based on different facts and legal theories. As such, the trial court was not required to apply the common core of facts doctrine to award the full amount of attorney's fees sought by Ms. McKay and was instead required to exclude the services expended on the conversion claim in its analysis. See *Hensley*, 461 U.S. at 435–36.

Furthermore, the decision by the trial was grounded in legal authority, specifically Rule 19-301.5. Here, Ms. McKay failed to address numerous factors considered by the court, including the difficulty and the time spent by counsel on the security deposit issue. As such, the trial court based its decision on the amount of a time an attorney would typically spend on a case seeking a tenant's unreasonably withheld security deposit. This led the trial court to award Ms. McKay for 14 hours of an attorney's time at an hourly rate

of $250.00, totaling $3,500.00. Ms. McKay was granted $6,3025.84 on her breach of lease claim; $3,500.00 in attorney's fees, more than 50% of the total award, was more than reasonable.

Ms. McKay had limited success after failing to succeed on her wrongful eviction claim. Furthermore, the distinct legal claims and theories presented by Ms. McKay granted the trial court considerable discretion in determining the attorney's fees to be awarded to Ms. McKay. Therefore, this Court finds the trial court's decision to only award $3,500.00 in attorney's fees was not an abuse of discretion.

Accordingly, the judgment of the Circuit Court for Prince George's County is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID 1/2 BY BRADLEY HILLS, 1/2 BY MABLE McKAY.