UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1430

September Term, 2015

CPG MS HOLDINGS I LLC D.B.A. AINET

v.

BACM 2005-3 RITCHIE HIGHWAY LLC

Arthur,
Reed,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: November 9, 2016

This case involves a dispute between the owners of the adjoining parcels of real estate on which the Marley Station Mall was built. Appellant CPG MS Holdings I LLC d/b/a AiNET ("AiNET") is the successor-in-interest to one of the original anchor tenants; appellee BACM 2005-3 Ritchie Highway LLC ("BACM") is the successor-in-interest to the mall's developer.

BACM filed suit against AiNET to recover unpaid common-area maintenance (or "CAM") charges. AiNET counterclaimed, alleging that BACM had thwarted a lucrative business opportunity.

The Circuit Court for Anne Arundel County granted a motion for judgment against AiNET on its counterclaim, and the jury found in BACM's favor on its claim for unpaid CAM charges. AiNET appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Marley Station Mall, the COREA, and the Supplemental Agreement

BACM's predecessor, a partnership by the name of TKL-East, began developing Marley Station Mall in 1985. The development, construction, and operation of the mall are governed by a Construction, Operation and Reciprocal Easement Agreement (the "COREA"). The original parties to the COREA were TKL-East and two lessees (presumably the anchor tenants): the May Department Stores Co.; and Marley Property Corp., which operated a Macy's department store.[1]

[1] At some point TKL-East's interest came into the hands of TKL-East, LLC. It is unclear whether TKL-East converted itself into TKL-East, LLC, or whether TKL-East transferred the property to TKL-East, LLC, a pre-existing business entity.

Article 10.1 of the COREA requires the developer to "keep and maintain the Common Area . . . in first-class condition, order and repair in accordance with the standards set forth in Exhibit 'E.'" Exhibit E sets forth a number of obligations with respect to parking areas, curbs, and sidewalks; landscaping; traffic control; and security patrols. With respect to parking areas, for example, Exhibit E obligates the developer to "[i]nspect, maintain, repair and replace the surface . . . , keeping them level, smooth and evenly covered with the type of surface material originally installed thereon."

Marley Property and TKL-East, the developer, entered into a lease and a supplemental agreement pertaining to the operation and construction of the Macy's store on the 14-acre parcel that Marley Property had leased. In consideration of the developer's undertaking to maintain the common areas of the mall, section 1 of the supplemental agreement required Marley Property to pay the developer common-area maintenance ("CAM") charges in monthly installments. Section 1 went on to provide:

> In the event Developer fails to maintain the [Macy's] Common Area in accordance with the foregoing, [Marley Property] shall have the right, upon thirty (30) days' written notice thereof to Developer, to withdraw [the Macy's Parcel] from maintenance by [the Developer] provided any such deficiency so claimed by [Marley Property] is not cured by Developer within such (30) day period or, in the event such deficiency so claimed cannot be cured within such thirty (30) day period, Developer has not commenced to cure any such claimed deficiency and is not diligently pursuing same to completion. Upon the happening of such termination, [Marley Property's] obligation to contribute to Developer's cost of maintaining the Common Areas shall be reduced to fifty percent (50%). [Marley Property] shall have no other right to withdraw the Common Area on its parcel from maintenance from Developer.

In effect, section 1 gives the tenant a right to "withdraw" its property from maintenance by the developer if the developer fails to take prompt remedial steps after being notified of a maintenance defect. If the tenant withdraws its property, section 1 reduces the CAM charges by 50 percent.

Section 10 of the supplemental agreement required a transferee of the Macy's parcel to assume Marley Property's obligations. Section 15 of the supplemental agreement stated that that agreement would be construed as though it were part of the COREA.

B. AiNET

On January 20, 2012, AiNET acquired the lease on the Macy's parcel. AiNET's principal, Deepak Jain, testified that AiNET intended to use the store to operate a "data center" that would provide fiber-optic and cloud telecommunication services that are designed to continue functioning despite power outages, weather emergencies, and civil strife. Mr. Jain also testified that at the time of trial AiNET had three data centers in Maryland.

As part of the conveyance of the Macy's parcel, AiNET assumed the transferor's rights and obligations under the COREA and the supplemental agreement. In addition, AiNET obtained an option to acquire a fee simple interest in the building that had housed the Macy's store, an adjacent parking lot, and other common areas. After exercising that option, AiNET acquired what had been the Macy's parcel, in fee simple, on June 29, 2013.

AiNET accepts that, as Marley Property's successor-in-interest, it is bound by the COREA and the supplemental agreement.

C. BACM

On or about July 2, 2012, after AiNET had acquired the lease on the Macy's parcel, but before AiNET had taken title in fee simple, TKL-East defaulted on a loan that was secured by its interest in the mall. The Circuit Court for Anne Arundel County appointed Woodmont Company as the receiver.

Through foreclosure proceedings, BACM obtained legal title to the mall on January 10, 2014. Following the acquisition, BACM appointed Woodmont as manager of the mall. BACM agrees that "Woodmont was BACM's predecessor[-]in[-]interest or its agent" and that Woodmont's acts are therefore "attributable to BACM."

D. AiNET's Attempt to Withdraw from the COREA, and the Letter-Writing Campaign

On July 1, 2013, at a time when TKL-East was in receivership but BACM had not yet acquired legal title, AiNET wrote directly to TKL-East to complain of the failure to maintain the Macy's parcel "in a first-class condition" as required by section 10.1 of the COREA. The alleged failures consisted of fencing-in a portion of a parking lot adjacent to the Macy's parcel; placing a storage tank in the parking lot adjacent to the Macy's parcel; failing to perform obligations relating to a telephone conduit;[2] failing to maintain

[2] The letter asserts that "Developer has failed to perform obligations relating to the Macy Parcel telephone conduit required by Section 2.4 of the [CO]REA." AiNET's brief interprets that language to mean that TKL-East had "fail[ed] to permit AiNET to (cont.)

the common areas in the Macy's parcel, including failing to remove debris and to maintain the landscaping; and permitting a fair to be held on the Macy's parcel without AiNET's knowledge or consent and failing to repair the damage caused by the fair.

AiNET's letter observed that under the COREA AiNET had the right to withdraw the Macy's parcel from maintenance by the developer if the developer failed to cure any of the deficiencies within 30 days, or in case the deficiencies could not be cured within 30 days, if the developer failed to commence the process of curing them within 30 days.

AiNET's letter reached Woodmont, the court-appointed receiver, on July 11, 2013. On that same day, Woodmont responded by requesting additional details.

On July 22, 2013, AiNET responded with additional details about two of its initial complaints. Among other things, AiNET complained that Woodmont had not consented to AiNET's request to extend telecommunications lines under the parking lots and common areas. AiNET also complained that Woodmont had failed to "maintain, replace and repair the surface of the parking areas" on the Macy's parcel. AiNET attached two photographs purporting to show the deteriorated condition of what appear to be two, small areas in the parking lot.[3] AiNET concluded by reiterating that it would withdraw

install necessary telecommunications lines." Similarly, BACM's brief refers to Woodmont's alleged refusal to consent to AiNET's installation of "telecommunications wires . . . underneath the common areas." On June 13, 2013, Woodmont had informed AiNET that it was considering a request to extend telecommunications lines under the parking lots and other common areas, but was not giving its consent "at this time."

[3] Unfortunately, the photocopies of the pictures in the record extract are of such poor quality that it is very difficult to discern what they depict.

its parcel from maintenance by the developer if Woodmont did not cure the alleged defects within the period stipulated by the COREA.

The war of letters continued on August 8, 2013. On that date, Woodmont responded that it had reviewed AiNET's proposal to install telecommunications lines and had provided parameters by which it would consent to the installation. Woodmont also responded that it was assessing the uneven or deteriorated areas shown in the two photographs that AiNET had sent on July 22, 2013.

Meanwhile, in internal emails, a Woodmont employee commented on the "terrible shape" of the parking lot as a whole. The employee mentioned a 2007 study that had identified part of the lot as being in need of repair. The employee also mentioned that TKL-East had known of problems with the lot, but had taken no action because AiNET's predecessor had not complained. At the same time, Woodmont employees speculated that AiNET's complaints were pretextual and that they had been prompted by Woodmont's hesitation in acceding to AiNET's proposal to install telecommunications lines for its data center.[4]

[4] Although AiNET steadfastly contends that it always intended to construct a data center on the Macy parcel, BACM assembled evidence suggesting that the data center was more of a threat than a goal. In communications with AiNET's real estate broker, Mr. Jain suggested that he intended to use the prospect of a data center to motivate a potential tenant to lease the Macy's parcel from him before the parcel was devoted to another use. At oral argument, BACM suggested that Mr. Jain may also have intended to use the prospect of a data center to motivate retail tenants to leave, thus driving down the value of the mall (which was already in receivership) and facilitating his ability to purchase it at an agreeable price in foreclosure. In June 2013 Mr. Jain (in his words) "seeded" a local newspaper with a story about AiNET's alleged intention to (cont.)

Woodmont's suspicions of pretext were not unfounded. On June 20, 2013, 11 days before the first salvo in the letter-writing contest, AiNET's principal, Mr. Jain, had written to his real estate broker that he had "just found the 'bring the pain' sections of the COREA," which would enable AiNET "to fight back." "I believe I can withdraw from having to pay the $250k/yr CAM fees unilaterally," Mr. Jain wrote. He concluded: "Made my day." A few weeks earlier, Mr. Jain had told AiNET's real estate broker that his goal was to get "a second retail box," presumably meaning a second anchor tenant, to "leave[] the mall, at which point," he said, AiNET "can kill the [CO]REA over there."

Woodmont patched the damaged areas of the parking lot that AiNET had depicted in the photographs that it sent on July 22, 2013. In addition, on August 15, 2013, Woodmont sent AiNET a list of 13 "items" that it wanted to add to the plans for installing telecommunications lines under the parking lot. The list includes items such as conducting soil-compaction testing on the areas where trenches would be dug and providing the testing to Woodmont; listing pertinent OSHA regulations on the plans; using traffic controls; submitting the work schedule to Woodmont; not leaving trenches open; and listing TKL-East and its successors as beneficiaries under a warranty.

Meanwhile, AiNET did not make the monthly payment for CAM charges. Hence, on August 19, 2013, Woodmont gave notice that AiNET had defaulted on its obligation to pay CAM charges.

construct a data center, AiNET's interest in purchasing the entire mall at a foreclosure sale, and his opinion that the mall would sell for less than $10 million.

A week later, on August 26, 2013, AiNET wrote to announce that effective August 1, 2013, it had withdrawn from its obligation to pay CAM charges under section 1 of the supplemental agreement. Henceforth, AiNET wrote, it would pay only 50 percent of the monthly charges. In the same letter, AiNET emphatically rejected any effort to restrict or condition its ability to install its telecommunications lines under the parking lot. AiNET pointed out that the COREA gave it the easements necessary to install the lines under the portions of the mall that it did not own and that neither the COREA nor the supplemental agreement gave the developer or its agent, Woodmont, any power to veto AiNET's construction plans.[5] AiNET wrote that it "intend[ed] to undertake such construction as soon as possible."

In another letter, on September 30, 2013, AiNET stated that it would provide Woodmont with a "courtesy copy" of its plans for installing the telecommunications lines once it had received all permits, that it would provide Woodmont and the anchor tenants with a timeline for construction, and that it would cooperate with Woodmont and the anchor tenants to minimize disruption during construction. AiNET, however, did not agree that Woodmont had the ability to prevent it from commencing construction.

Although AiNET had represented that it would continue to pay 50 percent of the CAM charges (as the COREA required), it ceased paying monthly CAM charges altogether in November 2013.

[5] Section 5 of the COREA contains a number of requirements concerning construction on the mall, but Woodmont appears to have been requesting conditions that went beyond those in that provision of the agreement.

E. The Complaint and Counterclaim

On April 4, 2014, BACM brought this civil action in the Circuit Court for Anne Arundel County. BACM alleged that AiNET had breached the COREA and supplemental agreement by failing to pay CAM charges. In Count I of its two-count complaint, BACM requested damages for breach of contract; in Count II BACM requested a declaration that AiNET had breached the supplemental agreement.

On August 18, 2014, AiNET counterclaimed. Among other things, AiNET claimed to have lost "substantial income" as a result of the alleged refusal to consent to the installation of telecommunications lines on the AiNET Parcel.

On October 1, 2014, while the litigation was pending, AiNET asked BACM to cease all repair work on the portion of the parking lot that AiNET owned. AiNET explained that if it prevailed on its counterclaim or if it proceeded with the installation of the telecommunications lines, it would have to cut through the newly-paved lot.

F. The Trial

After Mr. Jain had completed his testimony in AiNET's case at trial, AiNET called a damages expert, who had submitted a report opining that AiNET had suffered $47 million in damages because of BACM's alleged refusal to permit the installation of telecommunications lines. On BACM's motion, the court excluded the expert because of the absence of any evidence that BACM had prevented AiNET from installing the lines. Because AiNET had no admissible evidence on the issue of its alleged damages, the court proceeded to grant BACM's motion for judgment on the counterclaim.

AiNET moved for judgment on BACM's claims. The court denied the motion and submitted the claims to the jury, along with a special-verdict sheet that the attorneys for both sides had prepared. The verdict sheet asked the jury to decide three issues: (1) whether AiNET had withdrawn from the COREA, (2) whether AiNET had breached the COREA, and (3) what damages BACM had suffered. The jury answered that AiNET had withdrawn from the COREA and that AiNET had breached the COREA. It awarded $503,835.11 in damages, the precise amount of unpaid CAM charges that BACM's counsel requested in closing argument.

After the court excused the jury, AiNET asserted that the verdict was internally inconsistent. It argued that if it had withdrawn from the COREA, then it would have been required to pay only 50 percent of the monthly CAM charges, but that the jury had awarded 100 percent of the unpaid charges. The court responded that the first question, about whether AiNET had withdrawn from the agreement, had been unnecessary. In the court's view, it was a "fact" that AiNET had withdrawn. More precisely, it was a fact that AiNET claimed to have had the right to withdraw.

AiNET filed a timely motion for judgment notwithstanding the verdict. The court denied the motion. AiNET noted this timely appeal.

QUESTIONS PRESENTED

AiNET poses three questions, which we have restated as follows:

1. Did the circuit court err in denying AiNET's oral motion for judgment and motion for judgment notwithstanding the verdict based on BACM's breach of contract claim?

2. Did the circuit court err in granting BACM's motion for judgment on AiNET's counterclaim and in denying AiNET's motion for a new trial after the court prohibited any testimony from AiNET's damages expert?

3. Did the circuit court err in denying AiNET's motion for new trial based on AiNET's claim that the jury had delivered an inconsistent verdict?

We conclude that the circuit court did not err in any respect. Accordingly, we shall affirm the judgment in its entirety.

DISCUSSION

I. The Denial of AiNET's Motion for Judgment and Motion for Judgment Notwithstanding the Verdict on BACM's Claim for Breach of Contract

AiNET argues that the trial court erred, first in denying AiNET's oral motion for judgment on BACM's claims, and later, in denying AiNET's motion for judgment notwithstanding the verdict on BACM's claim. We disagree.

"The standard of review of a court's denial of a motion for [judgment notwithstanding the verdict] is the same as the standard of review of a court's denial of a motion for judgment at the close of the evidence, *i.e.*, whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence." *Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012) (citing *Washington Metro. Area Transit Auth. v. Djan*, 187 Md. App. 487, 491-92 (2009)). Our task is to decide whether the trial court's decision to deny the motion for judgment (or the motion for judgment notwithstanding the verdict) was legally correct, "while viewing the evidence and the reasonable inferences to be drawn from it in the light most favorable to the non-moving party[.]" *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011). We review any of the trial court's legal conclusions on a de

novo basis. *Blue Ink, Ltd. v. Two Farms, Inc.*, 218 Md. App. 77, 91 (2014); *USB Fin. Servs., Inc. v. Thompson*, 217 Md. App. 500, 514 (2014).

AiNET claimed to have demonstrated that BACM and its agent, Woodmont, had breached the COREA by failing to maintain common areas on the Macy's parcel, and specifically, the 11-acre parking lot in "first-class condition." Hence, argued AiNET, BACM had failed to fulfill its contractual obligations under the COREA, which permitted AiNET to withdraw from the COREA and to stop making the full monthly CAM payments. The trial court denied AiNET's motion for judgment, stating that the term "first-class" is ambiguous and reasoning that it was for the jury to determine whether Woodmont had maintained the lot in first-class condition. AiNET revisits these arguments in this appeal.

AiNET's brief cites internal communications in which Woodmont employees acknowledged that the lot was "in terrible shape" and "bad repair"; discussed a 2007 study that had identified part of the lot as being in need of repair; and mentioned that TKL-East had known of problems with the lot, but had taken no action because AiNET's predecessor had not complained. AiNET also cites photographs, taken by a Woodmont employee in July 2013, which show cracks, uneven areas, holes, and weeds growing in the lot. This certainly was evidence on which a reasonable jury could have concluded that BACM, through its agent, Woodmont, had breached the COREA by failing to maintain the lot in first-class condition.

The question, however, is not whether AiNET adduced sufficient evidence to justify a verdict in its favor; the question is whether the evidence, when viewed in the light most favorable to BACM, was such that a reasonable jury could only have returned a verdict in AiNET's favor. Applying that standard, we agree with the circuit court that the jury would not have been compelled to find that BACM and its agent, Woodmont, materially breached the agreement by failing to maintain the parking lot in "first-class condition."

While the meaning of the term "first-class condition" is elusive, a jury would be hard-pressed to find that BACM and its agent, Woodmont, had maintained the lot as a whole in first-class condition. Nonetheless, in the circumstances of this case, it would not have been unreasonable for the jury to find that Woodmont had done enough to satisfy its contractual obligations by repairing the only sections of the lot about which AiNET had complained. Because AiNET had done nothing with its space inside the mall building, it was using only about 10 of the 1100 spaces in its sector of the lot. The jury could have found that, in promptly addressing the defects that AiNET identified in the spaces that it was actually using, Woodmont adequately complied with its obligations under the agreement.

In addition, the jury could have found that the breach, if any, was immaterial. Although much of the lot was "in terrible shape" and in "bad repair," AiNET was using only one-tenth of one percent of the spaces in the lot and had no imminent plans to do anything with the rest of them, except to dig a trench through them. Nor did AiNET lose

any customers because of the condition of the lot. The question of materiality is ordinarily one of fact (*see, e.g.*, *Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 52 (2007)), and on this evidence, it would have been reasonable to conclude that the failure to maintain the unused portions of the lot did not affect the purpose of the contract in an important and vital way – i.e., that it was not material. *See* Maryland Civil Pattern Jury Instructions § 9:25 (4th ed. 2013); *Sachs v. Regal Sav. Bank*, 119 Md. App. 276, 283 (1998).

Similarly, the jury could have found that the allegations of breach were pretextual. AiNET registered no complaints until about 18 months after it acquired the lease on the Macy's parcel. It abandoned most of its initial complaints, and the major complaint at trial – the overall condition of the parking lot – was not one that it had ever clearly raised in its extensive letter-writing campaign. The letter-writing campaign began shortly after AiNET's principal, Mr. Jain, expressed his goal of "kill[ing] the [CO]REA" and "unilaterally" "withdraw[ing] from having to pay the $250k/yr in CAM fees." On these facts, the jury could reasonably have concluded that the condition of the lot was not material to AiNET and that AiNET had complained of the condition in a bad faith effort to escape from its contractual obligations.

Finally, the jury could have reasonably found that BACM and Woodmont had no contractual obligation to engage in the Sisyphean task of repaving the remaining 1090 spaces while AiNET was expressing its intention to dig a trench across the lot to facilitate the installation of telecommunications lines. The jury could also have found that AiNET

had excused any breach on or after October 1, 2014, when it directed BACM not to repave the lot because it would have to be repaved again after AiNET installed the telecommunications lines.

In summary, the jury could reasonably have rejected AiNET's assertion of material breach for any number of reasons. The circuit court, accordingly, did not err in denying AiNET's motion for a directed verdict on BACM's claims.

II. The Dismissal of AiNET's Counterclaim

In its counterclaim, AiNET claimed that it had suffered $47 million in damages because BACM and its agent, Woodmont, had allegedly prevented the construction of the telecommunications lines across its parcels. AiNET claims that the circuit court erred in directing a verdict in BACM's favor on the $47 million counterclaim. We disagree.

The directed verdict followed the circuit court's decision not to permit AiNET's damages expert to testify about his opinions. The court excluded the expert because it saw no evidence on which the jury could reasonably base a finding that BACM or Woodmont had prevented AiNET from installing the telecommunications lines. AiNET had no other evidence of damages, such as evidence of lost sales that it could have made a price that exceeded its costs. Hence, although we would ordinarily conduct a de novo review of the decision to grant a motion for judgment (*see, e.g.*, *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 394 (2011); *Scapa Dryer Fabrics, Inc.*, 418 Md. at 503), the judgment in this case turns on the decision to exclude AiNET's expert, which we typically review for abuse of discretion. *See, e.g.*, *Exxon Mobil Corp. v. Albright*, 433

Md. 303, 417 (2013); *Burdette v. Rockville Crane Rental, Inc.*, 130 Md. App. 193, 210 (2000).

In deciding whether to admit expert testimony under Md. Rule 5-702, a circuit court must determine, among other things, "whether a sufficient factual basis exists to support the expert testimony." "'[N]o matter how highly qualified the expert may be in his [or her] field, [the expert's] opinion has no probative force unless a sufficient factual basis to support a rational conclusion is shown.'" *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 182 (2003) (quoting *State Dep't of Health v. Walker*, 238 Md. 512, 520 (1965)). "An expert's opinion testimony must be based on a[n] adequate factual basis so that it does not amount to 'conjecture, speculation, or incompetent evidence.'" *Id.* at 182-83 (quoting *Uhlik v. Kopec*, 20 Md. App. 216, 223-24 (1974)). A circuit court has no discretion to admit an expert opinion that lacks an adequate factual basis. *See, e.g.*, *Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 98 (2007).

Based on the evidence presented in this case, the circuit court did not abuse its discretion in concluding that the expert lacked an adequate factual basis to opine that AiNET had suffered damages as a result of anything that BACM or its agent, Woodmont, had done. During the letter-writing campaign in the summer of 2013, AiNET took the position that Woodmont could not impose any conditions, beyond those contained in the COREA itself, on AiNET's right to dig a trench across the parking lot to install the telecommunications lines. On August 26, 2013, AiNET announced that it "intend[ed] to undertake such construction as soon as possible." At trial, Mr. Jain reiterated that AiNET

had no obligation to obtain consent from Woodmont or BACM before commencing the construction: he testified that AiNET informed Woodmont of its plans only to be a "good neighbor." Counsel for BACM agreed that the evidence was that AiNET did not need BACM's consent.

But although AiNET claims to have stood to gain tens of millions of dollars if it proceeded to exercise its right to install the telecommunications lines, it inexplicably did nothing: it never commenced the construction that it announced it would commence "as soon as possible" in August 2013, and it took no action to convert its empty department store into a data center. On these facts, the circuit court correctly observed that BACM and Woodmont had not delayed the installation of the telecommunications lines: AiNET simply opted not to proceed.[6]

Accordingly, the circuit court did not err in excluding an expert whose damages opinions assumed that BACM and Woodmont were responsible for the delay. *See Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 185, *cert. denied*, 444 Md. 641

[6] If AiNET had really been deterred from earning $47 million in profits over the next two years because of the conditions that Woodmont requested in the summer of 2013, one would think that AiNET would have promptly filed suit to obtain a declaration that the conditions were unauthorized, as well as a temporary restraining order and a preliminary injunction to prevent Woodmont from interfering with the construction. Alternatively, AiNET could have commenced the construction, as it said it planned to do, and put the onus on Woodmont to obtain an injunction. Under Md. Rule 15-503(a), Woodmont would not have been able to enjoin the construction unless it posted a bond in an amount adequate to compensate AiNET for the damages to which it would be entitled as a result of the injunction – presumably, $47 million. As yet another alternative, AiNET could have accepted the conditions under protest, installed the lines, earned its $47 million, and filed suit to recover whatever unnecessary expenses it had been required to shoulder.

(2015). Because AiNET had no proof of damages without the expert, the court did not err in directing a verdict in BACM's favor on the counterclaim. *See Hall v. Lovell Regency Homes Ltd. P'ship*, 121 Md. App. 1, 27 (1998).

The Allegedly Inconsistent Verdict

The jury found that AiNET had withdrawn from the COREA, but awarded $503,835.11 in damages – the full amount of CAM charges that AiNET would have been obligated to pay had it not withdrawn from the COREA. If, however, AiNET had had the right to withdraw from the COREA, it would have been obligated to pay only about 50 percent of the CAM charges, or about half of the amount that the jury awarded.

In an unsuccessful motion for a new trial, AiNET argued that the jury verdict was irreconcilably inconsistent. AiNET reiterates those arguments on appeal. We agree that the verdict could be viewed as internally inconsistent, but we disagree that it is irreconcilably inconsistent.

The Court of Appeals has drawn a distinction between verdicts that are irreconcilably inconsistent and verdicts that are merely inconsistent. "[I]t is only irreconcilably inconsistent verdicts that are not allowed to stand." *Turner v. Hastings*, 432 Md. 499, 517 (2013).

"'[W]here the answer to one of the questions in a special verdict form would require a verdict in favor of the plaintiff and an answer to another would require a verdict in favor of the defendant, the verdict is irreconcilably defective.'" *Id*. at 516 (quoting *Southern Mgmt. Corp. v. Taha*, 378 Md. 461, 488 (2003)). Nevertheless, "'[i]n

reconciling a jury's answers to specific interrogatories, we should assume that the jury was rational and consistent, rather than irrational or inconsistent.'" *Id.* at 517 (quoting *Edwards v. Gramling Eng'g Corp*., 322 Md. 535, 547-48 (1991)). "Our quest should be for a view of the case which would make the jury's findings consistent.'" *Id.* (quoting *Edwards*, 322 Md. at 548).

In a case in which an employer's liability was based solely on a theory of respondeat superior, a verdict was irreconcilably inconsistent when a jury found that the employer was liable, but that the employees were not. *Southern Mgmt. Corp. v. Taha*, 378 Md. at 486. By contrast, in an auto tort case, a verdict was inconsistent, but not irreconcilably inconsistent, when the jury found that the plaintiff had not suffered an injury, but still awarded damages for past medical expenses, lost wages, and property damage. *Turner v. Hastings*, 432 Md. at 517-18. The Court explained that the finding of no injury could be interpreted as a finding that the plaintiff herself did not sustain any physical injury. *Id.* at 517. The award of a small amount for past medical expenses was consistent with that interpretation, because the jury could have found that it was reasonable for the plaintiff to be examined by a doctor after her accident. *Id.*

In this case, as in *Turner*, the verdict is not irreconcilably inconsistent. Because there was no dispute that AiNET *claimed* to have withdrawn from the COREA, the jury may well have thought that it was being asked to affirm that uncontroversial proposition, and not being asked to answer the question that the lawyers apparently thought they were asking, which was whether the circumstances were such that AiNET had a right to

withdraw. In this regard, we note that the circuit court had expressed doubt about the necessity for the first question, but had declined to interfere with a question to which counsel for both parties had agreed.

In retrospect, the verdict sheet would have been clearer had the first question asked whether BACM or its agent, Woodmont, failed to maintain the common areas in "first-class condition." Had the jury answered that question in the affirmative, it would have established the factual predicate for the legal conclusion that AiNET had the right to withdraw from the COREA. In that event, the verdict sheet could have directed the jury to award only 50 percent of the unpaid CAM charges.

In this case, the verdict sheet may have been clear to the lawyers, but it was evidently unclear to the lay jurors, who were asked whether AiNET had withdrawn from an agreement from which it emphatically claimed to have withdrawn. Because the jurors appeared to have been confused in thinking that the question asked whether AiNET claimed to have withdrawn or asserted a right to withdraw, and not whether AiNET had a factual basis to withdraw, the verdict was not irreconcilably inconsistent. Accordingly, the circuit court did not err in denying the motion for a new trial.

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