Circuit Court for Montgomery County
Case No.: C-15-CV-23-000593

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1891

September Term, 2023

MARK S. BYRD, ET AL.

v.

ROOSTERTAIL, INC., ET AL.

Wells, C.J.,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: May 20, 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 a contract to host a wedding reception in the spring of 2020 that ultimately did not occur due to the COVID-19 pandemic. The Circuit Court for Montgomery County granted summary judgment in favor of Roostertail, Inc. and Roostertail Entertainment Group, LLC ("Roostertail"), appellees, owners and operators of the event venue, in an action brought by Mark Byrd and his wife, Wiata Weeks Byrd, appellants,[1] seeking the return of deposits paid for the venue. On appeal from that judgment, the Byrds pose five questions,[2] which we rephrase:

> I. Did the circuit court err by not denying Roostertail's motion because the affidavit was deficient?

[1] The parties were not yet married when they entered into the original contract. For ease of discussion, we shall refer to Ms. Byrd by her current name.

[2] The questions as posed by the Byrds are:

> A. Did the circuit court err in determining that the Byrds entered into a chain of novation contracts after Covid-19, that replaced the Booking Contract formed prior to Covid-19?
>
> B. Did the circuit court err by determining that the entirety of the Byrds' $19,800 in deposits are nonrefundable under the Booking Contract, where there are ambiguous contract provisions regarding refunds of deposits?
>
> C. Did the circuit court err by determining that Roostertail did not act in bad faith where they refused to continue forward with a Saturday night reception, as set forth in the Booking Contract, unless they Byrds paid an additional $8,400 over and above the negotiated price?
>
> D. Did the circuit court err by granting Roostertail's motion for summary judgment where the affidavit was late-filed and not based on the affiant's personal knowledge?
>
> E. Did the circuit court err by granting summary judgment against the Byrds' installment sale agreement claim under Maryland Commercial Code § 12-605(a)?

II. Did the circuit court err by granting summary judgment on the recission counts?

III. Did the circuit court err by granting summary judgment on the unjust enrichment count?

IV. Did the circuit court err by granting summary judgment on the breach of contract count?

V. Did the circuit court err by ruling that the contracts were not retail installment sales agreements?

For the following reasons, we answer these questions, "No," and affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On September 5, 2019, the Byrds, who live in Maryland, entered into a contract with Roostertail to hold their wedding reception at the event venue in Michigan on the evening of Saturday, May 23, 2020 ("the original contract"). The contract was delivered and executed electronically. The total contract price was $22,350. A deposit schedule required the Byrds to make an initial $3,000 deposit, six $2,800 deposits over the following six months, and a final $2,550 payment ten days before the event.

A provision on the first page of the original contract stated that "ALL payments made towards the event are non-refundable for any reason." The Byrds initialed that provision. Similar language appeared on the second page, beneath the payment schedule: "The DEPOSIT will be applied as payment towards the total cost of your event. If for any reason your event is canceled, the date changed, or subsequent deposits are not timely paid, the DEPOSIT will be totally forfeited."

In the small print below the signature lines, a provision captioned, "DEPOSITS" stated, in pertinent part:

> The BOOKING CONTRACT requires a DEPOSIT. The DEPOSIT is due according to the schedule set forth on page 1 of this BOOKING CONTRACT. . . . The parties agree that the DEPOSIT represents a reasonable estimate of costs incurred by THE ROOSTERTAIL in planning and preparing the event as of the date listed. The parties further agree that all DEPOSIT monies are nonrefundable except in the event of an EXCUSED NON-PERFORMANCE discussed in Paragraph 7 below.

Paragraph 7 states:

> It is specifically agreed that THE ROOSTERTAIL shall not be liable for any failure to provide the goods and services contracted for under this BOOKING CONTRACT due to, but not limited to, . . . government (Federal, state or local) restrictions or requirements, . . . beyond the control of THE ROOSTERTAIL. *Any such non-performance shall be excused, and THE ROOSTERTAIL may terminate this BOOKING CONTRACT without further liability of any nature upon return of the DEPOSIT monies collected from the CUSTOMER*. In no event shall THE ROOSTERTAIL be liable for loss or [sic] profit or for consequential damages whether based on breach of contract, warranty or otherwise.

(Italicized emphasis added.)

The original contract only could be modified "in writing signed by the parties." A choice of law provision stated that the contract was governed by Michigan law.

A "Client Expectation Checklist" attached to the original contract included a "Cancellation" provision that states:

> At the time of signing the booking form, which is bound by law, a deposit is also due. The amount of your deposit is based upon your total minimum revenue. <u>The payment of deposit is non-refundable or transferable</u>. If you need to change your date after we have received your deposit you will have to present a new deposit for the new date and sign a new booking contract.

(Emphasis in original.) Mr. Byrd initialed next to that provision. Amber Sharp, an agent for Roostertail, certified that she had explained the items in the checklist to Ms. Byrd on September 5, 2019. The Byrds each certified and agreed that they had read the entire contract.

The Byrds made a $3,000 deposit upon signing the original contract and paid $16,800 in additional deposit payments between October 2019 and February 2020.

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 23, 2020, the governor of Michigan issued an executive order prohibiting public and private gatherings of any size involving persons not members of the same household until April 13, 2020. Executive Office of the Governor, *Temporary requirement to suspend activities that are not necessary to sustain or protect life*, Governor Gretchen Whitmer, available at https://perma.cc/GFZ2-EWTY (last visited Apr. 21, 2025).

On March 26, 2020, the Byrds spoke to Ms. Sharp about their wedding. According to the Byrds, Ms. Sharp advised that "Roostertail would not refund [their] deposits and . . . had no further obligation under the [original] contract[.]"[3]

[3] Documents attached to the Byrds' motion to alter or amend reflect that Ms. Byrd emailed Ms. Sharp the next day to thank her for discussing the Byrds' concerns that COVID-19 restrictions would still be in place on May 23, 2020, making it impossible to hold their wedding on that date. She stated that they "of course, would like to reschedule the date" but wanted to ensure that they would be permitted to reschedule again without penalty should the pandemic restrictions continue for longer than then anticipated. She also asked about a refund of the deposit monies paid and creation of an entirely new payment schedule as an "alternative to the approach discussed above."

Ms. Sharp responded with potential dates and assured the Byrds that Roostertail would "definitely let our couples reschedule again" if the COVID-19 restrictions remained in place and that they were being "very flexible" in these unprecedented circumstances.

(continued…)

Ms. Sharp advised that if the Byrds rescheduled their wedding "to the 2021 year that 50% of what you have paid will be credited to a Friday or Saturday date" and if they chose "a Sunday-Thursday [Roostertail was] willing to transfer 100% of your event."

On or about April 5, 2020, Ms. Byrd executed a new contract with Roostertail for the wedding reception to occur on Sunday, May 30, 2021 ("the second contract"). The second contract specified that the sixth $2,800 deposit payment would be due on July 4, 2020, and that the final payment of $2,550 was due February 4, 2021. The terms of the contract were otherwise identical.

More than eight months later, on January 21, 2021, Ms. Byrd emailed Nicole D'Onofrio, an agent of Roostertail, to express her concern that the wedding was just over four months away and the COVID-19 restrictions on gatherings remained in place. She asked to postpone their reception until May 2022, if possible. Ultimately, after an exchange of emails, the Byrds and Roostertail settled on Friday, July 29, 2022, as the date for their wedding reception.

On January 30, 2021, Ms. Byrd executed a third contract. It included the following new language:

> As of 1/30/21, Roostertail is allowing a $0 rescheduling fee due to COVID-19. All payments made towards the original date of 5/23/20 were transferred to 5/30/21 with no additional rescheduling fees. All payments made towards the two dates, 5/23/20 & 5/30/21, to be transferred to a new date of 7/29/22. Total payments made for 5/23/20 & 5/30/21 equal $19,800 with a remaining balance of $2,550.

Ms. Sharp added that while Roostertail could not refund the Byrds' deposit, it would create a new payment schedule for the remaining balance.

Ms. Byrd initialed next to that statement. A new deposit schedule for the remaining balance appeared below, with six payments of $365 due from January 2022 through June 2022 and a final payment of $360 due the week of the reception. Ms. D'Onofrio certified that she had explained the terms to Ms. Byrd on January 30, 2021.

On June 17, 2021, the State of Michigan lifted its restrictions on gatherings.

On March 24, 2022, the Byrds emailed Ms. D'Onofrio to inform her that they had decided to cancel their planned event because of "the extended effect of COVID on [their] lives and other life changes[.]" They proposed that if Roostertail could rebook the date of their event, it refund them $19,800, comprising all the payments except the initial $3,000 deposit. If Roostertail could not rebook the date, they proposed that it could retain the profit it anticipated earning from the event, which they could negotiate in advance. Ms. Byrd designated her father, a Michigan resident, as a person authorized to negotiate on her behalf.

On July 21, 2022, Roostertail provided a verbal response to the email that was unsatisfying to the Byrds.

On February 19, 2023, the Byrds filed suit against Roostertail asserting five counts[4]:

I. Contract Recission due to Impossibility of Performance
II. Contract Recission due to Frustration of Purpose
III. Unjust Enrichment
IV. Cancellation of Installment Sale Agreement
V. Breach of Contract

[4] Roostertail unsuccessfully moved to dismiss the complaint for lack of personal jurisdiction.

In each count, the Byrds sought the return of the $19,800 in deposit monies they had paid for the wedding reception. They attached to their complaint the original contract and copies of some of the deposit checks. They did not allege that they entered into the second or third contract.[5]

Roostertail moved for summary judgment on all counts,[6] attaching the original, second, and third contracts, the email correspondence leading up to the third contract, the email correspondence concerning the cancellation, and a June 17, 2021, announcement by the Michigan Department of Health and Human Services rescinding restrictions on gatherings. It argued that the third contract was the controlling document as it superseded the prior contracts and because the Byrds unilaterally cancelled that contract, they were not entitled to a refund of their deposit. It further maintained that the Retail Installment Sales Act ("RISA"), codified at Md. Code, Commercial Law ("CL") §12-601–12-636, did not apply because the contracts were governed by Michigan law and none of the contracts were installment sales agreements.

The Byrds opposed the motion, supported by an affidavit made by Mr. Byrd. They argued that they only were bound by the original contract because they entered into the later contracts under duress, the subsequent contracts were not executed by Mr. Byrd or

[5] The Byrds twice amended their complaint, adding claims for intentional infliction of emotional distress and conversion, and requesting punitive damages and attorneys' fees. Because their appeal is addressed only to the claims in the original complaint, we need not recount the amendments in further detail.

[6] The Byrds moved for partial summary judgment, but do not challenge the denial of their motion on appeal.

Roostertail, and there was not a meeting of the minds as to the subsequent agreements. Recognizing that an unjust enrichment claim ordinarily does not lie where there is an express contract covering the same subject matter, the Byrds argued the bad faith exception to that rule applied. They further asserted that the original contract was an installment sales agreement because Roostertail was obligated to provide "goods and services." Alternatively, the Byrds maintained that Roostertail's motion should be denied as deficient because it was not supported by an affidavit.

On September 26, 2023, Roostertail filed a first amended motion for summary judgment supported by an affidavit made by Michael Schoenith, the owner and CEO of Roostertail.[7] Mr. Schoenith averred that the Byrds entered into three contracts with Roostertail, that they unilaterally cancelled their event, that there were no COVID-related restrictions in place on the date of their rescheduled event (July 29, 2022), and that Roostertail remained ready and willing to perform the third contract when it was cancelled.

The court heard argument on the motion on October 31, 2023, and ruled from the bench, granting Roostertail's motion for summary judgment and denying the Byrds' motion for partial summary judgment. We will discuss the court's ruling in our analysis. The circuit court denied the Byrds' motion to alter or amend the judgment.

The Byrds noted this timely appeal.[8]

[7] This affidavit also had been attached to Roostertail's memorandum in reply to the Byrds' opposition to the original motion for summary judgment.

[8] The Byrds noted their appeal on November 29, 2023, within thirty days of the court's oral ruling. By order entered December 27, 2023, this Court remanded the case to (continued…)

STANDARD OF REVIEW

Summary judgment is proper 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." Md. Rule 2-501(f). "We review the circuit court's grant of summary judgment *de novo*." *Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken*, 483 Md. 590, 616 (2023) (citation omitted). "We conduct an independent review of the record to determine whether a [genuine] dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law." *Id*. (citation omitted). "We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant." *Gambrill v. Bd. of Educ. of Dorchester Cnty*., 481 Md. 274, 297 (2022) (quoting *Md. Cas. Co. v. Blackstone Int'l Ltd*., 442 Md. 685, 694 (2015)). "We do not endeavor to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried." *Gambrill*, 481 Md. at 297 (citing *Newell v. Runnels*, 407 Md. 578, 607 (2009)). Furthermore, it is a "well-established general rule that in appeals from the granting of a motion for summary judgment, absent exceptional circumstances, Maryland appellate courts will only consider the grounds upon which the circuit court granted summary judgment." *Selective Way Ins. Co. v. Fireman's Fund Ins. Co*., 257 Md. App. 1, 34 (2023) (cleaned up).

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the circuit court for it to enter a written order and stayed the appeal. Prior to that order being entered, the Byrds filed their motion to alter or amend the judgment. On January 11, 2024, the court entered an order memorializing its October 31, 2023, oral ruling. On June 10, 2024, it denied the motion to alter or amend. Thereafter, this Court lifted the stay of the appeal.

DISCUSSION

I.

As a threshold matter, the Byrds assert that Roostertail's motion for summary judgment was deficient because the Schoenith affidavit was late-filed and was not based upon personal knowledge. Under Rule 2-501(a), a motion for summary judgment that is based upon "facts not contained in the record" must be supported by an affidavit. Though Roostertail's initial motion for summary judgment was not so supported, they supplied an affidavit with their reply memorandum and with their first amended motion for summary judgment. Consequently, any defect in the original motion was corrected before the circuit court ruled.

The affidavit states that Mr. Schoenith is the owner and CEO of Roostertail and that the averments are based upon his personal knowledge and his review of the business records of his company. The Byrds did not move to strike the affidavit or raise any deficiencies in their opposition to the first amended motion for summary judgment.[9] Having failed to challenge the affidavit before the circuit court, this issue is not preserved for review. Md. Rule 8-131(a).

II.

On the two recission counts in the complaint, the circuit court ruled that the original contract likely would have been subject to recission due to the COVID-19 restrictions that

[9] At the hearing on the motion, Mr. Byrd argued that Mr. Schoenith lacked personal knowledge of the email and verbal communications between the Byrds and the event staff at Roostertail. Mr. Schoenith's affidavit did not touch upon those matters, however.

would have made it impossible for Roostertail to perform and/or frustrated the purpose of the contract. It reasoned that prior to that eventuality, however, the Byrds entered into the second contract and the third contract, which were novations that extinguished the immediately preceding contracts. Because the third contract was objectively possible to perform, the Byrds were not entitled to recission as a remedy under the operative contract. The Byrds contend that this was error because the record does not support the conclusion that the second and third contracts were novations.

"Contract interpretation is . . . a question of law that may be properly determined on summary judgment." *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 78 (2006); *Sweebe v. Sweebe*, 712 N.W.2d 708, 711 (Mich. 2006). In determining whether summary judgment is proper where a contract is disputed, courts look to the contract as a whole and construe the "words consistent with their usual and ordinary meaning[.]" *Maslow v. Vanguri*, 168 Md. App. 298, 318 (2006); *Barton-Spencer v. Farm Bureau Life Ins. Co. of Mich*., 892 N.W.2d 794, 798 (Mich. 2017).

Michigan, like Maryland, adheres to the objective theory of contract interpretation, which gives "effect to the clear terms of agreements, regardless of the [subjective] intent of the parties at the time of contract formation." *Myers v. Kayhoe*, 391 Md. 188, 198 (2006); *Quality Prods. & Concepts Co. v. Nagel Precision, Inc*., 666 N.W.2d 251, 259 (Mich. 2003). Under this theory, when the language used in a contract is clear and unambiguous, "a court shall give effect to its plain meaning[.]" *DIRECTV, Inc. v. Mattingly*, 376 Md. 302, 312 (2003). "Contractual language is considered ambiguous when the words are susceptible of more than one meaning to a reasonably prudent person." *Maslow*, 168 Md.

App. at 319. "To determine whether a contract is susceptible of more than one meaning, the court considers the 'character of the contract, its purpose, and the facts and circumstances of the parties at the time of the execution.'" *Id*. (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co*., 302 Md. 383, 388 (1985)).

"A 'novation' is a new contractual relation made with intent to extinguish a contract already in existence." *I.W. Berman Props. v. Porter Bros., Inc.*, 276 Md. 1, 7 (1975). The elements of a novation are: "(1) [a] previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the validity of such new contract, and (4) the extinguishment of the old contract, by the substitution for it of the new one." *Leisner v. Finnerty*, 252 Md. 558, 564 (1969) (quoting *Dist. Nat'l Bank of Wash. v. Mordecai*, 133 Md. 419, 427 (1919)); *accord George Realty Co. v. Gulf Refin. Co*., 266 N.W. 411, 413 (Mich. 1936). Whether a novation has occurred is determined by the intention of the parties, and that intention may be gleaned from the surrounding circumstances. *Leisner*, 252 Md. at 565; *Oakland Cnty. v. Allen*, 294 N.W. 98, 99 (Mich. 1940).

The court did not err in ruling that the second and third contracts were novations. It is not disputed that the original contract was a valid obligation between the parties. The second and third contracts changed the date upon which Roostertail would perform and changed the deposit schedule, but otherwise did not differ substantively from the original contract as to the terms and are valid.

The circuit court correctly rejected the Byrds' contention that there was a genuine issue of material fact as to whether the second contract and third contracts were invalid due to grossly unequal bargaining power, i.e., that the contracts are void for unconscionability.

Both procedural and substantive unconscionability must be shown before a contract may be deemed unconscionable. *See Liparoto Constr., Inc. v. Gen. Shale Brick, Inc*., 772 N.W.2d 801, 805 (Mich. Ct. App. 2009) ("For a contract or a contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present."); *accord Lloyd v. Niceta*, 255 Md. App. 663, 685-86 (2022). Because the terms of the contracts are not '"unreasonably' or 'grossly' favorable" to Roostertail and do not "attempt to alter in an impermissible manner fundamental duties otherwise imposed by law," *Stewart v. Stewart*, 214 Md. App. 458, 477-78 (2013) (citation omitted), this argument is without merit.

The evidence likewise demonstrated mutual assent to the second and third contracts. Ms. Byrd signed and initialed the contracts and Roostertail never disputed that it was bound by them. Thus, only Mr. Byrd's assent was at issue. The circuit court correctly ruled that the email correspondence demonstrated that Ms. Byrd executed the second and third contracts on behalf of herself and Mr. Byrd, her then fiancé and now husband, and that there was mutual assent to the terms. Ms. Byrd copied Mr. Byrd on all her email correspondences with agents of Roostertail. That Mr. Byrd agreed to the third contract also is evidenced by the cancellation email signed by the Byrds, which references the reception date agreed to in the third contract. The circuit court did not err by ruling as a matter of law that the parties mutually agreed to the second and third contracts.

The second and third contracts, coupled with the same emails, established that the parties intended to extinguish the original contract and replace it with the second and then the third contract. Both times that the Byrds sought to reschedule their wedding, Roostertail

sent a new contract to them for electronic signature. The singular purpose of each contract was for a wedding reception on a particular date at a particular time. The postponement of the wedding by more than a year on two occasions altered the central terms of the contract and, consistent with the cancellation clause on the client expectation checklist, necessitated a new contract.

III.

The Byrds are likewise not entitled to relief under a theory of unjust enrichment. As they acknowledge, it is firmly established under Michigan and Maryland law that "no quasi-contractual claim can arise when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests." *AAC HP Realty, LLC v. Bubba Gump Shrimp Co. Rests., Inc*., 243 Md. App. 62, 70-71 (2019) (cleaned up); *see also Belle Isle Grill Corp. v. City of Detroit*, 666 N.W.2d 271, 280 (Mich. Ct. App. 2003) (rejecting an unjust enrichment claim where a lease covered the same subject matter because "a contract will be implied only if there is no express contract covering the same subject matter"). Here, the original, second, and third contracts expressly governed the Byrds' right to recover their deposits upon cancellation of the event, precluding relief under a quasi-contractual theory.

The Byrds nevertheless contend that the court erred in granting summary judgment on this count because there was a genuine dispute of fact as to whether Roostertail acted in bad faith when it refused to refund their deposit in 2020, bringing their claim within an exception to this general rule. They cite only Maryland law in support of this contention, however. *See Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc*., 358

Md. 83, 100 (2000) (reasoning that "evidence of fraud or bad faith" is an exception to the general rule that a claim for unjust enrichment may not lie where this is an express contract governing the subject matter). Because our research reveals no Michigan cases adopting a bad faith exception, the circuit court did not err by granting summary judgment in favor of Roostertail on this claim.

Even under Maryland law, however, as the circuit court ruled, there was no "evidence of bad faith or fraud in the formation of the [second] contract" bringing the Byrds' claim within the narrow exception. *AAC HP Realty*, 243 Md. App. at 72. Roostertail was under no obligation to refund the Byrds' deposit at the time they entered into the second contract because the excused non-performance clause of the original contract only applied if Roostertail terminated the original contract due to the government restrictions. Because the restrictions did not yet extend to the date of the Byrds' wedding reception, however, the excused non-performance clause had not been triggered.

IV.

The Byrds contend that the court erred by granting summary judgment on their breach of contract count because the circuit court erroneously failed to give effect to the excused non-performance clause.[10] As already explained, however, that provision only applied if Roostertail terminated the contract due to impossibility of performance. The

[10] The Byrds also assert that the excused non-performance clause and the forfeiture of deposits clause are irreconcilable, making the contract ambiguous, and that the term "deposit" refers only to the initial $3,000 payment. Both claims were raised for the first time in their motion to alter or amend the judgment, the denial of which they do not challenge in this appeal. Consequently, we decline to address those contentions.

circuit court correctly ruled that because the Byrds cancelled their wedding reception at a time when there were no government restrictions preventing it from going forward as planned, the excused non-performance clause was not implicated.

V.

The Byrds contend that the circuit court erred by granting summary judgment in favor of Roostertail on its RISA claim. As relevant, CL § 12-605(a) obligates the seller of retail goods to deliver to the buyer an "exact copy" of the installment sale agreement signed by the seller within fifteen days after the buyer signs the agreement and, if that does not occur, the agreement is rendered void, and the buyer is entitled to a refund of deposits paid. CL § 12-605(a)(1)-(2).

The circuit court correctly ruled that the contracts in this case are not retail installment sales agreements. The Byrds were not buying or leasing goods from Roostertail, rather they contracted regarding the venue for it to perform a service, i.e., hosting their wedding reception. CL § 12-601(c)(1) (defining "Buyer"); CL § 12-601(v) (defining "Seller"). Because neither the original contract nor the second or third contracts were for "the retail sale of consumer goods," CL § 12-601(m) (defining an "Installment sale agreement"), the Byrds were not entitled to relief under RISA.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.