Circuit Court for Baltimore County
Case No.: C-03-CV-20-001842

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 767

September Term, 2023

BLUE OCEAN REALTY, LLC

v.

GC6609, LLC and UB6609, LLC, T/A GLW 6609, JV

Nazarian,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: April 1, 2024

*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).

Appellees, GC6609, LLC and UB6609, LLC, a joint venture trading as GLW 6609 ("GLW"), filed a complaint for breach of lease in the Circuit Court for Baltimore County against appellant, Blue Ocean Realty, LLC ("Blue Ocean"), appellees' former office space tenant. Blue Ocean filed a counterclaim for breach of contract, asserting that GLW had released it from liability and repudiated its obligations under the lease by failing to resolve air conditioning issues in the leased space. After a three-day bench trial, the circuit court found Blue Ocean in breach of the lease and awarded $267,323.66 to GLW.

Blue Ocean appeals timely, presenting the following two questions for our consideration:

> I. Did the [c]ircuit [c]ourt err when it found that, as a matter of law, [a] broadly written release executed by [GLW] did not bar it from recovery against [Blue Ocean]?
>
> II. Did the [c]ircuit [c]ourt err when it failed to apply the doctrine of repudiation to [GLW]'s unequivocal renunciation of its contractual obligations[,] regardless of whether [GLW] made repairs under the [l]ease?

For the reasons we shall explain, we answer each question in the negative and affirm the judgment of the circuit court.

FACTUAL BACKGROUND

Blue Ocean is a real estate investment company owned by Jonathan Ehrenfeld, who holds also an ownership interest in two additional entities relevant to the case before us: 6609 Reisterstown, LLC and Atlantic Mechanical, LLC ("Atlantic"). GLW is a real estate development company owned, in relevant part, by Wayne Goddard. This action arises from

Blue Ocean's lease of commercial property located at 6615 Reisterstown Road in Baltimore County ("the Property") from GLW.

The Property: Prior to GLW's Purchase

Prior to GLW's acquisition of the Property in May of 2019, the Property, as well as additional office space located at 6609 Reisterstown Road, was owned by 6609 Reisterstown, LLC.[1] At that time, Blue Ocean occupied the entire third floor of the Property – "Suite 300" – as its corporate headquarters. Blue Ocean made certain upgrades and renovations to Suite 300, including adding supplemental air cooling units.

In May of 2018, it was determined that Blue Ocean's control system in the overall, multi-story building's heating, ventilation, and air conditioning ("HVAC") system was "no longer operating or communicating with any of the field devices."[2] Accordingly, in December of 2018, Blue Ocean replaced its control system with a web-based control system operated by a personal computer ("PC"), accessible in an open area in Suite 300.

[1] The purchase and sale agreement for the Property provided for the purchase of both 6609 and 6615 Reisterstown Road. Only 6615 Reisterstown Road is relevant to the facts before us.

[2] At trial, Robert Kleinman, who replaced later the inoperable control system with a web-based one, explained the control system's relationship to the HVAC system as a whole:

> [T]hink of an orchestra. You have a front end controller which acts very much like the conductor, and then have you [sic] many, many disparate pieces, for example, in this building here, that are much like the orchestra itself. They all know what sort of to do but don't know what to do in concert with all the other pieces. So that is what the control system consisted of. And that was not communicating. So the conductor had basically left the podium and none of the pieces knew what to do.

GLW Enters into: (1) Agreement to Purchase the Property, (2) Lease with Blue Ocean, and (3) Lease with Atlantic

GLW and 6609 Reisterstown, LLC entered into a purchase and sale agreement ("PSA") in January 2019, whereby 6609 Reisterstown, LLC, agreed to sell the Property to GLW. In connection therewith, 6609 Reisterstown, LLC, agreed that affiliates Blue Ocean and Atlantic would lease office space in the Property. Specifically, the PSA provided that Blue Ocean would continue to lease Suite 300 from GLW for forty-nine months, and Atlantic would lease approximately 954 square feet in the basement of the Property – "Suite LL3" – for thirty-six months.

On 30 April 2019 and 1 May 2019, GLW executed commercial lease agreements with Blue Ocean and Atlantic, respectively. Relevant to the case before us, the lease between GLW and Atlantic was executed, on behalf of Atlantic: "By: Blue Ocean Realty, LLC, its Manager[,] By: Jonathan Ehrenfeld, Manager[.]" Further, the lease between GLW and Blue Ocean provided that GLW was responsible for the "heating, ventilation, cooling and electrical systems" on the Property, and that Blue Ocean was responsible for "any HVAC systems that exclusively serve" Suite 300. Finally, the lease between Blue Ocean and GLW provided Blue Ocean's option to terminate following GLW's uncured default:

> [S]hould Landlord fail to perform any material term or material covenant under this Lease or any other existing agreement between Landlord and Tenant, (such failure being herein sometimes referred to as a "Landlord Default") and if any such Landlord Default shall not be cured and shall accordingly be continuing thirty (30) days following written notice by Tenant to Landlord of such Landlord Default (unless such default is not reasonably capable of being cured within such thirty (30) day period and Landlord is diligently prosecuting such cure to completion), then Tenant shall have the option (at Tenant's sole discretion) of (a) terminating this Lease[.]

GLW Acquires the Property

On 1 May 2019, GLW closed on the sale of the Property. Less than one week later, Blue Ocean notified GLW that it was experiencing issues with heating and cooling in its offices; specifically, that it was "very cold in the morning and then warms up in the afternoon." On 17 May 2019, Robert Kleinman, who installed the web-based HVAC controller for Blue Ocean's space, visited the Property, at the request of GLW, and determined that the PC that managed the new control system was "no longer there[.]" Kleinman suggested, and Goddard approved, a proposal to replace the missing PC to regain access to the control system. That work began on June 10th or 11th.

In the meantime, Blue Ocean continued to experience "[u]ncomfortably warm" temperatures in Suite 300. On 11 June 2019, Ehrenfeld sent a notice of landlord default to Goddard, stating that:

> As you are aware, we have been experiencing major issues with the air conditioning in the premises. On multiple occasions, including today, the air conditioning was inoperable, failed to properly cool the premises, or cooled the premises too much, causing very uncomfortable conditions and an adverse impact on our operations. This is documented in multiple emails and telephone calls to your staff. Please be advised that this is a very serious matter and that we are prepared to take all steps necessary to protect our interests and the interests of our employees.
>
> Pursuant to Section 12 of the Lease it is Landlord's duty to maintain the cooling systems and failure to do so is a Landlord Default. If the air conditioning is not properly repaired within 30 days of this letter, we may exercise our rights and remedies under the Lease which may include the declaring the Lease 'terminated.'

The following day, Kleinman returned to the Property. He discovered, for reasons unclear from the record, the missing PC controller above a ceiling tile in Suite 300. After

regaining access to the control system, Kleinman determined that there was also a broken actuator in the boiler room.[3] GLW ordered promptly a replacement actuator. On 18 June 2019, the actuator was replaced, and the HVAC system began functioning again.

In the meantime, tensions continued to rise between GLW and Blue Ocean. Pertinent to the case before us are the following exchanges: (a) on 12 June 2019, Goddard stated to Ehrenfeld that, "The Landlord will repair th[e] actuator at its expense. However, the controls for the HVAC will remain with Blue Ocean along with all future maintenance, repair and equipment updating obligations"; and (b) on 17 June 2019, Ehrenfeld asked Goddard if he was aware that the office was "82 degrees[,]" to which Goddard responded:

> No I'm not aware of the temperature in the suite. What I am aware of is that Blue Ocean is responsible for the HVAC repair and upgrade, except for the actuator. What I am aware of is that the Landlord has acting [sic] with diligence to address the myriad of HVAC issues which arose, almost immediately after we purchased the building 45 days ago.

Two days later, in response to Ehrenfeld's claim that the system remained inoperable, Goddard asserted that "if the HVAC is not working in your unit, per the lease, it['s] your responsibility to do whatever needs to be done to correct it." On 8 July 2019, in response to another heat-related complaint from Blue Ocean, Goddard responded, in part, that "[t]here is a material dispute as to whose responsibility it is to repair, maintain and update the HVAC."

[3] At trial, Kleinman explained that the actuator, a "device that . . . opens and closes" a three-way control valve in the HVAC system, "was pretty much in a closed position so there was no chilled water really making it to the air handling unit."

A day later, representatives from GLW and Blue Ocean met in Suite 300 to "clear the air[.]" It is undisputed that the air conditioning was working properly at that time. Nonetheless, on 17 July 2019, Blue Ocean tendered a "Notice of Lease Termination" to GLW, providing that:

> On June 11, 2019, pursuant to Sections 12 and 22 of the Lease, Blue Ocean sent [GLW] a thirty (30) day notice to cure the defective air conditioning in the Leased Premises. To date, the Leased Premises continues to be unbearable and [GLW] has failed to cure its default.
>
> As a result of [GLW]'s material breach and pursuant to Section 22 of the Lease, [Blue Ocean] hereby elects to terminate the Lease. As [Blue Ocean] currently has no place to move its business, it has projected a final termination date of August 9, 2019.

On 22 July 2019, the Property's HVAC system suffered a "catastrophic failure[.]" That day, GLW notified tenants of its plans to replace the Property's HVAC system with a new, Variable Refrigerate Flow HVAC system, which was in the process of being designed for the Property. During the design and installation time for the new system, GLW provided temporary air conditioning to the Property, first by freestanding air conditioning units, and then, by rental of a seventy-ton portable unit delivered by tractor trailer, which arrived on-site and became operational 25 July 2019.

As foretold in its July 17 notice, Blue Ocean vacated the premises on August 9. Atlantic continued to occupy its basement space, Suite LL3, until 29 February 2020, when GLW and Atlantic agreed to an early termination of that lease in exchange for Atlantic's payment of six months of rent ("Release"). The recitals of the Release provided that GLW and Atlantic wished to "terminate the [l]ease and to settle all potential claims which could have been asserted against each other[,]" regarding the space "consisting of approximately

954 sq. ft. of gross leasable space for Suite 6615 LL3[.]" In addition, the Release contained the following release language:

> **Complete Release**. Except for the obligations created under this Agreement and subject to the terms set forth herein, Tenant and Landlord each hereby agree to absolutely and irrevocably release and forever discharge each other, and each of their respective heirs, assigns, agents, servants, employees, directors, officers, managers, members, attorneys, insurers, and all other persons, firms, associations, partnerships, corporations and entities, of and from any and every right, claim, demand, debt, damage and/or cause of action whatsoever, that they now have, or may in the future have, foreseen or unforeseen, of whatever kind or nature, on account of, or in any way arising out of and by reason of anything whatsoever from the beginning of the world until the end of time. The foregoing shall not constitute a waiver of any breach of or default under this Agreement.

PROCEDURAL BACKGROUND

On 22 April 2020, GLW brought this action against Blue Ocean to recover lost rent and costs associated with securing a replacement tenant for Suite 300. Blue Ocean responded with a motion to dismiss, or, in the alternative, motion for summary judgment, asserting that the Release between GLW and Atlantic barred GLW's claim against Blue Ocean as a matter of law. GLW opposed that motion. On 22 September 2020, after a hearing, the court denied the motion.

Blue Ocean filed then a counterclaim for breach of lease, asserting that GLW repudiated its obligations under the lease and, thus, Blue Ocean had been evicted constructively from the Property. Blue Ocean filed also a second motion for summary judgment, asserting again that GLW's claims were barred by the Release. GLW opposed the motion, noting that Blue Ocean's contentions had been considered and denied

previously by the court. After a hearing, the court denied Blue Ocean's second motion for summary judgment.[4]

In May of 2023, the court held a three-day bench trial. Blue Ocean asserted two defenses: first, that GLW's claims were barred by the Release with Atlantic, because it released Atlantic and its "managers[,]" to wit Blue Ocean. In support, Blue Ocean pointed to the lease between Atlantic and GLW, which Blue Ocean signed on behalf of Atlantic as "its Manager[,]" and to the following testimony from Goddard at trial:

> [COUNSEL FOR BLUE OCEAN:] You were aware, though, at the time you signed the leases that Blue Ocean was the manager of Atlantic Mechanical?
>
> [MR. GODDARD:] I did see it in the lease that they signed as the manager.
>
> [COUNSEL FOR BLUE OCEAN:] So you appreciated at the time that Blue Ocean was the manager of Atlantic Mechanical?
>
> [MR. GODDARD]: That is what they represented to me, correct, when they signed the lease – back in 2019.

Second, Blue Ocean asserted that GLW breached the lease by repudiating expressly its obligation to maintain the HVAC system. In this regard, Blue Ocean pointed to Goddard's statements that Blue Ocean would be responsible for the "repair and upgrade" of the HVAC system, that "if the HVAC is not working in [Blue Ocean's] unit, per the lease, it['s Blue Ocean's] responsibility to do whatever needs to be done to correct it[,]" and that "[t]here is a material dispute as to whose responsibility it is to repair, maintain and update the HVAC." Blue Ocean contended that, because GLW was required to maintain

[4] Neither of the transcripts from the summary judgment hearings are in the record before us.

the heating and cooling system on the Property, these statements were a definite repudiation of GLW's obligations under the lease. Blue Ocean maintained that its obligation to maintain the HVAC that served exclusively its unit under the lease applied only to its supplemental cooling units.

GLW responded that the Release resolved only its dispute regarding the space occupied by Atlantic, and that Blue Ocean's claims regarding the Release had been considered and denied by the court twice previously. Further, GLW maintained that Goddard's statements were consistent with the terms of the lease, which provided that Blue Ocean was responsible for HVAC components servicing Blue Ocean's suite, including the control system. Finally, GLW maintained that the only alleged default imputable to it had been cured on 18 June 2019, when GLW replaced the broken actuator.

The court found Blue Ocean in breach of its lease with GLW. As an initial matter, the court disagreed that GLW released its claims against Blue Ocean in the Release with Atlantic. Specifically, the court, alluding to Blue Ocean's previously denied motions for summary judgment, asserted that:

> I did quickly read through both the motion and the response and to me, the hook here is that, as set out in the response, or the opposition, I should say, is that Diane Barstow represented Atlantic, not Blue Ocean. She made that very clear when she was negotiating that release with -- and I'm not sure if it was directly with Mr. Goddard -- I believe it was -- that there was an e-mail to Mr. Goddard on February 15th of 2020 saying, you know, to be clear, I represent Atlantic, not Blue Ocean. And as we know through this case, Mr. Goddard was dealing with Mr. Engel on behalf of Blue Ocean from -- certainly by the end of June of 2019. So yes, Mr. Goddard is an attorney, but I think it was made crystal clear to him that this was just Atlantic's release and if I'm wrong, then I'm sure an appellate court can let me know that. But I believe that it was a release for Atlantic, between Mr. Goddard's entity and Atlantic, even though it was signed by Blue Ocean. And actually Blue Ocean

> is an entity as well. It was signed by Mr. Ehrenfeld on behalf of Blue Ocean. And it had that, you know, releasing everyone for the end of time language. I don't think I can attribute that to Blue Ocean's breach in this case.

Further, the court found that Blue Ocean's 11 June 2019 notice of default was cured after the actuator was replaced by GLW on 18 June 2019, because, "[b]y all accounts the AC was functioning[.]" The court explained that:

> I don't know what else [Goddard] could have done in 50 days [since acquiring the Property] other than have Mr. Kleinman on site, [and an additional HVAC contractor] on-site eight times. All of this time [Goddard's partner] is working on designing a new system. So not like they sat on their hands and said we are going to keep our fingers crossed and we can hold it together with spit and bubble gum.

Additional facts will be mentioned as necessary to our analysis.

STANDARD OF REVIEW

We review matters tried without a jury "on both the law and the evidence." Md. Rule 8-131(c). Further, we "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." *Id*. "Factual findings 'cannot be held to be clearly erroneous' if 'there is any competent evidence to support' them." *Middleton v. State*, 238 Md. App. 295, 304 (2018) (quoting *Goff v. State*, 387 Md. 327, 338 (2005)). "We review a trial court's legal conclusions to determine whether they are 'legally correct.'" *Id.* at 305 (quoting *Goff*, 387 Md. at 338).

A trial court's interpretation of a contract "is a question of law subject to *de novo* review." *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 392 (2019) (quotation marks and citation omitted). Moreover, we review without deference whether a party's

"conduct constituted a breach of the terms of that contract." *Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 50 (2007).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT THE RELEASE BETWEEN GLW AND ATLANTIC DID NOT BAR RECOVERY FROM BLUE OCEAN.

Blue Ocean asserts that the circuit court "disregarded the unambiguous language of the Release" and "relied on impermissible parol evidence[,]" by referring to the parties' summary judgment papers, to determine that GLW had not released Blue Ocean. In support, Blue Ocean maintains that the Release "unambiguously released Blue Ocean from any and all claims by [the] Landlord[,]" pointing to the facts that "the Atlantic [l]ease was executed by Blue Ocean, as manager for Atlantic[,]" and that Goddard testified that Blue Ocean was the manager of Atlantic when Atlantic and GLW entered the lease agreement. GLW responds that the Release "does *not* unambiguously include Blue Ocean as a releasee as to all claims including claims related to Blue Ocean's tenancy in Suite 300 or breach of the Blue Ocean Lease." We agree with GLW and the circuit court.

"A release is a contract subject to 'ordinary contract principles.'" *Shutter v. CSX Transp., Inc.*, 226 Md. App. 623, 635 (2016) (quoting *Chicago Title Ins. Co. v. Lumbermen's Mut. Cas. Co.*, 120 Md. App. 538, 548 (1998)). Further, "Maryland law generally requires giving legal effect to the clear terms of a contract and bars the admission of prior or contemporaneous agreements or negotiations to vary or contradict a written contractual term." *Calomiris v. Woods*, 353 Md. 425, 432 (1999). Thus, when the language

of a contract is unambiguous, "our search to determine the meaning of a contract is focused on the four corners of the agreement." *Cochran v. Norkunas*, 398 Md. 1, 17 (2007).

Consistent with those principles, "the court will give effect to [the contract language's] plain, ordinary, and usual meaning, taking into account the context in which it is used." *Sy-Lene of Washington, Inc. v. Starwood Urb. Retail II, LLC*, 376 Md. 157, 167 (2003); *see also Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 506-07 (2021) ("As with the interpretation of a statute, the court does not construe particular language in isolation, but considers that language in relation to the entire contract."). "Only '[w]here a court determines contractual language to be ambiguous,'" is the court "'entitled to consider extrinsic or parol evidence to ascertain the parties' intentions.'" *W. F. Gebhardt & Co., Inc. v. Am. Eur. Ins. Co.*, 250 Md. App. 652, 666 (2021) (quoting *Credible Behav. Health*, 466 Md. at 394).

Here, reviewing the plain language of the Release, we are unpersuaded that GLW released Blue Ocean from its claims against Blue Ocean under their lease. We agree with the parties that the Release is unambiguous; it provides that GLW and Atlantic released broadly each other and their "heirs, assigns, agents, servants, employees, directors, officers, managers"; however, there is simply no indication, from the plain and unambiguous language of the Release, that the parties undertook to release Blue Ocean vis a vis its lease terms and obligations with GLW.

Indeed, Blue Ocean is not mentioned anywhere in the Release. Viewing the language in the context in which it appears, we note that the Release was executed to "terminate the [l]ease" between the parties thereto – Atlantic and GLW – and to "settle all

potential claims which could have been asserted against each other[.]" The plain language identified specifically the lease "by and between Atlantic Mechanical and GLW 6609," noting that the subject thereof was the "954 sq. ft. of gross leasable space for Suite 6615 LL3[.]" It made no mention of any other office space on the Property, including Suite 300, or of any other entity, including Blue Ocean.

Blue Ocean perceives that "there is nothing ambiguous or unusual about the Release" and thus, that GLW's claims are barred by some of the Release's sweeping language. Somewhat contrary to its "plain and unambiguous" language contentions, Blue Ocean relies upon evidence and testimony outside of the four corners of the Release, including Goddard's testimony at trial, as well as the signature block in the lease between GLW and Atlantic – executed nearly nine months prior to the existence of the Release – where Blue Ocean is noted as Atlantic's manager. As Blue Ocean acknowledges, however, where an agreement is unambiguous, we do not look outside of its four corners, even to prior agreements. *Calomiris*, 353 Md. at 432 ("Maryland law generally requires giving legal effect to the clear terms of a contract and bars the admission of prior or contemporaneous agreements or negotiations to vary or contradict a written contractual term.").[5] Here, as both parties agree, the Release is unambiguous; thus, looking outside of

[5] Nor is it clear how Blue Ocean's assertion that "parol evidence cannot be used to *add or alter* the terms of a completely integrated contract, but it may be used to *define* ambiguous terms[,]" applies to the facts before us. In support, Blue Ocean cites to *Tricat Indus., Inc. v. Harper*, 131 Md. App. 89, 107 (2000). In that case, we considered whether parol evidence was appropriate for the purpose of determining whether an agreement is invalid, not whether parol evidence is appropriate to interpret an unambiguous agreement, such as the Release in the matter before us. Indeed, in that case, we reiterated that parol (continued…)

its four corners is neither necessary nor appropriate. *W. F. Gebhardt*, 250 Md. App. at 668 (noting that extrinsic evidence "is appropriately considered only for the purpose of resolving an ambiguity in the contract").

Assuming, *arguendo*, that were we to have found the language of the Release ambiguous, our conclusion would remain the same. The record does not reflect any evidence or testimony supporting the contention that either party to the Release understood Blue Ocean to be Atlantic's manager when executing the Release. Indeed, as Goddard testified at trial, he understood only that Blue Ocean was the manager of Atlantic "when they signed the lease – back in 2019[,]" not when the Release was signed, in February of 2020. Further, the indication in the lease that Blue Ocean was, at that time, a manager for Atlantic is missing notably from the signature block in the Release at issue.

Accordingly, because the plain and unambiguous language of the Release does not release Blue Ocean, the court determined correctly that the Release did not apply to GLW's claims against Blue Ocean in the matter before us. *See Elliott v. State*, 417 Md. 413, 435 (2010) (holding that '"a trial court's decision may be correct although for a different reason than relied on by that court'" (quoting *Robeson v. State*, 285 Md. 498, 502 (1979))). Further, the court's reliance upon the parties' summary judgment briefing to reach this conclusion was harmless, at worse. *See CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 390 (2012) (noting that "[e]ven in cases where error is found, '[i]t has long been the policy in

evidence is admissible "'when the written words are sufficiently ambiguous[.]'" *Id.* (quoting *Calomiris*, 353 Md. at 433). Here, both parties agree that the agreement is not ambiguous.

this State that [the court] will not reverse a lower court judgment if the error is harmless'" (quoting *Flores v. Bell*, 398 Md. 27, 33 (2007))), *aff'd*, 430 Md. 431 (2013).

II. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT GLW HAD NOT REPUDIATED ITS OBLIGATIONS UNDER THE LEASE.

Blue Ocean asserts that GLW "unequivocally repudiated the [l]ease when it told Blue Ocean that it was refusing to provide adequate air conditioning to [Suite 300] in violation of the [l]ease." Specifically, Blue Ocean points to Goddard's statements that "the controls for the HVAC will remain with Blue Ocean along with all future maintenance, repair and equipment updating obligations[,]" that Blue Ocean was "responsible for the HVAC repair and upgrade, except for the actuator[,]" that "if the HVAC is not working in your unit, per the lease, it's your responsibility to do whatever needs to be done to correct it[,]" and that "[t]here is a material dispute as to whose responsibility it is to repair, maintain and update the HVAC." GLW responds that the circuit court determined correctly that GLW did not renounce unequivocally its obligations under the lease, and instead, that it "acted diligently to locate and repair the broken actuator and, thus, timely cured the conditions complained of in the notice of breach." We agree with GLW.

When a party to a contract "definitely and specifically refuses to do something which he is obligated to do, so that it amounts to a refusal to go on with the contract, it may be treated as a breach by anticipation[.]" *Weiss v. Sheet Metal Fabricators, Inc.*, 206 Md. 195, 203-04 (1955) (quotation marks and citation omitted). Such "refusal to perform[, however,] must be positive and unconditional[.]" *Id.* at 204. In other words, anticipatory breach, or anticipatory repudiation, requires "a definite, specific, positive, and

unconditional repudiation of the contract by one of the parties to the contract." *C. W. Blomquist & Co., Inc. v. Cap. Area Realty Invs. Corp.*, 270 Md. 486, 494 (1973). Indeed, "[d]oubtful and indefinite statements that the performance may or may not take place and statements that, under certain circumstances that in fact do not yet exist, the performance will not take place, will not be held to create an immediate right of action." *Harrell v. Sea Colony, Inc.*, 35 Md. App. 300, 306 (1977) (quotation marks and citation omitted).

Here, the facts indicate that Blue Ocean tendered a notice of default to GLW on 11 June 2019. Under the terms of the lease, GLW had thirty days from that notice to cure any alleged default. Within seven days, GLW replaced the broken actuator causing the HVAC issues in Suite 300 at that time. It is undisputed that when the parties met in Suite 300 on 9 July 2019, the HVAC was working properly.

Although Blue Ocean asserted that the HVAC continued to malfunction after the actuator repair, the facts indicate that the HVAC had not functioned properly prior to the execution of the lease between the parties. As the court noted:

> This wasn't someone coming in off the street saying oh, this space looks beautiful, but no one tells me the lights don't turn on. This is someone who had been in the space, already had supplemental coolers in the space; knew there was a temporarily [sic] system that required those supplemental cooling systems before the sale.

Indeed, at trial, both parties referred to the HVAC system as a "Frankenstein machine[,]" and Ehrenfeld testified specifically to knowing prior to selling the property to GLW that it was "old." In any event, the facts indicate that GLW was working on a permanent solution for the HVAC, which the court noted required designing and installing a new system:

> [T]his isn't like a hot water heater broke and I can go to Home Depot and get one and have my guy put it in the next day.
>
> To have a permanent fix required the design of a new system and the installation of it unique to this building. And I think that all parties in this case appreciated that.

Nonetheless, Blue Ocean invites us to hold that GLW repudiated the lease "regardless of its purported attempts to actually repair the HVAC system." We decline to do so. Blue Ocean provides no support for overlooking a party's conduct to conclude that a contract has been repudiated, and we are not aware of any. *See Rad Concepts, Inc. v. Wilks Precision Instrument Co. Inc.*, 167 Md. App. 132, 156 (2006) (holding that appellant "repudiated the contract not only because of [appellant]'s statement to [appellee] set forth above, but because of [appellant]'s failure to provide actual payment or assurances"); *Stefanowicz Corp. v. Harris*, 36 Md. App. 136, 146 (1977) (noting that repudiation of a contract may be reflected by "words or acts").

Nor are we persuaded that the statements made by Goddard indicate "a definite, specific, positive, and unconditional repudiation of the contract[.]" *C. W. Blomquist*, 270 Md. at 494. Three of the four statements recited, specifically, that "the controls for the HVAC will remain with Blue Ocean along with all future maintenance, repair and equipment updating obligations[,]" that "if the HVAC is not working in your unit, per the lease, it['s] your responsibility to do whatever needs to be done to correct it[,]" and that "[t]here is a material dispute as to whose responsibility it is to repair, maintain and update the HVAC[,]" are not inconsistent facially with the terms of the lease, which provides that Blue Ocean is responsible for "any HVAC systems that exclusively serve" Suite 300.

Indeed, it is undisputed that the issues with the HVAC system during some part of the period relevant to the facts before us involved, in part, a missing control system that exclusively served Suite 300.

Further, as to the fourth statement by Goddard, that Blue Ocean was "responsible for the HVAC repair and upgrade," we note that the record reflects that on that same day, in the same email thread, he asserted also that the actuator would be replaced "first thing tomorrow morning" – and indeed, it was.[6] Thus, we cannot say that, based upon the record before us, Goddard's statements indicated a definite and specific refusal "to go on with the contract[.]" *Weiss*, 206 Md. at 203-04 (quotation marks and citation omitted).

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

[6] Nor are we persuaded that GLW breached the lease by, according to Blue Ocean, improperly "demand[ing] reimbursement from Blue Ocean for the [actuator] repair." As Blue Ocean acknowledges, despite the initial requests for reimbursement, GLW paid for the repair; as the court noted at trial, "[GLW] restored [the air conditioning] and said let['s] sort it out later; I don't want your people to be miserable."