

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0865

September Term, 2016

GANDHI HEALTH CAREER SERVICES,
LLC

v.

1515 REISTERSTOWN ROAD, LLC

Woodward, C.J.
Graeff,
Thieme, Raymond G. Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: July 13, 2017

*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 from a dispute involving the payment of rent under a commercial lease agreement between Gandhi Health Career Services, LLC (“tenant”) and 1515 Reisterstown Road, LLC (“landlord”). Tenant presents the following question for our review, which we have rephrased slightly: did the trial court abuse its discretion in denying tenant’s motion to set aside summary judgment and money judgment, and in denying tenant’s motion to reconsider its ruling on summary judgment?¹

For the following reasons, we affirm.

BACKGROUND

On May 1, 2014, tenant and landlord entered into a five-year commercial lease agreement for office space on the third floor of the property located at 1515 Reisterstown Road, Pikesville (the “Property”). Tenant intended to use the office space for its business of healthcare staffing. Pursuant to the terms of the lease, tenant was permitted to occupy the premises beginning on June 1, 2014. Because the Property was undergoing renovations at that time, the lease provided that tenant was not obligated to pay rent until September 1, 2014. Tenant took possession of the property on September 26, 2014.

In the months that followed, tenant failed to make certain rent payments on the Property. Landlord initiated multiple “failure to pay rent” actions against tenant in the District Court of Maryland for Baltimore County, and obtained four (4) judgments

¹ Appellant phrased the question as:

Did the Circuit Court err when Judge Fader denied Appellant’s Motion to Set Aside Summary Judgment and Money Judgment and Motion to Reconsider Ruling on Summary Judgment?

against tenant between November 2014 and April 2015 for the unpaid rent totaling \$10,182.00. On or about May 7, 2015, a warrant of restitution was issued, and tenant was evicted from the Property.

On January 16, 2015, tenant filed a complaint against landlord in the Circuit Court for Baltimore County, alleging breach of the lease agreement, specifically: 1) that it was entitled to three months of free rent pursuant to the lease agreement; 2) that a fellow tenant of the Property had denied it access to the Property via a fire door; and 3) that tenant was not allowed to place a business sign on the Property. Tenant claimed that it suffered monetary loss as a result of landlord's breach of the lease agreement.

Landlord counterclaimed and filed a motion for summary judgment, arguing that it was not in breach of the lease agreement, and that it was due, as a matter of law, \$10,182.00 in unpaid rent plus \$11,987.00 in attorneys' fees. Tenant filed an "answer" in response to landlord's motion for summary judgment. Neither party requested a hearing on the motion for summary judgment.

On March 1, 2016, the circuit court granted landlord's motion for summary judgment on the ground that tenant had failed to provide an affidavit for the court to consider in opposition to the motion for summary judgment, as required under Maryland Rule 2-501². According to the case docket, the judgment was indexed and mailed to the

² Rule 2-501 provides, in pertinent part:

(b) Response. A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such

Continued . . .

parties on March 4, 2016. On March 18, 2016, tenant filed a motion to set aside the summary judgment and money judgment on the grounds that no hearing had been held on the summary judgment motion, and that neither party had received notice of the judgment. Landlord filed a response, arguing that tenant's motion was untimely, and that tenant had failed to request a hearing on the summary judgment motion.

On April 8, 2016, tenant filed a motion to reconsider the summary judgment order. On May 31, 2016, the circuit court entered an order denying tenant's motion to reconsider the summary judgment ruling and tenant's motion to set aside summary judgment and money judgment. Tenant noted a timely appeal.

DISCUSSION

Tenant argues that "taken together," its motion to set aside the summary judgment and money judgment and its motion to reconsider the ruling on summary judgment were motions seeking relief under Rule 2-535, requesting that the circuit court revise its final judgment. Rule 2-535 provides that "on motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the

fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(c) Form of Affidavit. An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

judgment[.]” Tenant’s motion to set aside the summary judgment and money judgment was filed within thirty (30) days of the summary judgment order. Tenant’s motion to reconsider, however, was filed on April 8, 2016, more than thirty (30) days after the court’s order on summary judgment was indexed on March 4, 2016.

Tenant argued in its motions before the circuit court, and in its brief on appeal, that “due to a clerical error” neither party received notice of the court’s summary judgment ruling, and that the summary judgment order was only discovered “by chance.”³ Despite the untimeliness of tenant’s motion to reconsider, the circuit court considered the merits of tenant’s motion, and therefore, we discern no prejudice to tenant as a result of the alleged clerical error.

We review a trial court’s decision to deny a request to revise its judgment for an abuse of discretion. *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013)(quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). An abuse of discretion occurs when “no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or principles.” *North v. North*, 102 Md. App. 1, 13-14 (1994)(internal citations and quotation marks omitted). An appellate court will

³ In the absence of a motion to correct an alleged error in the docket, the date that the judgment was entered on the docket controls. “Where ... the rules rely upon the form and date of the docket entry to establish the finality and date of finality of an order, the docket entry will control until corrected.” *Short v. Short*, 136 Md. App. 570, 578 (2001)(citation omitted).

find an abuse of discretion only “in the extraordinary, exceptional, or most egregious case.” *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

A. Motion to Set Aside Summary Judgment and Money Judgment

Tenant argued in its motion to set aside summary judgment and money judgment that the circuit court erred in granting summary judgment in favor of landlord without first holding a hearing on the motion. Landlord responded that because neither party had requested a hearing, the court was not required to hold one.

Rule 2-311(f) provides that, “[a] party desiring a hearing on a motion ... shall request the hearing in the motion or response[.]” In ruling on the motion, “the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.” *Id.*

In the present case, tenant did not include a request for a hearing in its “answer” to landlord’s motion for summary judgment or in its memorandum in support of its “answer.” By failing to request a hearing on the motion, tenant waived its right to a hearing. *See Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462 (2013) (“Waiver is conduct from which it may be inferred reasonably an express or implied ‘intentional relinquishment’ of a known right.”). Accordingly, the circuit court did not err in failing to hold a hearing on the motion when no such hearing was requested by the parties, and absent such a request, a hearing was not required by the Rules.

B. Motion to Reconsider Ruling on Summary Judgment

Tenant contends that the circuit court abused its discretion in denying its motion to reconsider the summary judgment order. In support of its motion to reconsider, tenant

attached two affidavits to its motion that were not included in its initial response to landlord’s summary judgment motion: affidavits of Ana Niji and Walter Kuklane. The affidavit of Ms. Niji stated that she was an “authorized officer” of tenant, and attested that all of the facts set forth in tenant’s memorandum in support of its response to landlord’s motion for summary judgment were “true and correct based on all of [her] personal information knowledge and belief.” The affidavit of Mr. Kuklane attested to the accuracy of the Baltimore County Uniform Code Enforcement Correction Notice (“Notice”) issued on August 28, 2014, and included a copy of the Notice as an attachment.

With respect to the affidavit of Ms. Niji, the court noted that her affidavit failed to explain how she would have personal knowledge of the facts set forth in tenant’s response to the motion for summary judgment. The court found that, although the Notice attached to Mr. Kuklane’s affidavit states that “there was a failure to obtain necessary inspections during the construction,” the affidavit failed to provide “facts to support how any of that meshes with the claims made by [tenant].” The circuit court concluded that tenant’s response to the motion for summary judgment, even with the affidavits of Ms. Niji and Mr. Kuklane, “fall short of the responsibility of [tenant] to produce specific fact evidence to withstand summary judgment.” In denying tenant’s motions, the court explained that “what has been produced is too little, too late, and not attended by specific facts to withstand summary judgment.”

“[I]n order to defeat a motion for summary judgment, the opposing party must show that there is a genuine dispute as to a material fact by proffering facts [that] would

be admissible in evidence.” *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993). *Accord Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016). As the Court said in *Beatty*, “a person opposing summary judgment cannot merely allude to the existence of a document and thereby hope to raise the specter of dispute over a material fact which would defeat a motion for summary judgment.” 330 Md. at 738.

Rule 2-501(c) requires that “an affidavit opposing ... a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated in the affidavit.” Specifically, “an affiant must attest to personal knowledge of the facts asserted and a basis for that knowledge.” *Great Atl. & Pac. Tea Co. v. Imbraguglio*, 346 Md. 573, 598 (1997). *Accord Cty. Comm'rs of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 103 (2000). Ms. Niji’s affidavit failed to explain how, in her role as an “authorized officer,” she obtained personal knowledge of the information contained in the tenant’s response to the summary judgment motion, specifically, the terms of the lease and the conditions of the Property that tenant claimed violated the terms of the lease. Moreover, as the circuit court noted, Mr. Kuklane’s affidavit failed to explain how the alleged code violation referenced in his affidavit related to tenant’s claim that it was unable to occupy the premises in violation of the lease.

We conclude that the circuit court did not abuse its discretion in denying tenant’s motion to revise the summary judgment order as the affidavits of Ms. Niji and Mr.

Kuklane failed to create a material factual dispute that would preclude summary judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**