

Circuit Court for Howard County
Case No. 13-C-17-113757

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 636

September Term, 2018

TSP AT HAVEN ON THE LAKE, LLC

v.

COLUMBIA ASSOCIATION, INC.

Meredith,
Kehoe,
Gould,

JJ.

Opinion by Kehoe, J.

Filed: October 29, 2019

*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. *See* Md. Rule 1-104

This appeal arises out of an eviction action originally filed in the District Court of Maryland, sitting in Howard County by Columbia Association, Inc. against its erstwhile tenant, TSP at Haven on the Lake, LLC. TSP prayed a jury trial and the case was transferred to the Circuit Court for Howard County. Columbia Association filed a motion to strike TSP’s demand for a jury trial, which the circuit court granted. TSP raises five substantive and procedural contentions as to why the circuit court erred,¹ but we will dismiss the appeal as moot because we cannot afford TSP the relief that it seeks.

¹ TSP’s issues are (footnote omitted):

1. Did the Circuit Court err in striking Appellant’s Verified Jury Trial Demand when Appellant established that Appellant has an interest in the Premises that exceeds \$15,000 due to projected gross revenues and net profits over the remainder of the purported lease period, the fair market value of the premises exceeded \$15,000, and the purported lease contained no jury trial waiver provision?
2. Did the Circuit Court err in striking Appellant’s Verified Jury Trial Demand when the District Court has sole jurisdiction to review a jury trial demand? See, Md. Code, Real Prop., § 8-604(a) (“A demand for trial by jury under this subtitle shall be subject to review by the District Court”)[?]
3. Did the Circuit Court err in striking Appellant’s Verified Jury Trial Demand after Appellee filed an “Opposition” to the Verified Jury Trial Demand before the District Court, Appellee argued its reasons for denial of the Verified Jury Trial Demand at oral hearing before the District Court, and the District Court held for Appellant and transferred the action to Circuit Court for a jury trial after having considered Appellee’s arguments, thereby giving rise to collateral estoppel and *res judicata*?
4. Did the Circuit Court abuse its discretion in denying Appellant’s Second Motion for Reconsideration, which cited newly-discovered evidence of Appellee’s recorded admissions implying that the parties were bound by a Partnership Agreement and not a “lease,” even though Appellee has

Background

This appeal, and a related case, *Still Point Wellness Centers, LLC, et al. v. Columbia Ass’n, Inc.* (“*TSP I*”), No. 1433, September Term, 2017, 2019 WL 1949620 (filed April 30, 2019), arose out of a dispute between TSP and Columbia Association as to the nature of a business arrangement that at one time existed between them.² TSP has and continues to assert that they had a partnership, while Columbia Association claims that their relationship was one between a lessee (Columbia Association) and a sublessee (TSP). In *TSP I*, and among other requests for relief, TSP sought a declaratory judgment that the parties were partners. The circuit court did not agree and entered a judgment to the effect that the parties were bound by the terms of a written sublease agreement that had been signed by both parties. A panel of this Court affirmed the judgment in an unreported opinion. *See TSP I*, 2019 WL 194620, at *12.

represented to the District Court and Circuit Court that so-called “lease” provisions require the striking of the Verified Jury Trial Demand?

5. Did the Circuit Court err in ordering escrow funds to be transferred to the District Court upon remand to the District Court when the Circuit Court struck the Verified Jury Trial Demand, which was the basis for establishing rent escrow in the first place, and when Appellee is not seeking monetary relief in this action?

² In a third and separate action between the parties, Columbia Association has appealed a ruling of the Circuit Court for Howard County denying it attorney’s fees incurred in litigating *TSP I*. *See Columbia Association, Inc. v. The Still Point Wellness Centers, LLC*, No. 650, 2018 Term, 2019 WL 4200944 (filed September 5, 2019). That case has no bearing on our decision here.

While *TSP I* was wending its way through the judicial system, Columbia Association filed the present case: an ejectment action against TSP pursuant to Md. Code § 14-132 of the Real Property Article (“Real Prop.”). The sole relief requested by Columbia Association was possession of the subleased premises.

The District Court has original jurisdiction in landlord–tenant actions. *See* Md. Code, § 4-401(4) of the Courts & Judicial Proceedings Article. However, ejectment is a legal remedy, and parties to such actions have the right to a jury trial if the amount in controversy exceeds the jurisdictional threshold for a jury trial in civil cases. *Brown v. Housing Opportunities Commission*, 306 Md. 515, 521 (1986); *Bringe v. Collins*, 274 Md. 338, 347 (1975). TSP filed a demand for a jury trial, asserting that the amount in controversy exceeded \$15,000 based on the value of its right to occupy the premises throughout the term of the sublease. *See Carroll v. Housing Opportunities Commission*, 306 Md. 515, 525 (1986).

Over Columbia Association’s objection, the District Court granted TSP’s jury trial demand. The court found that the amount in controversy exceeded \$15,000 and ordered that the case be transferred to the circuit court. Additionally, the court ordered TSP to make monthly payments into the court’s escrow account pursuant to Real Prop. § 8-118.

As we have related, when the case arrived in the circuit court, Columbia Association filed a motion to strike TSP’s demand for a jury trial. Columbia Association argued that the amount in controversy did not exceed \$15,000, and that, in any event, TSP had waived its right to a jury trial pursuant to the terms of their sublease agreement. The circuit court

granted the motion to strike and remanded the case to the District Court without providing a basis for its decision. TSP filed a motion for reconsideration and the court issued another order making it clear that it concluded that the amount in controversy was less than \$15,000, but otherwise denying the motion. The court did not address Columbia Association's waiver argument. TSP filed a notice of appeal.

While this appeal was pending, the following events occurred.

First, Columbia Association filed a motion in this Court asking us to enforce the District Court's order requiring TSP to continue to make rent payments into escrow. On July 24, 2018, this Court ordered TSP to continue to make the payments into the District Court escrow account.

Second, on September 24, 2018, Columbia Association filed a petition to hold TSP in constructive contempt for failing to comply with this Court's order directing TSP to continue to make rent payments into the District Court's escrow account. On October 24, 2018, this Court denied the motion without prejudice "to [Columbia Association's] filing a petition for the requested relief in the District Court of Maryland for Howard County." Columbia Association filed such a petition and, as far as the record in this appeal indicates, the petition is still pending in the District Court.

Third, Columbia Association filed a motion to dismiss this appeal. Columbia Association asserted that TSP voluntarily surrendered possession of the subleased premises to Columbia Association and that this appeal was therefore moot. In its response to that motion, TSP concedes that it returned its keys to Columbia Association and vacated the

premises but nonetheless asserts that it did not surrender the premises but “merely shutter[ed] the business operating out of [the] premises.” (Appellant’s Opposition to Motion to Dismiss Appeal at ¶ 5.) TSP contends that whether the subleased premises were surrendered turns upon the intent of the parties and that it is entitled to have a jury decide the issue of the parties’ intentions. *Id.* This is because TSP “continues to view the premises as property it obtained the right to possess pursuant to [the] terms of a partnership” between it and Columbia Association. *Id.* Its purpose for doing so, according to TSP, was “to ensure the safekeeping of partnership property as [TSP] believes it still has a colorable claim to the premises.” (Affidavit of Marla Peoples.)

Finally, as we have related, a panel of this Court filed its opinion in *TSP I*. In affirming the judgment of the circuit court, the panel concluded that the relationship between Columbia Association and TSP was one of landlord and tenant, and not, as asserted by TSP, a partnership. *TSP I*, 2019 WL 1949620 at *11–12. TSP filed a petition for a writ of certiorari to the Court of Appeals in *TSP I*. As a result of that petition, this panel entered an order staying proceedings in this appeal pending a decision by the Court of Appeals in *The Still Point Wellness Centers v. Columbia Association*, Pet. Docket No. 148, September Term 2019. On August 23, 2019, the Court of Appeals denied TSP’s petition. On September 11, 2019, this panel lifted the stay.

Analysis

In assessing the parties’ contentions on the issue of mootness, we will assume for purpose of analysis (but only for that purpose) that the circuit court erred when it struck TSP’s request for a jury trial and remanded the case to the District Court. Nonetheless, we conclude that the appeal is moot.

“Generally, a case is moot if no controversy exists between the parties or when the court can no longer fashion an effective remedy.” *D. L. v. Sheppard Pratt Health System, Inc.*, 456 Md. 339, 351-52 (2019) (filed August 13, 2019); *see also, Powell v. Maryland Department of Health*, 455 Md. 520, 539 (2017) (same). The only remedy that TSP seeks from this Court is an order requiring the circuit court to reinstate TSP’s request for a jury trial, which would necessitate transfer of the case back to the circuit court. But because TSP surrendered the premises that were the subject of the eviction action, there will not be a jury trial in this case. This is because all of TSP’s arguments as to why the case is not moot were premised upon its assertion that it possessed the subleased premises pursuant to a partnership agreement between itself and Columbia Association. To put it another way, TSP has never argued that eviction was inappropriate because it had not violated the sublease; rather, TSP’s position has been that it was Columbia Association’s partner in a business located in the subleased premises. This contention was laid to rest when the Court of Appeals denied TSP’s petition for a writ of certiorari in *TSP I*. The principles of *res judicata* and collateral estoppel now prevent TSP from further asserting that it was Columbia Association’s partner. Because TSP no longer can assert that there was a

partnership between the parties, its claim that it has a right to have a jury decide that issue is moot.³

**APPEAL DISMISSED. APPELLANT TO
PAY COSTS.**

³ TSP argues that the appeal is not moot because our ruling on the merits might have collateral effects. For support, TSP relies on *Cane v. EZ Rentals*, 450 Md. 597 (2016), in which the Court of Appeals held a summary ejectment action was not moot because the tenant could suffer collateral consequences from a trial court’s monetary judgment. *Cane*, 450 Md. at 611. The Court explained that:

a civil judgment may be included on an individual’s credit report, with a concomitant negative effect on the individual’s credit score. A low credit score in turn carries a plethora of negative consequences. An adverse judgment in a summary ejectment case may affect an individual’s ability to rent a residence in the future. Moreover, a judgment in a summary ejectment case may affect a tenant’s right to redeem a rental unit in a future dispute with a landlord.

Id. at 612.

Cane is distinguishable. Here, no monetary judgment has been entered against TSP. Nor will one be on remand, as Columbia Association has not requested damages or attorney’s fees. Thus, we fail to see how TSP will suffer from collateral consequences arising out of the eviction action.

TSP also asserts that even if the case is moot, we should address the appeal on its merits because there is “an imperative and manifest urgency to establish a rule of future conduct in [a] matter[] of important public concern” (quoting *Attorney General v. Anne Arundel Co. School Bus Contractors Ass’n*, 286 Md. 324, 328 (1979)). The “matter of public concern” is Columbia Association’s contention that TSP waived its right to a jury trial because of a provision in the sublease agreement. We decline to do so because, in light of the holding in *TSP I*, neither party would have an economic incentive to seek further review of our resolution of that issue.