

Circuit Court for Baltimore City
Case No.: 24C18002505

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3489

September Term, 2018

ATLANTIC PARKING, INC.

v.

FRANKLIN GARAGE EQUITIES, LLC

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 8, 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.

11 E. Franklin St., LLC, appellee, successor in interest to Franklin Garage Equities, LLC (Franklin Garage), filed suit in the Circuit Court for Baltimore City against Atlantic Parking Inc., appellant, for rent and late charges due under a commercial lease. The court entered summary judgment in favor of appellee in the amount of \$201,171.84 for rent due and \$20,117.18 for late charges.¹ On appeal, appellant argues that the court erred in entering summary judgment, and in the alternative, the court erred in the amount of the judgment. We affirm the court’s decision on liability but conclude that the court erred in its computation of the amount of rent and late charges. Thus, we vacate the judgment and remand for further proceedings consistent with this opinion.

BACKGROUND

On May 22, 2014, Franklin Garage, owner of a parking garage, leased (the Lease) the garage to appellant. The term of the Lease was from June 1, 2014 to May 31, 2019. Section 1.1.1 of the Lease gave the landlord the right to terminate the Lease “by giving six (6) months prior written notice.”

On February 5, 2016, Franklin Garage sold its interest in the subject property to appellee and assigned its rights and obligations under the Lease to appellee. On the same day, appellee gave appellant six months’ notice of termination. Appellant did not voluntarily vacate the premises. In September 2016, appellee filed a Tenant Holding Over action in the District Court of Maryland, in Baltimore City. On November 9, 2016, the

¹ It appears from the record that the circuit court also awarded attorney’s fees to appellee. That award is not part of the judgment, and it is not raised on appeal.

District Court held a hearing, concluded that the notice of termination was invalid, and ruled in favor of appellant.

Appellee appealed to the circuit court. Based on a review of the record, and after a hearing on April 10, 2017, by order dated May 8, 2017, the circuit court held that the notice of termination was valid, reversed the decision of the District Court, and remanded the case to the District Court for further proceedings. On remand, the case was dismissed because Franklin Garage was not the proper party. Appellee then filed the Tenant Holding Over action in the same court. On January 22, 2018, the District Court held a hearing and granted possession to appellee. On February 28, 2018, appellant was evicted from the rented premises.

On April 24, 2018, appellee filed the complaint in this case, claiming rent and other charges due under the Lease. The Lease, in section 1.3.2, in pertinent part, provided:

If the Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without having obtained the Landlord's express, written consideration thereto, then without altering or impairing any of the Landlord's rights under this Lease or applicable law, (a) the Tenant hereby agrees to pay to the Landlord immediately on demand by the Landlord, as Rent for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until the Tenant surrenders possession of the Premises to the Landlord, a sum equaling two hundred percent (200%) of the amount of the monthly Base Rent which would have been due and payable under subparagraph 1.3.1(b) had the Landlord given its express, written consent of the Tenant's occupation of the Premises after the expiration of the Term or earlier termination of this Lease. . . .

Both parties filed motions for summary judgment. On January 22, 2019, the circuit court entered judgment in favor of appellee.

DISCUSSION

Appellant argues (1) the materials filed in support of appellee’s motion for summary judgment were insufficient to support the entry of summary judgment; (2) the “double rent” provision in section 1.3.2 is an illegal penalty; and (3) the court erred in its computation of the amount of rent and late fees.

Appellant first argues that the record was insufficient to establish that a valid notice of termination was sent to appellant. Appellee’s motion was supported by (1) the May 8, 2017 opinion entered by the circuit court in the District Court appeal in which the circuit court ruled that the notice of termination was valid; (2) a letter dated August 11, 2016 from appellee’s counsel to appellant’s counsel reminding it of the February 5 notice of termination and asserting that appellee would enforce section 1.3.2 of the Lease; and (3) appellant’s answer to the complaint in which appellant admitted that (i) the District Court granted appellee possession of the premises, and (ii) on February 28, 2018, appellant was evicted from the premises.

We conclude that the record supports the entry of summary judgment. In doing so, we note that at the motions hearing in the circuit court, appellant argued waiver, accord and satisfaction, and that section 1.3.2 was a penalty provision. Appellant did not argue that the notice of termination was invalid. At the hearing on the motion, counsel were in agreement with respect to the history of the Tenant Holding Over action.

On May 8, 2017, the circuit court, in the Tenant Holding Over action on appeal from District Court, ruled that the notice of termination was valid and that appellant was a hold over tenant. Appellant did not seek further appellate review of the circuit court decision. Thereafter, the District Court ordered an eviction of appellant. Appellant did not seek appellate review of that decision. The judgment became final, and it determined the issue of notice of termination.

When an issue is determined by a final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties. *Cassidy v. Bd. of Educ. of Prince George's Cty.*, 316 Md. 50, 62 (1989)(quoting Restatement (Second) of Judgments § 27 (1980)). The issue of whether the notice of termination was valid was essential to determination of the Tenant Holding Over action. That action was between appellant and appellee, the latter as successor in interest to Franklin Garage.

Appellant next argues that section 1.3.2 is a penalty and not a valid liquidated damages provision. Appellant relies on *Board of Education v. Heister*, 392 Md. 140, 156 (2006), in which the Court of Appeals discussed the test for whether a liquidated damages provision is valid.

There are three essential elements of a valid and enforceable liquidated damages clause. “First, such a clause must provide ‘in clear and unambiguous terms’ for ‘a certain sum’[.]” *Mass. Indem. & Life Ins., supra*, 269 Md. at 368, 306 A.2d at 216 (Citation omitted). “Secondly, the liquidated damages must reasonably be compensation for the damages anticipated by the breach[.]” *Mass. Indem. & Life Ins., supra*, 269 Md. at 369, 306 A.2d at 216 (Citations omitted). “Thirdly, liquidated damage clauses are by their nature mandatory binding

agreements before the fact which may not be altered to correspond to actual damages determined after the fact[.]” *Id.* (Citations omitted). While the language used by the parties is instructive in determining the validity of a liquidated damages clause, “[t]he decisive element is the intention of the parties—whether they intended that the sum be a penalty or an agreed-upon amount as damages in case of a breach and this is to be gleaned from the subject matter, the language of the contract and the circumstances surrounding its execution.” *Traylor*, 273 Md. at 661, 332 A.2d at 660 (Citations omitted).

Applying the above, appellant argues that the amount of the rent and late charges are not a fair estimate of potential damages at the time the parties entered into the Lease and the amount of damages was capable of estimation. Appellee argues that the double rent provision determined the amount of rent under holding over circumstances, and it is not a liquidated damages provision.

Rent “is the compensation paid by a tenant for the use of land.” *University Plaza Shopping Center, Inc. v. Garcia*, 279 Md. 61, 65 (1977). In a commercial lease, “charges which may be definitely ascertained, paid by the tenant, and going to his use, possession and enjoyment of rental commercial premises, are rent if such was the intention of the parties.” *Id.* at 67. The provision in section 1.3.2 simply changes the amount of the monthly rent for continued occupancy of the premises. In addition, the late charges are rent. *See* section 2.1 of the Lease (“rent” included late charges). In a commercial lease, late charges may be rent if the parties so intend. *See Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 419 (2016) (distinguishing *University Plaza Shopping Ctr., Inc.*, in which a contrary conclusion was reached, because it involved a residential lease that was subject to statutory requirements).

Even if the charges in question are regarded as liquidated damages, the holdover rent and late charge provisions are not penalties. In a commercial context, a tenant who does not vacate the premises at the of the term may foreseeably cause the landlord to incur losses in addition to the amount of the rental. At the time of entering into a lease, the opportunities for other rentals may not be foreseeable. In addition, a 10% late charge is not an unreasonable approximation of administrative costs.

Finally, appellant argues that the court erred in its computation of holdover rent and other charges. Appellant paid the base rent for the period of time in question. Appellant observes that the court granted judgment for two times the base rent plus the amount of the base rent, which had been paid. The base rent was \$5,500 per month with 3% increases each lease year. During the holdover time period, the monthly base rent ranged from \$5,834.95 to \$6,009.99. We agree with appellant that the Lease unambiguously required the payment of 200% of the base rent, *i.e.*, double the base rent. Because the court included in its computation an amount equal to double the base rent plus the amount of the base rent, the court erred in its computation of the amount of rent. This error also affected the amount of late fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE SPLIT
EQUALLY BETWEEN APPELLANT AND
APPELLEE.**