Circuit Court for Prince George's County
Case No. CAL21-08953

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1589

September Term, 2023

FRANCISCA MENDOZA

v.

CARLOS CORNELIUS AUSTIN

Tang,
Albright,
Hotten, Michele D.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Tang, J.

Filed: December 4, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from an action by appellant Francisca Mendoza ("Mendoza") against appellee Carlos Cornelius Austin ("Austin"), from whom she had rented space for her salon.[1] Mendoza alleged that Austin wrongfully evicted her from the space and threw away her equipment and other salon items worth over $57,000. Austin filed an answer to Mendoza's complaint but did not respond to her discovery requests and failed to appear for trial. The Circuit Court for Prince George's County deemed Austin in default and conducted a bench trial on damages. At the end of the trial, the court granted judgment in favor of Mendoza but declined to award her any damages. Mendoza appealed, arguing that the court should have awarded her damages in the amount she requested.[2] For the reasons that follow, we shall affirm the judgment of the circuit court.

BACKGROUND

Mendoza was a certified cosmetologist. Between January 2016 and February 2019, Mendoza leased space from Austin to operate a hair salon in a shopping center. Before that,

[1] We will address the parties and other individuals by their last names, as the appellant does in her brief, with no disrespect intended.

[2] Mendoza presents the following issues in the "Statement of Issues Presented" section of her brief:

1. Did the trial court err in disregarding the undisputed evidence of [Mendoza] as to her damages[?]
2. Did the trial court err in rejecting the damages testimony admitted by law when Austin was in default and a default was entered in the case and not vacated[?]
3. The failure of the lower court to abide by Maryland Rule of Civil Procedure 2-613 is reviewed de novo as a matter of law.

Austin did not file an appellate brief.

she had rented space from another individual in the same shopping center. That prior space was fully furnished with salon equipment that she did not own. However, the space was small, and she decided to lease a larger space from Austin beginning in January 2016.

Mendoza and Austin orally agreed that she would pay him $1,000 per month, including water. She also paid $500 to connect the plumbing to the washer. On February 2, 2019, Austin evicted Mendoza because she failed to pay rent, and he threw away her salon equipment and supplies.

Mendoza's Complaint

In August 2021, Mendoza filed a two-count complaint against Austin for conversion and breach of contract. In the complaint, she alleged the following facts common to both counts:

> 3. On or about January 1, 2016, Mendoza leased space at Marlow Heights Shopping Center, Door 212 from Austin to operate a hair salon.
>
> 4. Mendoza bought numerous items to operate the salon including equipment, supplies, a television set, chairs, tables and other items.
>
> 5. Mendoza operated the salon at Marlow Heights Shopping Center, Door 212 from January l, 2016 until February 1, 2019, paying rent each month in the amount of $ [1,000] per month through December, 2018.
>
> 6. On or about February 2, 2019, Mendoza was unlawfully evicted by Austin from the Marlow Heights Shopping Centre, Door 212, where she operated a salon.
>
> 7. Austin threw away Mendoza's possessions at that time despite having given her until February 10, 2019 to pay her rent.
>
> 8. The possessions he threw away into the trash included, but are not limited to Mendoza's customer book, her shampoo bowl, her foot massager, her back to bottom massaging machine, her hand massaging machine, her facial machine, her head massage machine, her washer and dryer, curtains, candy jars, hand mirrors, waxing kit, magnifying glass mirror, a SAM

> machine, shampoo capes, three large wall mirrors, weaving needles, two product stands, two cupboards, one massage table, one massage tables [sic], shears for cutting hair, hair clippers, razors, combs, clips, brushes, hair color chart book, various hair products, four stools, radio with record player, five fans, two towel steamer machines, two hot wax machines, five fans, one shampoo chair with sink, one electric napkin warmer machine, several electric curling irons, two hair dryers with chairs, one microwave oven, one refrigerator, one clock, two humidifiers, roller stick, electric water kettle, three styling chairs, five floor mats, two humidifiers, paintings, a television mount and one steam cap.

Under her conversion count, Mendoza claimed Austin deliberately disposed of her property, which had a total value exceeding $57,060.18.

Under the breach of contract count, Mendoza alleged that Austin breached the lease "in a number of way[s], including, but not limited to failure to provide air conditioning during the summer as promised, failure to repair water leaks" and "removing [her] and her property from the leased premises without cause, without notice, without any court order and without an opportunity to cure any alleged defaults by [her]." She claimed that the breach resulted in "lost income, loss of personal property in the leased premises and other expenses." Under this count, Mendoza claimed damages in the amount of "$1,500,000" in the *ad damnum* clause. At oral argument before this Court, counsel for Mendoza clarified that she sought $1,500 as damages under the breach of contract claim for the property that Austin threw away.[3]

In October 2021, Austin filed an answer denying Mendoza's allegations. He stated that Mendoza was a stylist who had worked for him. He wrote that she "rented a chair" but

[3] On appeal, Mendoza does not raise any issue regarding her damages claim for lost income.

"didn't pay" and was subsequently "let go." Austin indicated that Mendoza owed him money. He requested that the court dismiss or deny the complaint and order any other appropriate relief.

Austin's Failure to Respond to Discovery Requests

In May 2022, Mendoza propounded requests for interrogatories and documents to Austin, which went unanswered. In July, Mendoza moved for an order of default against Austin under Maryland Rule 2-613 for failing to respond to her discovery requests. This Rule provides that if the time for pleading has expired and the defendant has failed to plead, the court, on written request of the plaintiff, shall enter an order of default. Md. Rule 2-613(b). Because Austin filed an answer to the complaint, the court denied the motion.

Trial was scheduled for October 5, 2023. The day before trial, Mendoza filed a motion *in limine* requesting that the court preclude Austin from introducing any evidence that refuted her allegations in the complaint or asserted any defenses to her claims because Austin had not responded to her discovery requests. Austin did not file a response to the motion.

Trial

On the day of trial, Mendoza appeared with counsel, but Austin did not appear. The court reviewed Mendoza's pending motion *in limine* and noted that Austin had yet to respond to Mendoza's discovery requests. The court stated, "[B]ecause there's never been any response [to discovery], the [c]ourt could grant the default against [Austin]. So now

it's just on damages[.]" Mendoza's counsel agreed, and the court proceeded to hear the case on Mendoza's request for damages.

The court focused on the period from 2016 to 2019, during which Mendoza occupied the rental space. Regarding the converted items, Mendoza testified that when she moved into the new space, she did not take any items from her former rental space. This was because the previous space was fully furnished, and she did not own any of the equipment there. Instead, she had to "buy everything" for the new space. She indicated that the items claimed in the complaint were "actually purchased" by her. The court noted that it would be helpful to have "some type of statement of account" and receipts in evidence.

Additionally, the court stated that having a rental agreement and proof of payments she made would also be helpful. Regarding the rental agreement, counsel advised that "[i]t was an oral lease." Mendoza had no documentation of the rental payments she made. She testified that she paid rent through December 2018. However, at another point during trial, she stated that she had not paid rent for December 2018.

Most of the evidence centered on the cost of items Mendoza had purchased for the salon that Austin threw away. Mendoza offered, and the court accepted, various exhibits to support her claim for damages, which we detail below.

"Report" of Items in Mendoza's Salon

Exhibit 2 was an undated "Report" prepared by Mendoza that listed items in her salon.[4] The Report included equipment such as a white fridge and a washer and dryer

[4] Exhibit 1 was a copy of Mendoza's cosmetologist license.

purchased at a warehouse for which she had no receipt. The Report also included salon supplies such as shampoo capes and hair products. Mendoza testified that she purchased the items listed in the Report from Paul's Beauty Warehouse, Home Depot, and other warehouse stores. Out of the several items listed, only one had an associated dollar amount.

Undated Sales Order from Paul's Beauty Warehouse

Exhibit 3 was a handwritten, undated, two-page sales order from Paul's Beauty Warehouse. Mendoza testified that someone at Paul's Beauty Warehouse prepared the document and that she purchased the items listed. Some items were listed in specific quantities with a "unit price," whereas several other items were generically described and given a "total." For example, three "Kure Layback" chairs were assigned a "unit price" of $374.98, whereas "nail products," "face products," "waxing products," and "towels" each totaled $2,000 according to the exhibit. Mendoza testified that the total cost of the items she purchased at Paul's Beauty Warehouse was $58,693.54. However, the total reflected on Exhibit 3 was $38,693.54.

Upon reviewing the document, the court identified the deficiencies contained in it:

> THE COURT: This doesn't have a date. I may not be able to see it, but I don't have a date on this document. I mean, basically I have a sheet of paper that has some list of items that doesn't have a date, salesperson, account contact, customer number, any of the numbers, the request numbers, just, and there's no signature. And it's just a handwritten document.

The following colloquy ensued:

> [MENDOZA'S COUNSEL]: Unfortunately, the way these are generated, they have printed dates, invoices. These are printed dates we—and some of the [sic] are—so these are the date purchased. That's how Paul's generated them. Some of them have, they do have some dates, but—

THE COURT: I mean, you see the problem with this though, right?

[MENDOZA'S COUNSEL]: Yeah.

THE COURT: Okay.

[MENDOZA'S COUNSEL]: Her testimony is those are the items she purchased.

THE COURT: I understand, but—

[MENDOZA'S COUNSEL]: (Indiscernible 10:26:00)

THE COURT: —the [c]ourt has to make a decision—

[MENDOZA'S COUNSEL]: Right. I understand.

THE COURT: —as to whether these expenses were actually incurred. When you said that there was a receipt, I thought I was going to see an actual receipt.

Reprinted "Sales Receipts" from Paul's Beauty Warehouse

Counsel proceeded to offer Exhibit 4, which comprised five "reprinted" "sales receipt[s]" from Paul's Beauty Warehouse. Counsel indicated that the receipts contained in this exhibit have "different dates" and "some of them are not actually a date of the purchase." The exhibit contained the following:

1. A purported sales receipt listed several items totaling $21,846.89. The document had the word "HELD," instead of a sales receipt number to indicate that the items were actually purchased. The document was "printed" on "8/11/2020," over a year after Mendoza had been evicted.
2. Sales Receipt #129962 dated "8/31/2015," before the relevant period, for items totaling $339.17.
3. Sales Receipt #157299 dated "4/15/2016" for items totaling $129.90.
4. Sales Receipt #172750 dated "8/16/2016" for items totaling $475.63.
5. Sales Receipt #237144 dated "12/27/2017" for items totaling $100.30.

The court indicated that the first item had "no date, so the [c]ourt can't consider that. I don't know when that was." The court also indicated that it would not consider the second item because that receipt reflected a date in 2015, before Mendoza moved into Austin's space in 2016.

Mendoza's counsel appeared to protest, and the following discussion took place:

> THE COURT: I heard her testimony. It's not been corroborated. So the [c]ourt has to weigh its probative value, and it's problematic since there wasn't—there's an oral agreement, nothing was in writing, and I have a list of hair supplies that were purchased but they were purchased, I don't know, because this is what the business she does and she was already at another salon. So.
>
> [MENDOZA'S COUNSEL]: Well, I was going to ask her if she took those items to her new salon at (indiscernible 10:33:26).
>
> THE COURT: You asked her, but the [c]ourt still has a problem with that bill. You're not asking the [c]ourt to grant a $54,000 judgment with no receipts.
>
> [MENDOZA'S COUNSEL]: Well, there are receipts, but some of them were purchased earlier, Your Honor. And I would say just because they were purchased earlier didn't mean she didn't take them over to her new salon because she was operating. The testimony, she was operating the salon in the same building.
>
> THE COURT: Okay, so do you have the agreement that was from the prior salon? Do you have anything to show what that arrangement was? Because again, if you're asking the [c]ourt to accept that she took items from one salon to another salon, then the [c]ourt would need something to look at aside from a handwritten document.
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> [MENDOZA'S COUNSEL]: I don't think she has any documents from the other salon, Your Honor. If you have some testimony and I would submit under the law that without any cross examination or any—
>
> THE COURT: And under the law, the [c]ourt can accept all, part or none of a witness's testimony.

> [MENDOZA'S COUNSEL]: I understand that. But I was just going to say that, you know, I understand that, Your Honor, but I would submit that those items are her damages and that those were all items that she's testified that were taken from the salon. . . .
>
> THE COURT: Okay. Well, I think that the reason why the default was granted was because she had rented a space. We don't know. We didn't have the lease or anything like that, but she rented a space. She had not paid the rent. She was evicted from the property and they converted her items. . . .

"Quotes" and "Invoice" from Home Depot

Exhibit 5 comprised three Home Depot documents listing items that Mendoza testified she purchased for her salon. The first was a "Customer Quote" that described four items: a matte white countertop convection microwave, a black steel front-load smart washer, a black steel stackable smart electric dryer, and a stainless steel minifridge. The quote was dated October 4, 2023, after Mendoza filed suit, and the prices were listed as "valid through" October 11, 2023.

The court asked Mendoza's counsel how this was relevant. Counsel explained that Mendoza wanted to "get an idea" of the "replacement cost." Noting the discrepancy between the white fridge that she had in her salon and the stainless steel minifridge in the Home Depot quote, the court responded that the replacement cost was for a comparable item, not for an "upgrade[d]" item.

The second document from Home Depot was a "Customer Invoice," also dated "10/04/2023," that listed strip lights and kitchen cabinets totaling $1,567.74. It indicated that the invoice was "valid" only for that day.

The court referred to a third document containing another quote from Home Depot, which lacked a date. The court described the document as showing "where you got all of the dryer, the hoses, and all of those items [with] the estimated arrival date is August 19, 2020." Because Mendoza had already left the premises by that date, the court indicated that it was not going to consider this document.

Photographs

Finally, Exhibit 5 consisted of various photographs that Mendoza had taken of her salon before she was evicted, as well as photographs of items she had photographed in stores. The court remarked that these "pictures really do not show anything," but it admitted them anyway.

Mendoza explained what happened on February 2, 2019, when Austin evicted her. She testified that she spoke to Austin and told him that rent would be late, but that he would receive it. Austin agreed, and Mendoza locked her salon and proceeded down the hallway to visit another office. While she was there, she heard Austin say, "[t]hrow everything out." She looked down the hallway and saw Austin throwing out her things.

The court asked whether Mendoza had taken pictures of Austin throwing her items away, and she responded that she had not. Mendoza explained that she saw Austin taking her things down the steps with two other men, at which point she called the police.

The Court's Decision

At the conclusion of the bench trial, the court denied Mendoza's request for damages. It explained:

> So the only—I heard the testimony. The testimony seems a little incredible and it is supported by these exhibits that say dates [sic] 2023 when items would be available or purchasing of items.
>
> But the [c]ourt did see an exhibit, an invoice on December 27th, 2017 for $100.30, for . . . 2016 for $129.90. August 16, 2016, $475.63, for a total of $705.83. But [Mendoza] admitted that she did not pay the thousand dollars for December, January or February.
>
> So that would leave, actually, a negative balance, so judgment has been entered in favor of [Mendoza] but for no amount.

On November 16, 2023, the court entered an order granting judgment in favor of Mendoza and against Austin but did not award Mendoza any damages. Mendoza noted a timely appeal.

STANDARD OF REVIEW

Maryland Rule 8-131(c) provides that

> When an action has been tried without a jury, an appellate court . . . . 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.

"Under the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Thomas v. Cap. Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009) (cleaned up). "Rather, our task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record. If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *Id*. (cleaned up).

DISCUSSION

Mendoza argues that the circuit court erred or abused its discretion by rejecting allegations in her complaint regarding the items converted and the breach of contract. She contends that the court should have deemed the allegations in her complaint admitted and determined only the value of the items that Austin threw away. By denying her request for damages, she argues, the court appeared to reject the allegations in her complaint, specifically that she purchased these items and that Austin improperly converted them. She argues that there was "affirmative evidence" that Austin converted the items listed in the complaint, and there was no dispute regarding their value.

Mendoza's question as presented suggests that she believes the court decided the default under Maryland Rule 2-613, *see supra* n.2. However, the court denied her earlier request for a default order and never entered an order of default against Austin under this rule.

Instead, it appears that the court treated Mendoza's motion *in limine* as one for sanctions for Austin's failure to respond to discovery. A discovering party may move for sanctions without first obtaining an order compelling discovery when "a party fails to serve a response to interrogatories . . . or to a request for production . . . after proper service." Md. Rule 2-432(a). When granting a motion for discovery sanctions, the court may "refuse to allow the failing party to support or oppose designated claims or defense[.]" Md. Rule 2-433(a)(2). It may also enter "a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party[.]" Md. Rule 2-

433(a)(3). The court may hold a bench trial "[i]f, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter[.]" *Id.*

Regardless, neither an order of default under Rule 2-613 nor the grant of sanctions under Rule 2-433 ordinarily "carr[ies] with it a judgment as to damages." *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 134–35 (2009) (addressing discovery sanctions under Rule 2-433(a)(3) and explaining that cases involving an order of default under Rule 2-613 "illustrate the general proposition that damages must be based on something more than a bare recital in a complaint of the relief sought"). A default "merely establishes the non-defaulting party's right to recover" damages from the defaulting party. *Id.* at 134 (citation omitted). A judgment of default operates as "an admission by the defaulting party of its liability for the causes of action set out in the complaint." *Pac. Mortg. & Inv. Grp., Ltd. v. Horn*, 100 Md. App. 311, 332 (1994). "The general rule, therefore, is that, although the defaulting party may not introduce evidence to defeat [their] opponents' right to recover at the hearing to establish damages, [the defaulting party] is entitled to present evidence in mitigation of damages and cross examine witnesses." *Fisher*, 186 Md. App. at 134 (citation omitted).

We disagree with Mendoza's assertion that the court rejected the allegations in the complaint. The court deemed Austin in default regarding liability. This is evident from the court's statement that it "could grant default against [Austin]," indicating the trial was "just

on the damages." At a later point during trial, the court mentioned that "the default was granted" and appeared to accept Mendoza's assertion that she had rented space from Austin, notwithstanding the absence of a written lease agreement. Furthermore, the court subsequently entered judgment in favor of Mendoza, which shows that it accepted the allegations and the evidence regarding liability. Therefore, the only matter left for the court to address was damages.

Damages must be proven with reasonable certainty beyond speculation or conjecture. *Della Ratta, Inc. v. Am. Better Cmty. Devs., Inc.*, 38 Md. App. 119, 143 (1977). As explained above, we review the court's findings for clear error, and "if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Spacesaver Sys., Inc. v. Adam*, 212 Md. App. 422, 449 (2013) (citation omitted). "This is particularly true when the trial judge is *not* persuaded of something[.]" *Bontempo v. Lare*, 217 Md. App. 81, 137 (2014) (citing *Omayaka v. Omayaka,* 417 Md. 643, 658–59 (2011) ("Although it is not uncommon for a fact-finding judge to be clearly erroneous when he [or she] is affirmatively **PERSUADED** of something, it is, as in this case, almost impossible for a judge to be clearly erroneous when he [or she] is simply **NOT PERSUADED** of something.")).

The court was not persuaded that Mendoza presented adequate proof of damages. Although the court accepted Mendoza's evidence regarding the 2016 and 2017 receipts from Paul's Beauty Warehouse, which totaled $705.83, it was not convinced by the evidence concerning the costs of the other items. In addition, the court did not find

Mendoza credible based on her testimony and the documentation admitted. *See Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020) ("[T]he fact finder 'may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given to each item of evidence.'" (citation omitted)). Giving due regard to the court's assessment of Mendoza's credibility and the evidence presented at trial, we conclude that the court did not err or abuse its discretion by denying Mendoza's request for damages.[5]

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

[5] The court's oral ruling indicates it offset $705.83 against the rent Mendoza owed Austin. Mendoza does not challenge this offset.