

Circuit Court for Worcester County
Case No. C-23-CV-18-000109

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1587

September Term, 2023

MUNTHER SALEM

v.

OCEAN CITY PARTNERS LIMITED
PARTNERSHIP

Wells, C.J.,
Arthur,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: September 26, 2025

*This is an unreported opinion. It 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).

This case arises from a commercial property lease (“the Lease”) between R&M, Inc. (“R&M”) and appellee Ocean City Partners Limited Partnership (“OCPLP”). Appellant Munther Salem was R&M’s principal and personal guarantor of the Lease. In 2018, OCPLP filed a complaint in the Circuit Court for Worcester County against R&M and Salem for breach of contract. R&M and Salem filed a complaint in the circuit court against OCPLP for breach of contract, declaratory relief, and fraud in the inducement. The circuit court consolidated both claims and granted Salem’s request to be substituted for R&M as “Trustee in Dissolution for R&M” because R&M forfeited its corporate charter. After trial, the circuit court found (1) Salem breached the Lease with OCPLP, (2) OCPLP was entitled to damages against Salem in the amount of \$763,496.31, plus attorney’s fees and costs, and (3) Salem’s claims against OCPLP were unfounded and therefore denied.

Salem filed this timely appeal. He submits three questions for our review, which we rephrase:¹

¹ Salem’s verbatim questions are:

1. Did the terms of the Guaranty, which require adjudication of disputes in federal court when a basis for federal jurisdiction exists, abrogate the trial court’s subject-matter jurisdiction over the case when Mr. Salem filed a Notice of Substitution of Party for R&M, Inc., thereby establishing diversity jurisdiction?
2. Did the trial court err as a matter of law by dismissing Appellants’ counterclaim as time-barred after ruling the Lease and Guaranty were not documents under seal and therefore not subject to the 12-year statute of limitations for actions based on sealed instruments?
3. Did the trial court commit clear error when it found there was no merit to Appellants’ counterclaims by failing to acknowledge the “domino effect”

1. Did the circuit court have subject matter jurisdiction over this case?
2. Did the circuit court err in finding Salem’s breach of contract claim was time barred?
3. Did the circuit court err in finding Salem’s breach of contract claim lacked merit?

We will not reach any of these questions, however. For the reasons that follow, we are constrained to dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A concise recitation of the facts will be sufficient to provide context for why we are compelled to dismiss this appeal. On April 9, 2015, OCPLP and R&M executed the Lease, in which OCPLP agreed to lease space in a shopping center in Berlin, Maryland (“the Premises”), to R&M for ten years. Salem, principal owner of R&M, executed a guaranty of lease (“the Guaranty”) by which he agreed to personally and fully guaranty all of R&M’s obligations under the Lease.

Exhibit B to the Lease required OCPLP, as Landlord, to complete certain work on the Premises, such as installing a demising wall and drive-through window. Exhibit B further specified that R&M, as Tenant, needed to perform all remaining work. Section 9.2 of the Lease stated: “Tenant shall be responsible for obtaining all applicable government approvals and permits necessary for the completion of Tenant’s work.” Section 9.1 of the Lease provided, in relevant part, that “[b]y taking possession of the Premises, Tenant

created by Appellee’s indisputable delay in completing its required start-up work?

acknowledges that it has . . . (ii) accepted the Premises, and all improvements, betterments[,] and equipment ‘AS IS’. . . and (iii) agreed that the Landlord has no obligation to improve or repair the Premises . . . unless said obligation is specifically set forth in Exhibit B.”

Section 1.1(C) of the Lease defined the “Term Commencement Date” as “[t]he date upon which the Landlord delivers the Premises to Tenant (which shall be deemed to have occurred upon substantial completion of Landlord’s work as described in Exhibit ‘B’).” Section 1.1(D) of the Lease additionally defined the “Rent Commencement Date,” the date when R&M needed to commence paying monthly rent, as “[t]he earlier of (a) the date Tenant opens for business from the Premises, or (b) ninety (90) days after delivery of the Premises by Landlord with Landlord’s work substantially complete (the ‘Possession Date’).” Section 4.1(iv) of the Lease also required R&M to “occupy and operate one hundred percent (100%) of the Premises continuously and uninterrupted during all of the Store Hours” beginning on the Rent Commencement Date.

According to testimony from Salem at trial, he expected to take possession of the Premises within two months of signing the Lease. The Lease, however, did not specify a time by which OCPLP needed to substantially complete its Landlord work and deliver the Premises. Evidence and testimony at trial revealed OCPLP could not substantially complete its work, such as installing the demising wall, until Salem obtained a building permit from Worcester County. Representatives from Worcester County sent Salem numerous emails over multiple weeks requesting certain information so it could grant

Salem the permit. Salem did not provide this information until August 2015. Worcester County then issued the permit to Salem on August 26, 2015.²

The court found OCPLP substantially completed its work and delivered the Premises to R&M on October 28, 2015—approximately six months after executing the Lease. R&M took actual, physical possession without objection to the condition of the Premises. Accordingly, the Rent Commencement Date, when the Lease required R&M to open for business and begin paying rent, was January 26, 2016, provided R&M did not open for business earlier. R&M did not open for business until October 29, 2016, and R&M never made a single monthly rent payment. R&M vacated and abandoned the Premises on January 22, 2018.

OCPLP filed a complaint in the Circuit Court for Worcester County on April 19, 2018, bringing claims against R&M and Salem for confessed judgment action and breach of contract. The court entered confessed judgment against R&M and Salem, but R&M and Salem timely moved to vacate the judgment. R&M and Salem then filed a counter-complaint against OCPLP with three claims: (1) breach of contract, (2) declaratory relief, and (3) fraud in the inducement. Regarding the breach of contract claim, R&M and Salem alleged OCPLP breached the Lease by failing to timely complete Landlord’s work, failing to timely turn over possession of the Premises, and failing to credit the tenant allowance to

² Other issues raised by Salem at trial, such as the amount of signage space available to Salem and placement of the drive-through, also arose during this time. The intricacies of those issues are not pertinent to this appeal.

R&M. OCPLP moved to dismiss the counter-complaint because Section 16.6(C) of the Lease prevented R&M from filing a counter-complaint against OCPLP. The court granted OCPLP’s motion.

R&M and Salem then filed a separate action against OCPLP in the circuit court, raising the same claims in their dismissed counter-complaint. Shortly after, R&M and Salem filed a motion to consolidate the separate action with OCPLP’s existing case against R&M and Salem. Salem additionally filed a Notice of Substitution of Party to be substituted for R&M as “Trustee in Dissolution for R&M” because R&M forfeited its corporate charter.³ The court granted R&M’s motion to consolidate and later reasoned that while Section 16.6(C) of the Lease prevented R&M and Salem from filing the counter-complaint, it did not prevent them from filing a complaint in a separate action.

OCPLP filed a motion for summary judgment, which the court granted in part and denied in part. The court found Salem was “in default as a matter of law on January 22, 2018, by virtue of vacating the [Premises]” and “the record [was] devoid of facts to indicate that this default was the result of any actions taken by OCPLP.” Summary judgment was otherwise denied.

The parties went to trial in 2021, and the court issued its Opinion and Order in September 2023. The court found that Salem breached the Lease by failing to pay rent, failing to open for business on the Rent Commencement Date and then continuously

³ Because of this substitution, we primarily refer to Salem and not R&M for the remainder of this opinion.

operate, and vacating the Premises prior to the end of the Lease term. Although the court previously found Salem was in default on January 22, 2018, for vacating and abandoning the Premises, the court found Salem was in default on January 26, 2016, for failing to open and continuously operate.

The court also found Salem’s breach of contract claim against OCPLP was time barred because it was not filed within three years of OCPLP’s alleged breach. The court noted Salem’s claim was not subject to the 12-year statute of limitations for specialties because the Lease was not a contract under seal. Specifically, the court found the body of the Lease did not contain any reference to it being signed under seal, and there was no indication that the parties intended the Lease to be a specialty contract.

Even if Salem’s breach of contract claim was not time barred, the court found the claim “is without merit and not supported by evidence as presented at trial.”⁴ *First*, the court rejected Salem’s claim that OCPLP breached by failing to complete the Landlord work in a timely or sufficient manner. The court noted testimony from Salem that OCPLP completed a majority of the Landlord’s work when it delivered the Premises to Salem, as well as the fact that the Lease did not provide a timeline by which the Landlord’s work was to be completed. The court also discussed how Salem took possession of the property, thereby acknowledging he found the Premises to be in a satisfactory condition pursuant to Section 9.2 of the Lease.

⁴ The court also rejected Salem’s declaratory relief and fraud in the inducement claims. The court’s findings and reasoning as to these claims are not relevant to this appeal.

Second, the court refuted Salem’s claim that OCPLP breached by failing to turn over the Premises in a timely manner. The court discussed the emails from Worcester County to Salem mentioned *supra*, finding Salem “caused substantial delays in the permitting process.”

Third, the court rejected Salem’s claim that OCPLP breached the Lease by failing to credit the tenant allowance to Salem. The court reasoned that Article XVIII of the Lease required OCPLP to provide a tenant allowance of \$66,000 to Salem for construction “[p]rovided Tenant is not in default of [the] Lease.” Because Salem was in default of the Lease on January 22, 2016, the court found he was not entitled to the tenant allowance.

Finally, the court reserved on OCPLP’s request for counsel fees as provided by the fee shifting provision in the contract. We provide additional facts in our discussion when necessary.

DISCUSSION

I. We Are Compelled to Dismiss this Appeal Because It Was Filed Prematurely.

No one disputes that in the circuit court’s Opinion and Order, docketed September 28, 2023, the court reserved on the issue of whether OCPLP, as the prevailing party, was entitled to an award of counsel fees under the lease agreement. The docket entries show Salem filed a Notice of Appeal on October 16, 2023. Although neither side briefed this issue, we alerted the parties ahead of oral argument that it seemed to us the appeal was premature and of no effect, and to be prepared to address this issue. The parties did so. We

now conclude that there was no final judgment at the time the appeal was filed, therefore the appeal must be dismissed.

Statutory provisions and the Maryland Rules determine appellate jurisdiction in Maryland. *See Rowe v. Maryland Comm’n on C.R.*, 483 Md. 329, 343–44 (2023). We may dismiss an appeal if “[it] is not allowed by [the Maryland Rules] or other law,” or if “the notice of appeal was not filed with the [circuit] court” within the time prescribed by the Maryland Rules. Md. Rule 8–602(b)(1), (b)(2). We may raise the jurisdictional issue of whether the trial court has entered an appealable order even if that issue goes unnoticed by the parties. *See Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 655, *cert. denied*, 440 Md. 116 (2014); *Barnes v. Barnes*, 181 Md. App. 390, 406 (2008).

Md. Rule 8–202 controls the time for filing a notice of appeal. That Rule states: “Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” In a civil case such as this one, “the only method of securing review by [this Court] is by the filing of a notice of appeal within” that prescribed time period. Md. Rule 8–201(a). An appeal is jurisdictionally defective if a party files the notice of appeal before the entry of final judgment. *Sovereign Grace Ministries*, 217 Md. App. at 662. Importantly, a premature notice of appeal neither confers jurisdiction on the appellate court nor divests the trial court of jurisdiction to enter a final judgment in the case. *See Quillens v. Moore*, 399 Md. 97, 121 (2007).

“An order will constitute a final judgment if the following conditions are satisfied: (1) ‘it must be intended by the court as an unqualified, final disposition of the matter in controversy;’ (2) ‘it must adjudicate or complete the adjudication of all claims against all parties;’ and (3) ‘the clerk must make a proper record of it’ on the docket.” *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989); Md. Rule 2–602(a) (providing that an order or other form of decision that adjudicates less than an entire claim, or fewer than all claims in an action, is not final judgment and remains subject to revision at any time before entry of judgment that adjudicates all claims).

Salem did not appeal from a final judgment. Although properly recorded and indexed by the clerk, the court’s September 28, 2023 order ruled in favor of OCPLP on the breach of lease against Salem and in favor of OCPLP on all of Salem’s counterclaims, but clearly reserved on the issue of whether OCPLP was entitled to attorneys’ fees after OCPLP provided “proper documentation” to the court. *See the circuit court’s Opinion and Order at 19*. Ultimately, the circuit court awarded \$67,736.00 in counsel fees in an order dated January 22, 2024.

“In considering whether a particular court order or ruling constitutes a final, appealable judgment,” the appellate court examines “whether the order was ‘unqualified,’ and whether there was ‘any contemplation that a further order [was to] be issued or that anything more [was to] be done.’” *Rohrbeck*, 318 Md. at 41–42; *see Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 299 (2015) (“The order must be a complete adjudication of the matter in controversy, except as to collateral matters, meaning that there

is nothing more to be done to effectuate the court’s disposition.”). The September 28 Opinion and Order from which Salem appealed was plainly a qualified disposition of the breach of lease claim that OCPLP filed. The court expressly stated that it would only award counsel fees to OCPLP after documentation was provided, which only happened months later.

Because the September 28 Opinion and Order did not decide the amount of contract-based attorneys’ fees for the breach of lease, the order did not fully adjudicate all the claims under the breach of lease claim. A contract claim is not fully adjudicated, and thus no final judgment can be entered, until the court resolves pending claims for attorneys’ fees that are based on a contractual right. *See G–C P’ship v. Schaefer*, 358 Md. 485, 486–88 (2000) (*per curiam*) (holding that appeal must be dismissed where guarantors appealed from orders granting summary judgment against them because “the counsel fees that were awardable pursuant to the contract form part of the claim for breach of contract, but [those fees] had not been determined when the [] appeal was noted”); *Mattvidi Assocs. Ltd. P’ship v. NationsBank of Virginia, N.A.*, 100 Md. App. 71, 78 n. 1 (holding that judgment in the case “was not final until judgment on the attorneys’ fees award was entered” where judgment against borrower and guarantors had first been “entered on the awards of principal, interest, and late charges” and then court later issued order for attorneys’ fees and litigation expenses), *cert. denied*, 336 Md. 277 (1994).

An appeal is premature when a party files a notice of appeal after the court makes a decision on the issue of breach of contract, but before the court determines the availability

and the amount of counsel fees awardable pursuant to the contract. *See Carr v. Lee*, 135 Md. App. 213, 221–24 (2000), *cert. denied*, 363 Md. 206 (2001). In those circumstances, a party may preserve the right to appeal by filing another notice of appeal after the court has decided the attorneys’ fees issue (and has embodied its decision in a separate order that is properly entered on the docket). *See Mattvidi*, 100 Md. App. at 78 n. 1. A party may, however, lose the right to appeal altogether if he or she fails to file another notice of appeal after the court enters written orders awarding contract-based counsel fees.

Significantly, in *Carr*, we explained that there “is more than a timing issue,” but a fundamental jurisdictional problem, when a party appeals from an order that does “not resolve all issues, and [that is] not a final judgment.” 135 Md. App. at 226. While this application of the final judgment rule may appear harsh, a uniform final judgment rule itself serves ““to promote the judicial system’s interest in finality of judgment and confidence in the judicial disposition of disputes.”” *Id.* at 229.

Under the circumstances, we conclude that we lack jurisdiction to consider the substantive issues in Salem’s appeals because he noted this appeal prematurely. Because these appeals are not permitted by rules or statute (Md. Rule 8–602(b)(1)), and because the notices of appeal in this case were not filed with the circuit court within the time period prescribed by Rule 8–202, we must dismiss these appeals on our own initiative. *See* Md. Rule 8–602(a)(3).

**APPEAL DISMISSED. COSTS TO BE EVENLY
DIVIDED BETWEEN APPELLANTS AND
APPELLEE.**