UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1207

September Term, 2014

LAURIE M. PARRINELLO

v.

ROBERT BOWES

Graeff,
Berger,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: October 14, 2015

This case comes to us from the Circuit Court for Montgomery County. Robert Bowes, appellee, filed suit for breach of contract, seeking repayment of monies secured by a promissory note in the amount of $17,500 – monies that he had loaned to Laurie Parrinello, appellant. Ms. Parrinello filed an answer in which she admitted borrowing money from Mr. Bowes, but she asserted a defense of the expiration of the statute of limitations. Following a bench trial on May 7, 2014, the court awarded judgment to Mr. Bowes in the amount of $10,000. Ms. Parrinello appealed and presents two questions for our review, which we will address in reverse order:

1. Did the trial court erred in not applying the Appellant's payments against the promissory note?

2. Did the trial court erred in not finding that the Appellee's claim was barred by the applicable statute of limitations?

For the reasons stated below, we answer both questions in the negative and, therefore, affirm the judgments of the circuit court.

FACTS AND PROCEDURAL HISTORY

Initially, Mr. Bowes and Ms. Parrinello were in a landlord-tenant relationship. Mr. Bowes leased the basement of his residence located in Bethesda to Ms. Parrinello. Ms. Parrinello moved in on Thanksgiving Day in November 2008, and she signed a lease agreement on February 28, 2009. The lease required Ms. Parrinello to pay monthly rent of $1,500, due on the fifteenth of every month.

Then, Mr. Bowes became a loan creditor of Ms. Parrinello. On April 17, 2009, Ms. Parrinello borrowed $17,500 from Mr. Bowes. She signed a promissory note in which she

promised to repay the loan with monthly payments of $500, beginning on May 25, 2009**.** At trial, Mr. Bowes testified that he and Ms. Parrinello discussed her difficulties with repaying the amounts secured by the promissory note and that the parties orally agreed to delay the repayment of the note amounts due to Ms. Parrinello's financial circumstances. Ms. Parrinello did not recall these discussions.

At trial, Ms. Parrinello argued that she had satisfied the loan, and the court received evidence of payments she made to Mr. Bowes ranging from June 2009 to November 2010 in the total amount of $11,000. Ms. Parrinello presented ten cancelled checks, which were usually in the amount of $1,000. Only one of the cancelled checks presented at trial had any indication that may have directed the application of the payments – a note on the memo line, reading "Rent/loan".[1] Ms. Parrinello argued that these payments were made to repay the loan. Mr. Bowes contended that these checks went toward the lease, but he testified that he made no notation denoting the application of the payments when he deposited them.

The parties also testified that at some point in the relationship, Mr. Bowes offered $7,500 to purchase Ms. Parrinello's household furniture. The parties stated that this agreement was made through text messages, but neither litigant provided copies of the messages. Ms. Parrinello testified that the $7,500 was to be a credit against the promissory note, but Mr. Bowes countered that this was to be applied to the amounts owed pursuant to

[1] Another check included "Thank you" in the memo line, but this notation does not provide directions for application of payments.

the lease. It appears that in late 2010 or early 2011, Ms. Parrinello moved out of Mr. Bowes's basement.

On February 18, 2013, Mr. Bowes sent a letter to Ms. Parrinello seeking repayment of the amounts secured by the promissory note in the total amount of $17,763.93, which included $263.93 in interest. Mr. Bowes directed Ms. Parrinello to pay the amount or to designate him as the beneficiary of her monthly retirement distribution; if she failed to select either option, he would pursue legal remedies. On August 26, 2013, Mr. Bowes filed a lawsuit for breach of contract based on Ms. Parrinello's failure to repay the amounts secured by the promissory note.

Ms. Parrinello filed an answer to Mr. Bowes's complaint in which she, *inter alia*, raised the defense of statute of limitations. Ms. Parrinello also filed a counter-complaint alleging that she and Mr. Bowes had agreed to enter into a business, and he was unjustifiably retaining the profits of that enterprise. Ms. Parrinello also filed a motion to dismiss for failure to state a claim, alleging that Mr. Bowes's lawsuit was outside of the statute of limitations. Mr. Bowes opposed this motion, contending that Ms. Parrinello's motion was procedurally improper pursuant to Rule 2-322. The court denied this motion without a hearing.

The matter then proceeded to a bench trial. At the conclusion of the proceeding, the court dispensed with Ms. Parrinello's counterclaim, noting, "the counterclaim is just simply lacking any evidentiary basis for this court to do anything with." The court determined that Ms. Parrinello entered into a promissory note for a loan with Mr. Bowes in the amount of

$17,500. The court credited Ms. Parrinello's testimony as to the $7,500 credit for her furniture but noted that the checks presented by Ms. Parrinello do not indicate "what they're being paid for. And that's the problem." The court credited Mr. Bowes's testimony regarding the checks, and, accordingly, the court awarded judgment to Mr. Bowes in the amount of $10,000. Following the denial of Ms. Parrinello's motion for reconsideration and a separate motion for a new trial, Ms. Parrinello noted this appeal.

STANDARD OF REVIEW

Our review of this case is governed by Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It 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.

This Court has also noted that the appellate court "'does not sit as a second trial court,'" and we "'must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed.'" *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (internal citations omitted). Stated another way, "'[i]f 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)). "When the trial court's decision 'involves an interpretation and application of Maryland statutory and case law,'" however, "'our Court must determine whether the lower court's conclusions are legally correct . . . .'" *Clickner v.*

Magothy River Ass'n, Inc., 424 Md. 253, 266 (2012) (quoting *White v. Pines Cmty. Improvement Ass'n, Inc.*, 403 Md. 13, 31 (2008)).

DISCUSSION

Preliminarily, Ms. Parrinello contends that Mr. Bowes improperly refers to documents and evidence that are not part of the appellate record. Specifically, Ms. Parrinello asserts that we should not consider the forbearance agreements between the parties because there was no evidence of them presented to the trial court. Furthermore, Ms. Parrinello argues that Mr. Bowes refers to "Exhibit 2" in his brief, which was not admitted into evidence and should not be considered on appeal.

Although Ms. Parrinello is correct that Mr. Bowes cannot include extraneous matter in his brief and appendix, *see Colao v. Cnty. Council of Prince George's Cnty.*, 109 Md. App. 431, 469 (1996) (citing cases), we fail to perceive these shortcomings in Mr. Bowes's brief. Mr. Bowes testified as to oral forbearance agreements with Ms. Parrinello concerning delaying repayment of monies owed pursuant to the promissory note. His testimony constitutes evidence that was part of the record before the trial court. Furthermore, Mr. Bowes does not refer to Exhibit 2 in his brief. Accordingly, to the extent that Ms. Parrinello has asked this Court to strike portions of Mr. Bowes's brief, we deny this motion.

I. Statute of Limitations

Ms. Parrinello contends that the court erred when, according to her, it failed to address her affirmative defense of the expiration of the statute of limitations. Ms. Parrinello asserted that she entered into the promissory note with Mr. Bowes on April 17, 2009, and, as the

general statute of limitations in Maryland is three years, Mr. Bowes would have had to bring this suit by April 17, 2012. Mr. Bowes did not file suit until August 2013. Accordingly, if Ms. Parrinello is correct, then Mr. Bowes's lawsuit should have been dismissed as beyond the statute of limitations.[2]

Ms. Parrinello is correct that the general statute of limitations for civil actions in Maryland is three years. *See* Md. Code (1974, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 5-101. CJP § 5-102(a), however, provides that "[a]n action on one of the following specialties shall be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner." Subsection (1) of that statute lists a promissory note as one

[2] As a preliminary matter, Mr. Bowes urges this Court to dismiss this portion of the appeal for failure to abide by the rules of appellate procedure. Mr. Bowes argues that Ms. Parrinello asserted the affirmative defense of the statute of limitations in a motion to dismiss filed on October 18, 2013. The court held a hearing as to this motion on January 7, 2014. Appellant's record extract in this case does not include a copy of the October 18th motion, nor does it include a transcript of the January 7th hearing. If Ms. Parrinello did, indeed, raise the defense of the statute of limitations in this motion, and the court addressed it at the January 7th hearing, then Ms. Parrinello is attempting to avoid the requirement of Rule 8-501(c) that the record extract "contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal." We note, too, that Mr. Bowes contends that Ms. Parrinello failed to abide by Rule 8-503, which provides rules for the format and style of briefs.

Although Mr. Bowes, too, did not include a copy of Ms. Parrinello's October 18th motion or a transcript of the January 7th hearing in his appendix, he, at least, directed us to the proper place in the record. To the extent that Mr. Bowes moves this Court to dismiss Ms. Parrinello's appeal for failure to abide by Rules 8-501(c) and 8-503, we deny this motion. Ms. Parrinello did not raise the defense of statute of limitations in her October 18th motion, and we do not perceive any shortcomings in Ms. Parrinello's appellate brief.

of the specialties. Accordingly, the general three year statute of limitations does not apply to this case.

Ms. Parrinello is, therefore, incorrect as to the statute of limitations that applied to this action. Assuming *arguendo* that the statute of limitations began to run when Ms. Parrinello entered into the promissory note with Mr. Bowes, then he would have until April 17, 2023, to bring suit. At whatever point that Ms. Parrinello finds error with the trial court's seeming inaction as to her statute of limitations defense, the court was legally correct in denying it. Accordingly, we find no error with the trial court's determinations as to Ms. Parrinello's statute of limitations defense.

II. Application of Payments

Ms. Parrinello also contends that the court erred in applying her payments. At trial, she presented evidence of $11,000 in payments made via personal check to Mr. Bowes. The parties also testified as to an agreement in which Mr. Bowes purchased Ms. Parrinello's furniture for $7,500. The court credited the former payments to the lease between the parties, and the latter to the loan. Ms. Parrinello argues that her check payments should have been credited to the loan, as well.

The Court of Appeals has held:

> In our opinion, the law is well established that in the absence of an agreement of the parties in regard to allocation of payments to a creditor holding two or more obligations of a debtor, the debtor has the original choice of allocation, and when the debtor makes an allocation of a payment, either expressly or by implication, the creditor must allocate the payment to the obligation indicated by the debtor.

> If no allocation is indicated by the debtor, then the creditor has the right to designate the application of the payment. If neither the debtor nor the creditor makes an allocation and if, as we have said, there is no agreement of the parties in regards to allocations, the law then makes the allocation to the oldest or the least secured obligations.

Clark-King Constr. Co., Inc. v. Salter, 269 Md. 494, 500 (1973) (emphasis omitted) (internal citations omitted). *See also T. Dan Kolker, Inc. v. Shure*, 209 Md. 290, 301-02 (1956).

At trial, testimony relating to Ms. Parrinello's checks consisted of the following exchanges:

> THE COURT: Why is it that you don't believe that you owe $17,500?
>
> MS. Parrinello: Because I paid him $11,000 in checks towards the loan. I repaid a bill that he asked me [to] repay of $1,006.22 and he agreed to set off the –
>
> THE COURT: Okay.
>
> MS. Parrinello: -- purchase of my furniture against that.
>
> THE COURT: I'm going to ask you this in your case. You said the $11,000 in checks paid off toward the $17,500. Do you have copies of those checks?
>
> MS. Parrinello: Yes, your honor, I do.
>
> THE COURT: Do they indicate that they're being paid in repayment of this loan?
>
> MS. Parrinello: The only check that has any indication at all says "Rent loan" on it. And that was in July 2009. And that was –
>
> THE COURT: Of all those checks, nothing indicates that this is a repayment and satisfaction of the promissory note?
>
> MS. Parrinello: That's correct, your honor.

* * *

MR. BOWES: Thank you. I have Exhibit 5, with checks that were – the checks that you submitted that you made payments, I have to enter –

THE COURT: Payments for what?

MR. BOWES: That's the question. My assertion is that they're for the lease and not for –

THE COURT: All right. You have them marked please?

MR. BOWES: Yes. This is the defendant's response to – in this case – to the request for the rush of documents.

THE COURT: Will you show it to her so she can identify it?

MR. BOWES: Sure.

BY MR. BOWES

MR. BOWES: This is a document you filed in this case. It was in response to a request from me to produce financial records. And those are the entirety of the financial records that you produced. Do you recognize that?

MS. Parrinello: Yes, I do.

MR. BOWES: And what exhibits or attachments do you see in that response? What's included in that? What do you have as copies?

MS. Parrinello: I have check payments as copies that have been cashed by you.

MR. BOWES: Was there a memo line in those checked items? Do you see a memo notation in any that indicate whether it's for the lease or for the loan?

MS. Parrinello: There's only one indication and it says "Rent/loan".

MR. BOWES: On how many of the checks?

MS. Parrinello: Only that one.

MR. BOWES: For how much? What's the dollar amount on that check?

MS. Parrinello: $1,700.

MR. BOWES: And this is for a $1,500 lease, but you had a $1,700 payment?

MS. Parrinello: This wasn't for a $1,500 lease.

* * *

MR. BOWES: There were two economic arrangements that I specifically recall that were written. One between the parties; one was a lease and one was a note. The payments that were made, my assertion is they were made under the lease and not fully though, and that the furniture was a partial satisfaction of the remainder of the rent owed on the lease.

THE COURT: Is that in writing?

MR. BOWES: The trade for the furniture, your honor?

THE COURT: Yes, sir.

MR. BOWES: No, it was done by text. And I agree with the dollar amount of $7,500, but that was an amount that was attributable to the –

THE COURT: Well do you have the text?

MR. BOWES: No, I do not.

THE COURT: So you don't have a text, she doesn't have a text. You say $7,500 to the lease, she says $7,500 to the promissory note.

MR. BOWES: I understand that's what's bring portrayed here.

THE COURT: Okay.

MR. BOWES: Now, back to the checks that were entered into as Exhibit 5, there were you know, eight or nine different checks totaling something about $10,000, and in only one of those checks, the memo account – in all of them except one, the memo account was blank. There was one, a $1,700 amount where the memo account line showed that it was for "Rent/loan" and that was $1,700. It was in April of 2009. I'm sorry, July of 2009. So this is when the rent was $1,500 and there was I guess an extra couple hundred or maybe it was back payments. Now, the items of checks are in varied amounts and non-sequential, and they skip periods. And it goes from the first one being June of '09 to roughly November of 2010, and it's just half hazard [sic] and it's spotty. Generally, it's aligned with you know, about a $1,000 times ten payments. The lease on the other hand, went from February of '09 till at least the end of 2010 maybe early 2011. So we're talking about roughly 24 months of lease payments at $1,500 a month, but that equates to something over you know, $27 – I'll do the math here, but it's significantly more than even any amount that she paid including the furniture. So there were arrearages or insufficiencies on the lease itself. So I am representing that I did receive value for the furniture and did receive those checks, but it was for the lease and there were no payments still made to the note. . . .

* * *

MR. BOWES: My representation is that these payments that were made were under the residential lease.

THE COURT: Okay. Did you endorse those checks?

MR. BOWES: Yes, I did.

THE COURT: When you endorsed them did you endorse them as having been received in payment of the lease?

MS. Parrinello: No, I did not. They were just in my signature and account number on each of them.

THE COURT: Okay.

* * *

THE COURT: Okay. And your position up to this point in time is that your testimony is that those checks that were written that are in evidence, were checks that were not written for a lease obligation, but checks that were written as repayment of this loan?

MS. Parrinello: Yes, your honor.

THE COURT: All right. And also that the $7,500 in furniture that was given or bartered I guess to Mr. Bowes, was also in payment toward that promissory note?

MS. Parrinello: Yes, your honor.

THE COURT: Okay. So what else did you want to say? This is again, anything in defense of the lawsuit brought against you.

MS. Parrinello: Okay. Mr. Bowes just stated that the total sum paid was less than the $17,500 on the promissory note when you combine everything together, yet he just said the checks totaled $10,000 and the loan repayment, the furniture was $7,500. That right there is computations off of it, but that's the $17,500 paid in full.

The rental, he argues that the family law case that I testified that I said I was paying rent to him, I did not testify that. That is not what the record reflects. And there was the existence of a residential lease, which we put that together for the use if I got custody of my children, I would have a place for my children to come and stay and live with me in the basement area. We were going to remodel that to a separate basement apartment if needed. And I didn't have to take that, I just needed to show that I had a place where I could bring my children I was told. Mr. Bowes actually acted as my counsel in this whole case. In fact, it was his idea to push for the child custody modification.

That gets into a different area, but I moved into Mr. Bowes['s] house Thanksgiving Day, 2008; no lease, no rent payments expected. I did help the household duties, picked up kids, his kids, my kids. There was no rent that was discussed between us. Other than the fact that I may need a residential lease to show that I would have a place to bring my kids. And it was in I believe June 2009, I made up the first payment towards the loan of $1,500 and that was to satisfy May and April because the loan, promissory note was the dates [sic] April 2009, so I

> was trying to repay it as quickly as possible because I hate being in debt. And there was a provision if I can't prepay. So I made three monthly installments in the $1,500 first payment towards the loan, and in July I expected that I would be getting my children for that time during the summer.
>
> THE COURT: There's a statement in there that you can't prepay? Is that what you said?
>
> MS. Parrinello: I may. There's no penalty for prepayment.
>
> THE COURT: Oh, I got you. Okay.
>
> MS. Parrinello: So, in end of June I expected that I would [be] getting modified custody arrangement from [sic] my children, and I was told by Mr. Bowes, who was helping me with the custody case, that I needed to show proof of rent, and I in good faith wrote that check was for either rent or loan depending on – the reason it says "Rent/loan" is because it was contingent upon me getting custody of my children. I didn't need to pay rent suddenly when I hadn't been paying rent to live where I already live.

In making its determination, the trial court found that Ms. Parrinello had entered into a promissory note to repay $17,500 to Mr. Bowes. Indeed, Ms. Parrinello admitted as much at trial. Referencing Ms. Parrinello's payments, the court reasoned, "there's nothing that is in the checks – in the memos of the checks – that reflects that the payments are being made with respect to either [the lease or the loan]." The court accepted Ms. Parrinello's testimony as to the $7,500 furniture exchange as a credit to the loan. The court determined, however, that the checks were not a credit to the amounts owed under the loan.

As we are not a second trial court, and we are constrained by the trial court's opportunity to assess the testimony and credibility of the witnesses, we cannot say that the trial court's determinations were clearly erroneous. There was evidence from which the court

could conclude that the checks were not made in repayment of the promissory note – mainly, the lease document and Mr. Bowes's testimony. Accordingly, we will affirm the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.