Circuit Court for Prince George's County
Case No: CAL18-38770

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 779

September Term, 2020

EDMUND AWAH

v.

EZ STORAGE CORPORATION, et al.

Nazarian,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 3, 2021

In October 2018, Edmund Awah ("Mr. Awah"), appellant, filed a complaint in the Circuit Court for Prince George's County against EZ Storage Corporation ("EZ Storage")[1] and Beltsville Land LLLP ("Beltsville Land"), appellants, alleging breach of contract, unjust enrichment, and other related causes of action. In response, Beltsville Land filed a counterclaim seeking "reasonable attorneys' fees and court costs incurred by it in connection with [the pending] litigation" pursuant to its rental agreement with Mr. Awah[2] and Maryland Rule 2-705.[3]

EZ Storage and Beltsville Land moved to dismiss Mr. Awah's complaint for failure to file suit within the time specified by the rental agreement. Following written opposition and a hearing, Mr. Awah's complaint was dismissed by the circuit court. The counterclaim for attorneys' fees, however, was not resolved at that time. Beltsville Land, therefore, moved for summary judgment on its counterclaim. In support, it attached the rental agreement and "a printout of the time and expense charges expended by Beltsville Land, LLLP" in the amount of $5,381.19. Additionally, it provided an affidavit executed by its

[1] EZ Storage did not file a brief for the Court's consideration of the question raised in the pending appeal.

[2] Paragraph 30 of the rental agreement reads:

> If either Owner or Occupant is made a party to any litigation instituted by or against the other, the losing party will indemnify the prevailing party against all loss, liability and expense including reasonable attorneys' fees and court costs incurred by it in connection with such litigation.

[3] Maryland Rule 2-705 "applies to a claim for an award of attorneys' fees to attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract."

counsel attesting that: 1) the printout was "a true and correct listing of the actual time and expense charges incurred" in defending the litigation, 2) his "regular hourly rate [was] $395 per hour…a reasonable rate for an attorney in Towson Maryland with 40 years of litigation experience," 3) he had charged Beltsville Land "a rate of $250.00 per hour as a courtesy rate," and 4) "all the time charges were necessary and reasonable in light of the pleadings filed by Mr. Awah."

Mr. Awah requested a hearing on Beltsville Land's motion for summary judgment. In his written opposition, Mr. Awah contended that Beltsville Land had "violated Maryland Rule 2-705(f)(2)[4] by failing to articulate 'the attorney's customary fee for similar legal services.'" The circuit court granted Beltsville Land's motion for summary judgment without a hearing, awarding it $5,381.19 in attorneys' fees and costs as requested.

On appeal, Mr. Awah submits a single question for the Court's review, which we rephrase for clarity:

> Did the circuit court err in granting Beltsville Land's dispositive motion for summary judgment without a hearing as requested by Mr. Awah pursuant to Maryland Rule 2-311(f)?

For the following reasons, we shall affirm.

[4] Maryland Rule 2-705(f)(2) provides that "the attorney's customary fee for similar legal services" is one of three factors that must be considered in a matter where the claim for attorneys' fees "does not exceed the lesser of 15% of the principal amount found to be due or $4,500." This rule, therefore, is inapplicable to the present case because the amount at issue is $5,381.19. However, this same factor is required for consideration pursuant to Maryland Rules 2-705(f)(1) and 2-703(f)(3), which are applicable to the present case.

DISCUSSION

Mr. Awah contends on appeal that the circuit court erred in granting Beltsville Land's motion for summary judgment without a hearing. Indeed, pursuant to Maryland Rule 2-311(f), "the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested." Having properly requested a hearing with the circuit court, Mr. Awah was entitled to be heard prior to its decision on summary judgment.

Despite the court's error, we decline to remand this matter to the circuit court for a hearing on summary judgment because "[s]uch a remand would be an exercise in futility and a waste of judicial resources." *Morris v. Goodwin*, 230 Md. App. 395, 410-11 (2016) (declining to remand for a hearing where the circuit court's "dismissal of appellant's petition [was] mandated by law"); *see also Express Auction Servs., Inc. v. Conley*, 127 Md. App. 447, 450 (1999) (noting that, though summary judgment was granted without a hearing in error, remanding the case to hold a hearing would serve no practical purpose "where the only issue…on appeal…[was] a narrow issue of law" to be addressed in the Court's opinion). We conclude that a hearing on remand would be a "futile exercise" for the following reasons.

Mr. Awah's Failure to Raise Genuine Issues of Material Fact

In order to defeat Beltsville Land's motion for summary judgment, Mr. Awah was required to "present admissible evidence demonstrating the existence of a dispute of material fact" in his opposition to summary judgment. *Montgomery Cty. v. Soleimanzadeh*, 436 Md. 377, 397 (2013). Moreover, his opposition needed to comply with the provisions of Maryland Rule 2-501(b), which states:

> A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

However, Mr. Awah failed to controvert the fact that he was bound by the fee-shifting clause contained in his rental agreement with Beltsville Land. His opposition to summary judgment did not assert any fact evidencing that he was not bound by its terms. He did not challenge that, as the "losing party," he was obligated to indemnify Beltsville Land "against all loss, liability and expense including reasonable attorneys' fees and court costs incurred by it in connection with such litigation" pursuant to the terms of the rental agreement.

As the Court of Appeals has previously held, "[w]here the parties' contract contains a provision providing that the prevailing party in litigation shall be entitled to reasonable attorney's fees from the other party, the trial court d[oes] not have discretion to refuse to award fees[.]" *Myers v. Kayhoe*, 391 Md. 188, 207-08 (2006) (internal quotations omitted). The applicability of the rental agreement unchallenged, the circuit court was required to enter an award of attorneys' fees and costs for Beltsville Land as the prevailing party.

Secondly, Mr. Awah did not raise any dispute of fact with regard to the reasonableness of the attorneys' fees and costs claimed by Beltsville Land. Specifically, Mr. Awah needed to direct the circuit court to facts which would have controverted Beltsville Land's assertion that $5,381.19 was a reasonable amount in attorneys' fees and

costs. In reviewing Mr. Awah's written opposition, however, his sole averment was that Beltsville Land had failed to articulate "the attorney's customary fee for similar legal services."[5] This pronouncement falls short of bringing *evidence* to the court's attention and does not controvert the facts attested to in Beltsville Land's motion for summary judgment. Because Mr. Awah failed to raise any dispute of fact with regard to the reasonableness of attorneys' fees and costs, he would not have been able to controvert the amount requested by Beltsville Land, which it supported with "a printout of the time and expense charges expended" in the amount of $5,381.19 and an affidavit executed by its counsel attesting to the reasonableness of the charges.

A hearing, therefore, would have been futile because Mr. Awah failed to raise any dispute of material fact in his written opposition to summary judgment as required by Maryland Rule 2-501(b). Had there been a hearing, Mr. Awah "would have been precluded from raising any dispute of facts" not raised in his opposition and, therefore, would have been unable to challenge the reasonableness of its attorneys' fees and costs. Likewise,

[5] Pursuant to Maryland Rule 2-705(f)(1), in determining the amount to be awarded, the court is required to consider "the factors set forth in Rule 2-703(f)(3) and the principal amount in dispute in the litigation." One of the factors enumerated in (f)(3) is "the customary fee for similar legal services." Though citing to the wrong subsection of Rule 2-705, Mr. Awah alleged in his opposition that Beltsville Land had failed to articulate "the attorney's customary fee for similar legal services in its motion." While Beltsville Land bore "the burden of providing the court with the necessary information to determine the reasonableness of its request," *Monmouth Meadows Homeowners Ass'n v. Hamilton*, 416 Md. 325, 333 (2010), it was not required to address each factor enumerated by Rule 2-703(f)(3). *Id*. at 337 n.11 (A court is not required to "explicitly comment on or make findings with respect to each factor.").

were the matter remanded for a hearing, Mr. Awah would be similarly constrained, making a hearing on remand a futile exercise.

Moreover, Mr. Awah does not indicate on appeal what evidence he would have presented to the court had a hearing been held or how such evidence would have changed the court's decision. He has, therefore, failed to show that the court's failure to hold a hearing has prejudiced him. "[A]ppellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show *prejudice* as well as *error*." *Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) (italics in original). For the foregoing reasons, we decline to remand this matter to the circuit court for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.