Circuit Court for Charles County
Case No.: C-08-CV-22-000287

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1153

September Term, 2023

ST. CHARLES TOWNE PLAZA, LLC, *et al.*

v.

SANAHED, INC., *et al*.

Graeff,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: March 14, 2025

*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).

St. Charles Towne Plaza, LLC, ("St. Charles") and Washington Prime Group, Inc. ("WPG") (collectively, the "Landlords"), appellants, brought this action against Sanahed, Inc. ("Sanahed") and DeHanas Real Estate Services ("DeHanas RE") (collectively, the "Tenants"), appellees, for the Tenants' alleged breach of a commercial lease for retail space owned by the Landlords (the "Lease"). Following motions for summary judgment filed by both parties, the Circuit Court for Charles County held a hearing on the motions on June 20, 2023, at the conclusion of which the court took the motions under advisement. The same day the court proceeded to trial without a jury.[1] The trial ended on the second day of trial, July 10, 2023, and the court found in favor of the Tenants. This appeal followed.

The Landlords present four questions for our review,[2] which, we have revised for clarity:

[1] By proceeding to trial, the court in effect denied both motions for summary judgment. *See Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 534 (2003) (stating that the "purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried."); *Bradley v. Fisher*, 113 Md. App. 603, 610 (1997)(same).

[2] The Landlords' questions, as set forth in their brief, are as follows:

> 1. Did Landlords' oral statement that early termination of the Lease was potentially available under certain Lease terms create an anticipatory breach, such that Tenants were justified in rescinding the Lease and prematurely vacating the premises without paying rents due for the duration of the Lease term?
> 2. Was there an accord and satisfaction when Landlords' leasing representative orally stated that early termination of the Lease was potentially available, and Tenants, without regard for the Lease's written termination conditions, prematurely vacated the premises?
> 3. Do findings of accord and satisfaction and anticipatory repudiation, based solely on an oral communication, permit termination of a commercial lease in contravention of Maryland's Statute of Frauds?

1. Did the trial court err in determining that there was an anticipatory repudiation by the Landlords that justified the Tenants' termination of the Lease prior to the end of the Lease term?

2. Did the trial court err in determining that there was an accord and satisfaction between the Landlords and the Tenants that provided for the early termination of the Lease?

3. Did the trial court's determination of an anticipatory repudiation or an accord and satisfaction violate Maryland's Statute of Frauds?

4. Did the trial court's determination of an anticipatory repudiation or an accord and satisfaction violate the Lease term that prohibits an oral modification of the Lease?

For the following reasons, we affirm the judgment of the circuit court.

BACKGROUND[3]

On November 6, 2013, Sanahed entered into a Lease with St. Charles for approximately 4000 square feet of commercial space at St. Charles Towne Plaza ("the Plaza"), an outdoor shopping mall located in Waldorf, Maryland, for a term of five years. The purpose of the Lease was for the operation of a real estate office under the trade name DeHanas RE. Sanahed's only business on the property was parking its moving van at the Plaza. Don DeHanas, who signed the Lease on behalf of Sanahed, was the principal owner of both Sanahed and DeHanas RE. On September 28, 2017, St. Charles and Sanahed

4. Do findings of accord and satisfaction and anticipatory repudiation, based solely on oral communication, permit termination of a written lease in contravention of the Lease terms prohibiting oral modification?

[3] Because the instant case was tried before the trial court, sitting without a jury, this Court "'must consider evidence produced at the trial in a light most favorable to the prevailing party[.]'" *Plank v. Cherneski*, 469 Md. 548, 608 (2020) (quoting *Gen. Motors Corp. v. Schmitz*, 362 Md. 229, 233-34 (2001)). Accordingly, our recitation of the facts will be in the light most favorable to the Tenants, as the prevailing parties.

executed an amendment to the Lease that extended its term for an additional five years, until July 31, 2023.

In 2020, WPG, the parent company of St. Charles, began negotiations with a third-party to lease a large section of the Plaza. In order to accommodate the third-party, WPG considered moving several tenants to different retail space in the Plaza, including the Tenants. The Lease permitted the Landlords to require the Tenants to relocate to another retail space within the Plaza. In the alternative, the Lease gave the Tenants the right to terminate the Lease. Specifically, Section 2.5 of the Lease states:

> Section 2.5. Relocation of Premises.
>
> A. **In the event Landlord shall** add additional buildings to the Center or expand any of the buildings currently contained therein or **renovate or reconfigure any part of the Center in the vicinity of the Premises, Landlord shall have the right, subject to Landlord's and Tenant's right of termination as set forth in subparagraph (B), to require Tenant to relocate its operation, at Tenant's expense, to other premises (the "New Premises") in another part of the Center or building in accordance with the following:**
>
> (i) Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation date, of Landlord's intention to relocate Tenant's operation to the New Premises;
>
> (ii) The proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and
>
> (iii) The New Premises shall be substantially the same in size and configuration as the Premises described in the Lease.
>
> B. **In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice.** Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the

> New Premises are acceptable to Tenant. In addition, if Tenant fails to exercise such right of termination by written notice to Landlord given within thirty (30) days following receipt of Landlord's relocation notice or to accept the New Premises in writing by written notice to Landlord given within thirty (30) days following receipt of Landlord's relocation notice, then Landlord shall have the right, at any time thereafter, to terminate this Lease effective the later of (a) thirty (30) days following Tenant's receipt of Landlord's notice of termination or (b) the proposed relocation date as set forth in Landlord's relocation notice. **Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.**

(Emphasis added.)

The Lease also contains a clause regarding modification of the Lease, which states, in relevant part:

> Section 23.3. Entire Agreement.
>
> There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Landlord and Tenant other than herein set forth. **Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by them.**

(Emphasis added.)

Neither party executed or attempted to execute a written modification to the Lease.

In July of 2021, a WPG leasing representative, Gino Pizzi, spoke over the phone with Mr. DeHanas about relocating the Tenants to another retail space in the Plaza at the end of 2021 or in early 2022. Regarding this phone call, Mr. DeHanas testified:

> DON DEHANAS: I was sitting in my office with my associate, Steve Nichols, and a call came in from Gino Pizzi. He identified himself from [WPG].
>
> **He said that he had someone that was going to be taking the two adjacent spaces next to mine, and also wanted mine, so they would be building us out another location somewhere else in the shopping center. We would just need to sign a new five year lease.**

***

[DEFENSE COUNSEL]: **So Mr. Pizzi's request was that you execute a new lease extending the [L]ease term?**

DON DEHANAS: **Yeah, he said we would need to sign a new five year lease.**

[DEFENSE COUNSEL]: **Okay, do you recall informing Mr. Pizzi of your intention to terminate the [L]ease at that time?**

DON DEHANAS: **Yeah, so in the course of that conversation I said, "Can we just terminate the [L]ease?"**

And he said, "I hate to lose you from the center, but yes, we can do that.["]

And I said, "Let me," he said, "We can do that, I just need you out before February of 2023 [sic]."

And I said, "Well, let me see if I can secure a new space, and I will let you know when I can be out."

[DEFENSE COUNSEL]: Now, you stated February of 2023. This phone call would have been in July of 2021?

DON DEHANAS: **I'm sorry, February of 2022.**

[DEFENSE COUNSEL]: What else do you recall from that conversation?

DON DEHANAS: He inquired as to . . . we had . . . we talked about space size. I told him that the space was no longer suitable for us because of the size, and he offered to build out a smaller space, as well. And I said that I was not interested in that.

[DEFENSE COUNSEL]: Did you inform him at that point of your intention to terminate the [L]ease?

DON DEHANAS: Yes, we were just waiting on a date when I could be out once we secured something else.

[DEFENSE COUNSEL]: Did you tell Mr. Pizzi of your intention to seek alternative office space?

DON DEHANAS: Yes.

[DEFENSE COUNSEL]: Did Mr. Pizzi respond to that?

DON DEHANAS: Not in so many words. He left it with, "I would hate to lose you from the center, but yes, we can let you out of the [L]ease." That was . . . that was the gist of it.

[DEFENSE COUNSEL]: **Is there anything else you recall from that conversation?**

DON DEHANAS: **He had an urgency to, for me to provide him with a date that we could be out. Other than that, no.**

(Emphasis added.)

Steven Nichols, the co-manager of DeHanas RE, also testified that Mr. DeHanas asked Mr. Pizzi on the July 2021 phone call whether termination of the Lease was an option and that Mr. Pizzi stated that termination "wouldn't be a problem."

Following that phone call, Mr. DeHanas immediately began looking for office space outside the Plaza. On August 2, 2021, Capital Eagle Investments, a company owned by Mr. DeHanas and Mr. Nichols, entered into a contract for the purchase of an office condominium in Waldorf, Maryland. The plan was for Capital Eagle Investments to lease the condominium to DeHanas RE.

Mr. DeHanas testified that he spoke with Mr. Pizzi again in August of 2021 and informed him that the Tenants had secured office space outside the Plaza but were not sure when they would be able to vacate the space in the Plaza. Specifically, Mr. DeHanas testified:

> DON DEHANAS: [Mr. Pizzi] called back a couple of weeks after the first phone call to follow up. **And at that point, I told him that we had located a space, but I wasn't sure of the timeline at that point because we hadn't, of course we hadn't settled, and we hadn't gotten any details from the contractor for a timeline for occupancy.**
>
> ***
>
> DON DEHANAS: [Mr. Pizzi] needed to know a date that we could be out, and I didn't have one at that point. **But he said, "I just need to make sure that you are out by February of 2022."**

(Emphasis added.)

On August 26, 2021, Mr. Pizzi left a voicemail with Mr. DeHanas that stated:

> **Hey, Don, this is Gino Pizzi with Washington Prime Group. I've been trying to reach you regarding the date which we need you out of your space, which is by February of next year.**

> **Please let me know that's going to be doable or if you plan on staying with us at the Center. I just need to know that answer.** I've been trying to get in touch with you regarding that.
>
> Please reach me on my cell any time[. . . .] Thank you.

(Emphasis added.)

Mr. DeHanas testified that, as soon as he got the voicemail message, he returned Mr. Pizzi's call, "the same day." Regarding this conversation, Mr. DeHanas testified:

> DON DEHANAS: **I told him that I still wasn't sure of the timeline, but I was certain that we could be out by December 1st if he needed the space earlier.**
>
> **And he replied with, "Well, I will need you to stay until at least the end of the year."**
>
> **And I said, "Well, that is not going to be a problem."**
>
> And that was pretty much the end of that conversation.
>
> [DEFENSE COUNSEL]: At that point on August 26th, were you confident you had procured your alternative office space?
>
> DON DEHANAS: Yes, yeah, at that point. I just, the contractor just hadn't provided us with a timeline yet.
>
> [DEFENSE COUNSEL]: **And your intention that August 26th was to terminate and relocate to your new office space?**
>
> DON DEHANAS: **Correct.**
>
> [DEFENSE COUNSEL]: **And did you make that clear to Mr. Pizzi?**
>
> DON DEHANAS: **Yes, in fact I felt it was clear from the first conversation.**

(Emphasis added.)

Having overheard the above phone conversation between Mr. DeHanas and Mr. Pizzi, Mr. Nichols corroborated Mr. DeHanas's version of the conversation.

In September of 2021, WPG's prospective tenant decided not to move to the Plaza, and Mr. Pizzi called Mr. DeHanas to inform him that he would no longer be required to move to a different office space. Mr. DeHanas testified that "[Mr. Pizzi] called to say that his deal fell apart, and that he wouldn't be able to let us out of the [L]ease."

On September 30, 2021, Mr. DeHanas sent an email to Mr. Pizzi, which, in its entirety, is as follows:

> Good Afternoon Gino,
>
> I spoke with my attorney, who is also copied on this email, and he feels, as do I, that your verbal request for us to move by February constitutes a verbal amendment to terminate the [L]ease. You were fully aware that I was in the process of securing another space, and I relied on your specific direction to do so. As a result, your communication about the "deal falling through", and not moving forward with terminating our [L]ease, has placed me in a very difficult financial position. I am requesting that you honor the plans to terminate my [L]ease without penalty on January 31, 2022.
>
> I have also included a copy of your voice mail, to refresh your memory of the message you left for me.

No response to this email was made by Mr. Pizzi or any other representative of St. Charles or WPG.

On January 14, 2022, Mr. DeHanas sent an email to several WPG employees informing them that DeHanas RE had vacated the retail space at the Plaza and would turn over the keys by the end of the month. Specifically, Mr. DeHanas wrote:

> To Whom it May Concern
>
> I have been a tenant at [the Plaza] for more than 20 years. Our [L]ease was scheduled to end in July 2023. Recently, in late summer, I received a call from Gino Pizzi letting me know that he was going to have to move my office to a different part of the shopping center because someone was interested in our space that is adjacent to two empty spaces. **Gino told me that he would arrange to have a space built out for us, and indicated we would need to sign a new lease. I told Gino that I had not planned to renew the [L]ease and asked him if there was an option to just dissolve it, and he said "Yes, but I'll need you out of the space by February 2022." I told him I needed to secure another space, and I would let him know what date I could be out of the space.**

> Because of the short notice, I immediately began searching for a suitable location, and found one within a few weeks. I put a contract on a small condo, that would need some renovation, but felt confident we could be out and relocate by the end of November or early December. In the meantime, I received a message from Gino, which I have attached to this email, telling me he needed me out of the space by February. I called and spoke to him and told him I thought we could be out by the end of November, and he told me he needed me to stay until the end of the year. I told him we could do that, and if we need some kind of addendum to the [L]ease to get it to me and I would sign it. For several weeks I did not hear back from Gino, and he called to tell me "the deal fell apart and I can't let you out of your [L]ease". I explained to him that as a result of his instructions to vacate the property by February, that I had already secured an alternative space. His response to me was "Sorry about that[.]"
>
> This interaction has resulted in putting me in a very difficult financial situation where I am now obligated to pay a mortgage and rent. I contacted my attorney, and he believes the voice mail constitutes a verbal amendment to the [L]ease. I sent an email to Gino, formally requesting that the [L]ease be terminated without penalty. (see email chain below). I never received a response from him, and do not know if he is even still with your organization.
>
> I naively went into this trusting that Gino was handling this interaction in a manner that was consistent with the way Washington Prime Group operates with regards to displacing tenants when an occupied space is needed to fulfil the needs of a new tenant.
>
> **I have acted in reliance on the statements, both verbal and via voice mail, of your officer, Gino Pizzio, [sic] and have been financially damaged as a result. I have vacated the space, and will turn keys over to you by the end of this month. None of this would have had to happen had Gino been truthful with me from the beginning. He knew I was working to secure another space to accommodate his request to vacate the space.**

(Emphasis added.)

On January 26, 2022, the Landlords sent a Notice of Default to the Tenants, stating that the Tenants remained liable under the Lease for all unpaid rent and related charges through July 31, 2023. On May 9, 2022, St. Charles filed a complaint against the Tenants for breach of contract in the Circuit Court for Charles County, Maryland. On December 8,

2022, the Tenants filed a Joint Counterclaim and Third-Party Complaint against St. Charles and WPG, claiming intentional misrepresentation, tortious interference with contractual relations, tortious interference with business relations, and detrimental reliance. On May 4, 2023, the Landlords filed a Motion for Summary Judgment, which was followed, on May 19, 2023, by the Tenants filing an opposition to the Landlords' motion, as well as a Counter-Motion for Summary Judgment, in part.

After a bench trial on June 20 and July 10, 2023, the trial court entered judgment in favor of the Tenants and against the Landlords. The court's oral opinion is set forth, in relevant part, as follows:

> Thank you. So, something I find . . . I want to go through my notes that, again, as I stated at the beginning before closing, that I went over the testimony, the exhibits, the arguments of the parties, and testimony.
>
> ***
>
> Was there any other change to the contract terms? And I just looked at accord and satisfaction. Accord, did both parties agree to accept the different performance, accept different performance and satisfaction of the original contract?
>
> And I answered that question yes, that negotiations to release the [Tenants] early and to allow the new big tenant to occupy the same space.
>
> And was there satisfaction? So, and I was, when I looked at that, was there an alternative performance completed? Yes, the [Tenants] departed the leased premises by a negotiated date, and that date was February 1st. And the rent was paid through January of 2021 [sic].
>
> ***
>
> **And then the last part I looked at was, was there anticipatory repudiation of the contract? And in that case I said, yes, by the [Landlords].** I think that the [Landlords] did make, when the [Landlords]. . . so, I'm sorry, I am going to look at the factors.

> Did the [Landlords] make an [un]ambiguous[4] statement? Yes. The [Landlords] informed the [Tenants] of a larger tenant and a date certain by which the... to vacate the space.
>
> Was that prior to full performance? Yes.
>
> And was it indicated that the [Landlords] would not perform the rest of the contract, and I indicted yes for that.
>
> And so the [Tenants'] options in response to the [Landlords'] anticipatory repudiation is to treat the repudiation as an offer to rescind, and treat the contract as discharged.
>
> So, when the [Landlords] informed the [Tenants] that [they] would be invoking the [L]ease term, allowing the [Landlords] to move out, the [Tenants], to move the [Tenants] to a different space within the mall, the [Tenants] had the right under the [L]ease option to terminate it, and did so through oral conversations and clear conduct to secure other space outside the mall.
>
> **The [Landlords'] conduct, making unambiguous statements prior to full performance indicating the [Landlords] would not complete the [L]ease terms through 2023, constituted an anticipatory breach or repudiation of the contract.**
>
> **Which the [Tenants] properly treated as an offer to rescind and discharged the [Tenants'] [L]ease obligations beyond February 1st of 2022.**
>
> And so, the remedy that I am finding for this court is to declare that the [L]ease is unilaterally rescinded, or was unilaterally rescinded, such that the [Tenants'] obligations under the [L]ease were discharged as of January 31st of 2022.

(Emphasis added.)

On August 9, 2023, the Landlords filed a notice of appeal of the trial court's judgment. We shall provide additional facts as necessary to the resolution of the questions presented in this appeal.

STANDARD OF REVIEW

Under Maryland Rule 8-131(c),

[4] It is clear from a later statement in the trial court's oral opinion, *i.e.*, "[t]he [Landlords'] conduct, making unambiguous statements," that the court here intended to use the word "unambiguous." Either the court misspoke or the transcript is in error. In either event, we are confident that the court found that the Landlords' statement was unambiguous.

> [w]hen an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It 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.

"[U]nder Rule 8-131(c), this Court reviews a lower court's factual determinations for clear error and its legal conclusions *de novo*." *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 392 (2019). A trial court's factual determinations are "not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings[.]'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). This Court "'must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed.'" *Id.* at 608 (quoting *Gen. Motors Corp. v. Schmitz*, 362 Md. 229, 233-34 (2001)).

DISCUSSION

I. Anticipatory Breach or Repudiation[5]

A. Arguments of the Parties

The Landlords argue that that the evidence does not support the trial court's ruling

[5] The terms anticipatory repudiation and anticipatory breach are used interchangeably in our case law. *See, e.g.*, *Harrell v. Sea Colony, Inc.*, 35 Md. App. 300, 306 (1977) (stating that "Sea Colony unilaterally attempted to convert Harrell's request for a mutual rescission of the contract to an anticipatory breach or repudiation on his part."); *Weiss v. Sheet Metal Fabricators, Inc.*, 206 Md. 195, 203 (1955) (stating that "these statements did not amount to a definite and specific anticipatory breach or repudiation of the contract.").

that their actions constituted an anticipatory repudiation of the Lease. Specifically, the Landlords contend that their "statements and actions were within the scope of the Lease terms," and that their "relocation request was a display of [their] intent and an offer to *continue* the Lease through the end of its term, albeit in a different space in the Plaza." (Emphasis in original). According to the Landlords, Mr. Pizzi testified that he wanted Mr. DeHanas to sign a new lease for the remainder of the original term, and Mr. DeHanas himself testified that Mr. Pizzi attempted to make several accommodations to keep DeHanas RE and Sanahed at the Plaza. In sum, the Landlords argue that "[n]either Mr. Pizzi's communication, nor his conduct, expressed positively and unconditionally a refusal to perform under the Lease or to abandon it; indeed, nothing in the parties' communications reasonably could have made the Tenants believe—or anticipate—a breach by the Landlords, such that Tenants would be allowed to repudiate the Lease."

In response, the Tenants argue that sufficient evidence supported the trial court's determination of an anticipatory repudiation. In particular, according to the Tenants, "Mr. Pizzi, the [L]andlord's agent, called the [T]enant to notify them that the [L]andlord had a new tenant for that premises and that the [T]enant could either accept a new leased space from the [L]andlord along with a new lease contract, or terminate their [L]ease." The Tenants assert further that the trial court credited the Tenants' testimony "that they wanted to terminate the [L]ease rather than relocate and extend the terms of the [L]ease on the new premises by an additional five years."

B. Analysis

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). In other words, "'[i]n order to constitute an anticipatory breach of contract, there must be a definite and unequivocal manifestation of intention on the part of the repudiator that he will not render the promised performance when the time fixed for it in the contract arrives.'" *Harrell v. Sea Colony, Inc.*, 35 Md. App. 300, 306 (1977) (quoting 6 Arthur L. Corbin et. al., *Corbin on Contracts* § 973). However, "'[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.'" *Id.* (quoting 6 Arthur L. Corbin et. al., *Corbin on Contracts* § 973). In addition, "'a mere expression of inability to perform in the future is not a repudiation of duty and cannot be operative as an anticipatory breach.'" *C.W. Blomquist & Co. v. Cap. Area Realty Invs. Corp.*, 270 Md. 486, 495 (1973) (quoting 4 Arthur L. Corbin et. al., *Corbin on Contracts* § 974). Upon an anticipatory repudiation of a contract, "the other party may, at his election, treat the contract as abandoned, and act accordingly." *Id.* at 494.

In their opening brief, the Landlords assert that their relocation request was simply an offer to continue the Lease through the end of its term, albeit in a new space in the Plaza. They point to the testimony of Mr. Pizzi that he wanted the Tenants to sign a new lease for the remainder of the term. What the Landlords overlook is the principle of appellate review that this Court must consider the evidence in a light most favorable to the Tenants, as the prevailing parties. *Plank*, 469 Md. at 608; *Braude v. Robb*, 255 Md. App. 383, 397 (2022).

Moreover, if, considering the evidence produced at trial in a light most favorable to the prevailing party, there is evidence to support the trial court's determination, it will not be disturbed on appeal. *Mayor & Council of Rockville v. Walker*, 100 Md. App. 240, 256 (1994); *Baltimore & Ohio R.R. Co. v. Kuchta*, 76 Md. App. 1, 11 (1988).

In the instant case, the trial court determined that the Landlords' statements to the Tenants constituted an anticipatory breach or repudiation of the Lease. The court found that the Landlords made "unambiguous statements prior to full performance indicating the [Landlords] would not complete the [L]ease terms through 2023." Considering the evidence in a light most favorable to the Tenants, we hold that there was sufficient evidence to support the trial court's determination of an anticipatory breach or repudiation of the Lease by the Landlords.

As set forth in the Background section above, Mr. DeHanas testified that in July of 2021, Mr. Pizzi told Mr. DeHanas that (1) a new tenant was taking two spaces adjacent to the Tenants' space and wanted the Tenants' space; (2) the Landlords were going to build another location for the Tenants in the Plaza; and (3) the Tenants "would just need to sign a new five year lease." At that time, the term of the Lease was to end in two years – July 31, 2023. Mr. DeHanas was then asked again whether Mr. Pizzi's request was "that you execute a new lease extending the Lease term." Mr. DeHanas responded: "Yeah, he said we would need to sign a new five year lease."

Mr. DeHanas also testified that in the July conversation, Mr. Pizzi told him that "I

just need you out before February of 202[2]."[6] Thereafter, according to Mr. DeHanas, Mr. Pizzi repeatedly contacted him in August of 2021, seeking assurances that the Tenants would be out by February of 2022. Mr. DeHanas testified that Mr. Pizzi said, "I just need to make sure you were out by February of 2022." It was not until September of 2021, after the Tenants had secured new space for their business that Mr. Pizzi called Mr. DeHanas to inform him that the deal for the new tenant had fallen apart and that "he wouldn't be able to let us out of the [L]ease."

Under Section 2.5 of the Lease, the Landlords have the right, subject to the Tenants' right of termination,[7] to require the Tenants to relocate to other premises in the Plaza, but the Tenants have the right to accept the new premises only for the unexpired term of the Lease. As acknowledged by the Landlords at oral argument before this Court, there is no provision in the Lease that gives the Landlords the right to require a new five year lease when relocating a tenant.

In our view, Mr. Pizzi's statements to Mr. DeHanas that Mr. DeHanas was required to sign a new five-year lease if he wished to remain at the Plaza was a definite and specific repudiation of the Lease by demonstrating his intent to not comply with the terms of the Lease for that portion of the Lease term from February 1, 2022 to July 31, 2023. Mr. Pizzi's

[6] Mr. DeHanas actually said 2023, but later corrected himself and testified that the year was 2022.

[7] Under Section 2.5B of the Lease, the Tenants have the right, in the event that the Landlord's relocation request is unacceptable, to terminate the Lease, "exercisable by written notice to Landlord." It is undisputed that the Tenants never gave notice to the Landlords in writing that they wished to terminate the Lease.

statement was not just a "mere expression of inability" to move the Tenants only for the remaining term of the Lease, but a clear statement that signing a new five-year lease was the only option if they wished to remain in the Plaza. *C.W. Blomquist & Co.*, 270 Md. at 495. The Tenants thus had the right to treat the Lease as abandoned. *See id.* at 494.

Finally, the trial court found that the Tenants properly treated Mr. Pizzi's statements "as an offer to rescind and discharged the [Tenants'] [L]ease obligations beyond February 1st of 2022." The evidence shows that, because he had little interest in signing a new five-year lease, Mr. DeHanas looked for new office space outside the Plaza, eventually purchasing an office condominium through his other company, Capital Eagle Investments. Therefore, we hold that the trial court did not err in determining that the Landlords' actions and statements constituted an anticipatory repudiation of the Lease and that the Tenants properly treated the Lease as abandoned, and thus the Tenants were discharged of their obligations under the Lease as of February 1, 2022.

II. Accord and Satisfaction

When a trial court relies on "several alternative independent grounds in reaching its decision, we must determine that at least *one* of those independent grounds was properly decided in order to affirm that decision." *Monumental Life Ins. Co. v. U.S. Fid. & Guar. Co.*, 94 Md. App. 505, 523 (1993) (emphasis in original). If we were to disturb the court's decision, on the other hand, "we would have to determine that *all* of the grounds upon which the court relied were improper." *Id.* (Emphasis in original).

In the instant case, the trial court's determinations of an anticipatory repudiation by the Landlords and an accord and satisfaction between the parties were alternative

independent grounds by which the court found that the Tenants' obligations under the Lease terminated on January 31, 2022. Indeed, the Landlords admitted the same at oral argument before this Court. Because we have decided that the trial court did not err when it held that the Landlords' actions constituted an anticipatory repudiation of the Lease, we conclude that it is not necessary for this Court to address the issue of whether the trial court erred in determining that the parties entered into an enforceable accord and satisfaction.

III. Statute of Frauds

In their opening brief, the Landlords made the following argument regarding the Statute of Frauds:

> **The trial court's findings of accord and satisfaction and anticipatory repudiation both are defeated by the Statute of Frauds.** An oral agreement involving an interest in real property cannot serve as a basis for surrender of a written lease agreement. Even if the evidence at trial supported an oral release – and it does not – the Statute of Frauds is controlling in Maryland. Oral modifications to an agreement relating to an interest in land must be in writing to be effective.

(Emphasis added.)

At oral argument before this Court, however, the Landlords acknowledged that the Statute of Frauds does not apply to an anticipatory repudiation. Counsel for the Landlords stated: "If the Court should find or hold that the trial court was legally correct in finding that there was an anticipatory repudiation, notwithstanding the oral communication rather than written notice, then I believe that would take the Statute of Frauds out of play." We agree with the Landlords' position at oral argument and shall explain.

The Statute of Frauds provides that a contract for the sale of real property is not enforceable unless the contract is in writing and signed by the party to be charged or their

agent. *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 434 (2008). Specifically, Md. Code Ann., Real Prop. § 5-104 states that

> [n]o action may be brought on any contract for the sale or disposition of land or of any interest in or concerning land unless the contract on which the action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or some other person lawfully authorized by him.

Similarly, Md. Code Ann., Real Prop. § 5-103 states that

> [n]o corporeal estate, leasehold or freehold, or incorporeal interest in land may be assigned, granted, or surrendered, unless it is in writing signed by the party assigning, granting, or surrendering it, or his agent lawfully authorized by writing, or by act and operation of law.

"[T]he purpose of the Statute of Frauds 'is the prevention of successful fraud by inducing the enforcement of contracts that were never in fact made. It is not to prevent the performance or the enforcement of oral contracts that have in fact been made.'" *Wang*, 183 Md. App. at 437 (quoting *Collins v. Morris*, 122 Md. App. 764, 773-74 (1998)). Thus, "[t]o render a contract enforceable under the statute of frauds, the required memorandum must be

> (1) a writing (formal or informal);
>
> (2) signed by the party to be charged or by [their] agent;
>
> (3) name each party to the contract with sufficient definiteness to identify [them] or [their] agent;
>
> (4) describe the land or other property to which the contract relates; and
>
> (5) set forth the terms and conditions of all the promises constituting the contract made between the parties."

Beall v. Beall, 291 Md. 224, 228–29 (1981).

It is clear from the above discussion that the Statute of Frauds applies to the performance or enforcement of certain contracts. *See* Md. Code Ann., Real Prop. § 5-104. An anticipatory repudiation of a contract is not a contract; rather, it is a breach of a contract. Nor is an anticipatory repudiation an assignment, grant, or surrender of a leasehold interest under Md. Code Ann., Real Prop. § 5-103. *See La Belle Epoque, LLC, v. Old Europe Antique Manor, LLC*, 406 Md. 194, 211-12 (2008) (suggesting that an assignment of an interest in a lease is a contract, the validity of which depends on the intent of the parties); *Eidelman v. Walker & Dunlop, Inc.*, 265 Md. 538, 543 (1972) (stating that, because the original lease was a contract, there must be a contract in the nature of an assent by the landlord to the surrender by the tenant for there to be a surrender of the premises). Therefore, we conclude that the Statute of Frauds does not apply to the anticipatory repudiation determined by the trial court in the instant case.[8] Accordingly, we will uphold the decision of that court.

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

[8] Likewise, an anticipatory repudiation is not a modification to the Lease and thus does not violate Section 23.3 of the Lease, which requires any "alteration, amendment, change or addition" to be in writing signed by the parties.