

Circuit Court for Prince George's County  
Case No. CAL1815234

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 976

September Term, 2019

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WAYNE BRISTOL, ET AL.

v.

523 DUNMORE, LLC

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Friedman,  
Shaw Geter,  
Adkins, Sally D.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Adkins, Sally D., J.

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Filed: September 17, 2020

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

This appeal arises out of the Circuit Court for Prince George’s County’s entry of summary judgment in favor of Appellee 523 Dunmore, LLC (“Dunmore”), against Appellant, *pro se*, Wayne Bristol. Dunmore filed a breach of lease action against Bristol and Bristol Construction, Inc., alleging that they had failed to pay rent pursuant to a binding commercial lease. Following discovery, Dunmore moved for summary judgment, asserting that there was no genuine dispute as to the material facts: Bristol and Bristol Construction owed unpaid rent under a valid lease. The circuit court heard oral arguments, at the conclusion of which it entered summary judgment in favor of Dunmore. For the reasons set forth below, we affirm.

### **FACTS AND LEGAL PROCEEDINGS**

Dunmore is a Delaware limited liability company (“LLC”) in the business of leasing commercial warehouse space to individuals and corporations, and is registered as a non-Maryland LLC. On May 23, 2017, it executed a lease agreement (the “Lease”) with Bristol Construction, Inc., for warehouse space located at 523 Dunmore Place, Capital Heights, Maryland (the “Property”). Bristol executed the Lease on behalf of Bristol Construction, and also personally guaranteed the company’s obligations. The Lease was for a term of five years, with an annual rent of \$54,000.

Shortly after the Lease was executed, Bristol Construction fell behind on the required rent payments, and ultimately ceased paying rent entirely. Dunmore filed an eviction action in the District Court for Prince George’s County on August 17, 2018, and that court entered judgment in favor of Dunmore for possession of the property and for

\$43,366.31 in utility costs, the security deposit, and other fees. The eviction was executed on October 12, and Dunmore seized Bristol Construction's equipment that they had left at the Property, and sold it for roughly \$45,000, pursuant to a lien in the Lease. The sale proceeds were put towards Bristol's and Bristol Construction's outstanding debt. Neither Bristol nor Bristol Construction appealed the district court's judgment.

Dunmore also filed a breach of lease action against Bristol Construction and Bristol in the circuit court, seeking to recover \$261,848.15, the total amount of back rent owed, plus associated costs and fees. Bristol, through counsel, filed a counterclaim. He alleged that Dunmore improperly sold his construction equipment, claimed that the equipment was worth one million dollars, demanded an accounting of the sale of the equipment, and requested that the court enter a judgment of one million dollars in his favor. The circuit court granted Dunmore's motion to dismiss the counterclaim on February 19, 2019, which Bristol did not appeal.

After close of discovery in the breach action, Dunmore moved for summary judgment. It argued that there was no dispute as to any relevant material fact, in particular, that a valid lease existed between the parties, and that Bristol failed to pay rent under the Lease. Bristol opposed the motion, and the court held a hearing on the issue before granting summary judgment. Bristol Construction did not appeal the summary judgment, and is not a party to this appeal. Bristol appeals and presents us with the following questions, rephrased by this Court:<sup>1</sup>

1. Whether Dunmore's sale of Bristol's construction equipment was legitimate?
2. Whether the circuit court erred in granting Dunmore's motion for summary judgment?

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<sup>1</sup> We have rephrased and consolidated Bristol's questions, which were as follows:

1. Whether a Circuit Court should require the appellee to provide properly authenticated evidence that establishes that it owns the subject property of the appellant which was stolen and then sold by the appellee using *leveraging, to his own people*. (emphasis in original.)
2. Whether the court should have considered defendant-Appellant's allegations that the plaintiff-appellee's agent and client was acting without authority.
3. The question of whether a trial court's grant of summary judgment in favor of Appellee was proper is a question of law subject to *de novo* review on appeal. (emphasis in original.)
4. Whether the court should have considered defendant-Appellant's defenses, which were not stricken by the trial court.

### STANDARD OF REVIEW

We review—without deference—a trial court’s grant of a motion for summary judgment. *See Heneberry v. Pharoan*, 232 Md. App. 468, 479 (2017). Summary judgment is appropriate when there is no genuine dispute as to any material fact, and the party in whose favor judgment is entered is entitled to judgment as a matter of law. Maryland Rule 2-501(f). A material fact is one that will “somehow affect the outcome of the case.” *Nerenberg v. RICA of Southern Maryland*, 131 Md. App. 646, 660 (2000). We “review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Worsham v. Erlich*, 181 Md. App. 711, 723 (2008).

### DISCUSSION

Bristol believes that there are genuine disputes over material facts, but what those facts are is unclear. As best as we can determine from his brief, Bristol believes that Dunmore induced him to remain on the Property with discussions of a payment plan, and then evicted him without notice. That district court eviction judgment, however, is not before this Court for review. Md. Rule 8-201(a) (“Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202.”). Nothing in the record indicates that Bristol appealed the eviction judgment, and the Maryland Rules apply equally to *pro se* litigants and to represented parties. *See Tretick v. Layman*, 95 Md. App. 62, 68 (1993). We address his arguments as best as we can decipher them.

*Dunmore's Sale Of The Construction Equipment*

Bristol argues that the Lease did not grant Dunmore a lien in the construction equipment that it seized, nor did it allow Dunmore to sell the equipment below market value without notifying Bristol and without advertising the sale. This was the primary argument he made at the summary judgment hearing as to what material facts were in dispute. Dunmore counters that the seizure and sale were legitimate pursuant to the lien granted in the Lease. Dunmore also argues that this issue is not properly before this Court.

The Lease contains the following language:

In addition, if an Event of Default shall have occurred Landlord, without notice to Tenant, may sell, at public or private sale, all or any part of the goods, chattels, fixtures and other personal property belonging to Tenant which are or may be put into the Premises during the Term, whether or not exempt from sale under execution or attachment (it being agreed that the property shall at all times be bound with a lien in favor of Landlord and shall be chargeable for all rent and for the fulfillment of the other covenants and agreements herein contained), and apply the proceeds of such sale, first, to the payment of all costs and expenses of conducting the sale or caring for or storing the property; second, toward the payment of any indebtedness, including, without limitation, indebtedness for rent, which may be or may become due from Tenant to Landlord; and third, to pay Tenant, on demand in writing, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid.

The Lease, then, establishes a lien. Moreover, in their Answers to Dunmore's Interrogatories, Bristol and Bristol Construction stated that they do "not dispute that the contractual instruments expressly granted landlord a lien and security interest in

Defendant’s property.” In their counterclaim, they acknowledge that “[Dunmore] may have been in lawful possession of Defendants’ property . . . .”

Regardless of the lien’s existence, this issue was the subject of Bristol’s counterclaim. Bristol and Bristol Construction argued that the property sold by Dunmore was worth one million dollars, and sought this amount from Dunmore. This counterclaim, then, was either a recoupment, or a set-off.<sup>2</sup> Either way, the claim was required to be pled as a counterclaim because Bristol and Bristol Construction sought well in excess of Dunmore’s claim. *See E.J. Smith Const. Co. v. Burton*, 262 Md. 62, 68 (1971) (“A claim arising out of [a] . . . set-off . . . must be pleaded as a counterclaim, but [a] . . . recoupment . . . need not be . . . unless an affirmative judgment (i.e., for an amount in excess of the plaintiff’s claim) is sought.” (cleaned up)).

The counterclaim was dismissed by the circuit court in an order issued on February 19, 2019. As the circuit court noted, neither Bristol nor Bristol Construction opposed

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<sup>2</sup> The Court of Appeals has defined recoupment as “a diminution or a complete counterbalancing of the adversary’s claim based upon circumstances arising out of the same transaction in which the adversary’s claim is based . . . .” *Imbesi v. Carpenter Realty Corp.*, 357 Md. 375, 380 (2000). A “setoff” is “a diminution or a complete counterbalancing of the adversary’s claim based upon circumstances arising out of a transaction other than that on which the adversary’s claim is based . . . .” *Id.* Bristol uses both terms in his brief to describe this claim.

Dunmore’s motion to dismiss the counterclaim. They also did not appeal its dismissal.<sup>3</sup> We therefore shall hold that this issue is not included in this appeal.<sup>4</sup> Md. Rule 8-202(a); *Ruby v. State*, 353 Md. 100 (1999) (failure of aggrieved party to file notice of appeal terminates its right of appeal, and the appellate court acquires no jurisdiction to hear the matter).

*Grant of Summary Judgment*

Bristol argues that summary judgment was not appropriate because: he was paying the monthly rent on-time; Dunmore was not crediting these payments, in order to charge for late fees; and his default was “manufactured.” Dunmore counters that the circuit court properly found that there was no dispute of the material facts that a valid lease existed between the parties, and that Bristol failed to make the required rent payments under the Lease.

Summary judgment is appropriate when the moving party “(i) clearly demonstrate[s] the absence of any genuine issue of material fact, and (ii) demonstrate(s) that it is entitled to judgment as a matter of law.” *Nerenberg v. RICA of Southern*

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<sup>3</sup> Bristol did not include the counterclaim dismissal order in the record extract. In *Denicolis v. State*, 378 Md. 646, 657 (2003), Judge Wilner, speaking for the Court of Appeals, stated: “It is true that a trial court’s actions and decisions are generally presumed to be correct and that it is the appellant’s burden to produce a record sufficient to show otherwise.” Even if we were inclined to review the dismissal of the counterclaim, we have not been provided with the materials necessary to do so.

<sup>4</sup> Bristol argues that the order dismissing his counterclaim is interlocutory and not a final judgment.



*Maryland*, 131 Md. App. 646, 660 (2000); Maryland Rule 2-501(f). A material fact is one that will “somehow affect the outcome of the case.” *Nerenberg*, 131 Md. App. at 660.

At the circuit court hearing, Bristol’s and Bristol Construction’s primary contention (through counsel) was that Dunmore did not notify Bristol before selling the construction equipment, and did not follow the correct procedures when selling it, which led to a sale price lower than it would have been if Dunmore followed the correct procedures. The court found that Bristol never actually stated that—had he received notice—he would have been able to buy back his equipment, and therefore there was no genuine dispute. We agree with the circuit court, and moreover, as we discussed above, Bristol’s recoupment argument is not part of this appeal.

Secondarily, Bristol and Bristol Construction argued that Dunmore had been in negotiations to allow him to remain in the Property—while behind on rental payments—when it evicted him. In finding no genuine dispute as to a material fact, the court stated that there was no express promise by Dunmore to allow Bristol to remain without paying rent, and that Bristol did not even expressly allege that there was a promise, but rather implied one.

The Lease states that “[i]f Landlord waives *in writing* any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.” That clause—combined with a review of the record that reveals multiple documented attempts by Dunmore to recover unpaid rent, but no written default waivers—leads us to

affirm the circuit court’s finding that there is no genuine dispute over the material fact that Bristol had defaulted.

Bristol did not dispute the validity of the lease before the circuit court, stating at the hearing, “[t]he fact that we do not contest it, the Lease remains unpaid . . . .” His claim before this Court that he was making his payments on-time, and that Dunmore was misappropriating them, was never raised before the circuit court. “Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . .” Md. Rule 8-131(a). This rule serves to prevent the unfairness that could arise when a party raises an issue for the first time on appeal, thus depriving the opposing party from admitting evidence relating to that issue at trial. *See Quinones v. State*, 215 Md. App. 1, 16 (2013). Even if, *arguendo*, Bristol disputed the validity of the Lease or the contention that he was behind on payments, a review of the record provides no evidence supporting these contentions. We shall therefore hold that there was no genuine dispute as to a material fact, and summary judgment was appropriate.

*Bristol’s Other Arguments*

Bristol makes other arguments in his brief, which do not seem to be related to his presented questions, nor do they raise an issue of material fact that could have affected this case at trial. We discuss them briefly.

First, Bristol argues that his counsel was ineffective at the trial level, which prejudiced him. Bristol’s counsel filed multiple pleadings and counter-pleadings in the circuit court on behalf of Bristol and Bristol Construction, and was present at the summary

judgment hearing. Moreover, parties are only entitled to counsel in criminal matters, and those which could result in the loss of their liberty. *Cf. Porterfield v. Mascari II, Inc.*, 374 Md. 402, 432 (2003) (rejecting claim that one is entitled to counsel in all civil matters). As this matter is civil, Bristol was not entitled to assert an ineffective assistance of counsel defense.

Throughout his brief, Bristol claims that he was unlawfully evicted. He alleges that “substantiating information was destroyed (in whole or in part) by landlord’s self-help eviction . . . .” This claim is not properly before this Court. Eviction was ordered by the District Court of Maryland for Prince George’s County, and that issue was not appealed to this Court. Md. Rule 8-131(a).

Bristol claims that Dunmore “destroyed” evidence, but as he prevents no evidence supporting this claim, we do not address it.

### CONCLUSION

Because there is no genuine dispute as to any material fact and therefore Dunmore was entitled to judgment as a matter of law, we affirm.

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