Circuit Court for Prince George's County
Case No. CAL14-32357

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1871

September Term, 2016

CIPRIANO SQUARE PLAZA CORP.

v.

HASEEB MUNAWAR, ET AL.

Kehoe,
Berger,
Beachley,

JJ.

Opinion by Kehoe, J.

Filed: February 21, 2018

Haseeb and Razia Munawar filed a civil action in the Circuit Court for Prince George's County to rescind a lease agreement between them and Cipriano Square Plaza Corporation. The court, the Honorable Nicholas D. Rattal presiding, granted the requested relief. Cipriano has appealed and presents two issues, which we have re-ordered and re-worded:

1. Did the trial court err in concluding that the Circuit Court for Prince George's County was the proper venue for the Munawars' rescission claim?

2. Did the trial court err when it concluded that Cipriano had materially breached the lease agreement, and that rescission of the lease was an appropriate remedy?

We will affirm the judgment of the trial court.

Background

On December 10, 2013, the parties entered into a lease agreement by which the Munawars agreed to rent space in a shopping center owned by Cipriano and located in Greenbelt, Maryland. Two parts of the lease are particularly relevant to this appeal.

The first consists of the choice of law and venue-selection provisions. The lease agreement states that it is governed by the laws of New York, and the case was tried on that basis. We will discuss how this affects our scope of review in Part 1 of this opinion. The venue-selection provision states that, subject to certain exceptions, Monroe County, New York is the exclusive venue for any lawsuit between Cipriano and the Munawars pertaining to the lease agreement. There are exceptions, and the parties do not agree as to how the exceptions apply to the present case. We will resolve this in Part 2.

The second provision pertains to the Munawars' obligations to reimburse Cipriano for common area maintenance ("CAM") expenses and real estate taxes. Essentially, the lease agreement requires the Munawars to pay a pro rata share of these expenses; their share is to be calculated according to several variables that are spelled out in the agreement. This is the grist for our mill in Part 3.

The Munawars took occupancy of their space a few days after they signed the lease. Shortly thereafter, they communicated with Jeff Lieber, Cipriano's leasing manager, asserting that the CAM and property tax charges appeared to be excessive and asking for an explanation. Neither Lieber nor anyone else from Cipriano responded to the Munawars' inquiries. They then retained counsel, who wrote to Lieber, again asking for the information, and also pointing out that Cipriano was required to provide certain documentation, i.e., tax bills and explanation of how the Munawars' pro rata share of the CAM and real estate tax expenses were calculated. Cipriano did respond to counsel's request, but the response did not include all, or even most of, the information requested. Further wrangling did not change the situation and, on November 25, 2014, the Munawars' counsel informed Cipriano that his clients were rescinding the lease.

Thereafter, the Munawars filed the current action, and Cipriano filed suit against them in New York. In the Maryland litigation, the Munawars sought rescission of the lease and damages for misrepresentation. (The latter count was dismissed by the court prior to trial.) Although the New York pleadings aren't in the extract, it appears that

Cipriano alleged that the Munawars had breached the lease and sought damages in the amount of the unpaid rent for the full ten year term. The New York action is stayed pending resolution of the Maryland case.

At the trial on the rescission count, the Munawars presented evidence in the form of documentary evidence (primarily the lease agreement and the written communications between the parties as to the CAM and tax charges), the testimony of Mr. Munawar, and a portion of the deposition testimony of Cipriano's corporate designee, Nicholas Vassello. Vassello was unable to articulate the basis by which Cipriano calculated the Munawars' share of the CAM and real estate tax charges.

For its part, Cipriano called Gregory Farrell, who testified that he was the collections manager for First Allied Corporation, which manages the Cipriano Square Shopping Center. Cipriano's intention to call Farrell as a witness was not disclosed to the Munawars' counsel until the morning of trial. The court did not permit him to testify as to the way that Cipriano calculated CAM and tax charges for the Munawars because the court concluded the landlord was bound by the testimony of Vassello, its corporate designee. Eventually, Cipriano withdrew him as a witness. It presented no other evidence.

The trial court announced its findings of fact and conclusions of law in an opinion from the bench. In summary, the court concluded that, to the extent that Cipriano violated the lease agreement regarding the CAM charges, that violation was not significant enough to warrant rescission of the lease agreement. However, the court found by clear

and convincing evidence that Cipriano had breached the lease agreement with regard to the calculation of the Munawars' share of the real property taxes, that the breach was material, that the Munawars lacked an adequate remedy at law, and that the status quo between the parties could be substantially restored by rescission of the contract.

1. Choice of Law and the Standard of Review

As we've noted, the lease agreement provides that it is to be governed by the laws of New York, and the trial court applied New York law in reaching its decision. The parties suggest that New York law affects our standard of review in two ways. First, they state that, under New York law, the Munawars were required to prove their case by clear and convincing evidence, and so we must review the trial court's findings under that standard. Second, again citing the law of New York, they assert that the materiality of a breach is a legal matter and must be addressed by us *de novo.* We are not bound by the parties' views on matters of law,[1] andwe don't entirely agree with either proposition.

Maryland courts generally respect parties' contractual agreements as to governing law. Contractual choice of law provisions pertain to substantive principles of law but not to procedural matters. *Vernon v. Aubinoe*, 259 Md. 159, 162 (1970). Distinguishing

[1] *See, e.g., Coley v. State,* 215 Md. App. 570, 572 n.2 (2013) ("An appellate court is not bound by a party's erroneous concession of error on a legal issue.").

between what is procedural and what is substantive can be difficult. The Court of Appeals has explained that procedural provisions of law are:

> those that generally restrict, limit, define, qualify, or otherwise simply modify an existing cause of action. Put differently, procedural matters are those that simply affect the manner in which the forum administers justice.

Lewis v. Waletzky, 422 Md. 647, 664 (2011).

We start with the burden or quantum of proof, which in Maryland is a procedural matter. *Finch v. Hughes Aircraft Co.,* 57 Md. App. 190, 230 (1984) ("The law of Maryland determines the quantum of proof required . . . because burden of proof, a matter of procedure, is governed by the *lex fori.*"). In light of the record generated before the trial court, identifying the appropriate burden of proof in an action seeking rescission of a contract based on breach is of academic interest. For the purposes of our analysis only, we will assume Maryland, like New York, imposes a burden of proof by clear and convincing evidence.[2]

[2] In fact, Maryland law appears to be unsettled as to this issue. There are a variety of factual premises that, if proven, can support the remedy of rescission. *See Hale v. Hale*, 66 Md. App. 228, 233 (1986) ("[C]ontracts generally may be subject to rescission on a finding of fraud, duress, undue influence, or negligent misrepresentation in their making[.]"). It is clear in Maryland that, when a party seeks to rescind a contract on the basis of fraud, the party must prove *the fraud* by clear and convincing evidence. *Boring v. Jungers*, 222 Md. 458, 465 (1960). The same rule applies when rescission is sought because of a mutual mistake of the parties. *Brockmeyer v. Norris*, 117 Md. 466, 472 (1940).

(Footnote continued. . . .)

Turning to the scope of appellate review, we conclude that it is also procedural, and therefore is governed by Maryland, and not New York, law. This is significant, because in Maryland, whether a breach is material is a question of fact. *Weichert v. Faust*, 419 Md. 306, 319 n.4 (2011) ("Whether the breach was willful or material is a question for the trier of fact to resolve, and not the appellate courts.").

Accordingly, we will "review the case on both the law and the evidence." Md. Rule 8-131(c). "To be clear and convincing, evidence should be 'clear' in the sense that it is certain, plain to the understanding, and unambiguous and 'convincing' in the sense that it is so reasonable and persuasive as to cause [the factfinder] to believe it." *Coleman v. Anne Arundel County,* 369 Md. 108, 125 n.16 (2002). We will examine the court's finding against that standard, bearing in mind that we will not set aside those findings unless they are clearly erroneous, and we "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). In this exercise, we bear in mind that a "trial judge need not articulate each item or piece of evidence she

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(Footnote continued. . . .)

Parties must prove a breach of contract by a preponderance of the evidence. Our appellate courts do not appear to have directly addressed whether that burden changes when the injured party seeks rescission as a remedy. *Cf. Maslow v. Vanguri*, 168 Md. App. 298, 323–24 (2006) (discussing circumstances when courts will grant rescission due to breach without suggesting that a plaintiff must prove its case by clear and convincing evidence.); *Vincent v. Palmer*, 179 Md. 365, 372–73 (1941) (contrasting rescission by breach and rescission by implied consent, which must be shown by clear and convincing evidence).

or he has considered in reaching a decision . . . . The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426-427 (2007) (quoting *John O. v. Jane O.*, 90 Md. App. 406, 429 (1992)).

2. Venue

The parties' agreement as to venue selection is found in §§ 22.03 and 29.02 of the lease agreement. Read together, they set out a general rule and two exceptions.

The general rule states in pertinent part:

> Owner and Tenant further agree that any action, suit or proceeding arising out of or relating to this Lease, or the parties' relationship arising out of the Lease, shall be adjudicated exclusively in New York State Supreme Court, Monroe County, New York, and the parties expressly, specifically, and irrevocably consent to the personal jurisdiction and venue of such court. . . . In the event of an action, suit or proceeding arising out of or relating to this Lease, or the parties' relationship arising out of the Lease, Tenant waives all objections to venue on the grounds of forum non conveniens or for any other reason. . . .

The first proviso:

> **Notwithstanding the foregoing**, the parties agree that, solely **with respect to actions and or proceedings by Owner seeking possession of the leased premises**, including, but not limited to, actions and/or proceedings seeking to evict or eject Tenant, such actions and/or proceedings shall be venued [sic] in the jurisdiction in which the leased premises are located and shall be governed by the laws of the state in which the leased premises are located.

The second proviso:

> **Notwithstanding the foregoing**, it is agreed that any action, suit or proceeding arising out of this Lease **that is not for the collection of rent or for other**

> **monetary matters** shall be brought in the State where the Shopping Center is located.

(Emphasis added and some capitalization changed.)

Cipriano filed a motion to dismiss on the basis of improper venue. It argued that the parties' underlying dispute had to do with the calculation of the Munawars' pro rata share of real estate taxes and CAM expenses, and that these were "money matters," thus requiring the case to be tried in New York. The trial court denied the motion, reasoning that the phrase "money matters" was intended to refer to the relief sought in the action, as opposed to the factual basis of the claim.

To this Court, Cipriano asserts that the trial court erred. It argues that "the Munawars' allegations regarding the calculation of taxes and CAM charges are clearly 'monetary matters' and the type of relief sought in an action centered on such monetary matters is immaterial for jurisdictional considerations." This contention is not persuasive.

Because we apply New York law in interpreting the lease agreement, we will:

> (1) look to a contract's "plain meaning so as to define the rights of the parties." *Mazzola v. County of Suffolk*, 533 N.Y.S.2d 297, 297 (N.Y. App. Div. 1988);
>
> (2) avoid interpretations of contract language that "produce[] unreasonable results." *Nassau Chapter, Civil Serv. Emp. Ass'n v. Nassau Count*y, 430 N.Y.S.2d 98, 100 (N.Y. App. Div. 1980); and
>
> (3) interpret contracts "so as to give effect to each and every part" of them, *FCI Group, Inc. v. City of New York*, 862 N.Y.S.2d 352 (N.Y. App. Div. 2008), and to "harmonize [a contract's] terms" if possible. *James V. Aquavella, P.C. v. Viola*, 914 N.Y.S.2d 498 (N.Y. App. Div. 2010).

Initially, we agree with the parties that the venue provisions in the lease agreement are unambiguous. In a legal document, the phrase "notwithstanding the foregoing . . ." means "that what follows controls that what precedes." In light of this, we do not accept Cipriano's contention that "monetary matters" refers to the facts underlying the parties' dispute, because doing would lead to unreasonable results.

By Cipriano's logic, any action based upon, or arising out of, a party's failure to pay money must be filed in New York. The flaw in this reasoning is illustrated by considering an eviction action stemming from a tenant's failure to pay rent. By Cipriano's logic, such an action would have to be filed in New York because the parties' rent dispute arises out of a "money matter." But the first proviso states that, in eviction actions, the law of the state in which the shopping center is located controls. This choice of law provision is unaffected by the second proviso. Thus, in order to evict a tenant from the shopping center because of unpaid rent, Cipriano would be required to file the action in New York, inform that court that it must apply Maryland law, and obtain a judgment of the court ordering eviction. Assuming—in what we suspect might be an unlikely event—that the New York court accepted jurisdiction, and then granted such relief, Cipriano would then be required to enroll the judgment in Maryland in order to enforce it. It's difficult to imagine a more unwieldy, and therefore less reasonable, process.

On the other hand, adopting the trial court's interpretation that the phrase "money matters" refers to the relief requested means that each part of the venue provision of the

lease agreement retains its significance. An eviction action, even one arising out of a failure to pay rent, does not seek a monetary judgment, and so must be filed locally. Actions seeking monetary damages must be brought in New York. Actions not seeking monetary relief must be filed locally. This last category would typically consist of injunction actions. Seeking an injunction from the local court makes good sense because the issuing court must be in a position to enforce its orders, and the local court is better able to do this efficiently. The case for filing a rescission action locally is admittedly less compelling, especially when the forum court must apply New York law. However, that same law makes it clear that courts may not "rewrite an unambiguous agreement" to suit a party's purposes. *Krumme v. WestPoint Stevens Inc*., 238 F.3d 133, 139 (2d Cir. 2000).

3. Material Breach and Rescission

Under New York law, a party may seek rescission of a contract on a variety of grounds, *e.g*., fraud in the inducement, mutual mistake, undue influence, or breach.[3] We are concerned with the last category. Under New York law, rescission of a contract on the basis of a breach is appropriate "where the breach is found to be material and willful, or, if not willful, so substantial and fundamental as to strongly tend to defeat the object of the

[3] *See Gould v. Bd. of Educ. of Sewanhaka Cent. High Sch. Dist*., 81 N.Y.2d 446, 453 (N.Y. App. Div. 1993) (mutual mistake of fact); *Banque Arabe et Internationale D'Investissement v. Maryland National Bank*, 850 F. Supp. 1199, 1208 (S.D.N.Y. 1994) (fraud); and *Pacchiana v. Pacchiana*, 462 N.Y.S.2d 256, 257 (N.Y. App. Div. 1983) (duress or undue influence).

parties in making the contract." *Callanan v. Keeseville, Ausable Chasm & Lake Champlain R.R. Co.,* 199 N.Y. 268, 284 (1910). *Callanan* is a sturdy centenarian; its articulation of the requirements for rescission by breach has been repeatedly employed by New York courts, albeit not always with attribution. *See, e.g., Krumme*, 238 F.3d at 143; *Miller v. Wells Fargo Bank*, 994 F. Supp. 2d 542, 552–53 (S.D.N.Y. 2014); *Willoughby Rehab. v. Webster*, 22 N.Y.S.3d 81, 84–85 (N.Y. App. Div. 2015).

The rule is stated in the disjunctive: a material and willful breach, or a non-willful breach that is so substantial that it defeats the contractual intentions of the parties. This dichotomy is more apparent than real because there is a great deal of conceptual overlap between a breach that is material, and one that defeats the intentions of the parties. Indeed, courts applying New York law have equated the concepts. *Compare Felix Frank Assocs., Ltd. v. Austin Drugs, Inc.,* 111 F.3d 284, 289 (2d Cir.1997) (A material breach is one that "goes to the root of the agreement between the parties," and "is so substantial that it defeats the object of the parties in making the contract."); *with Callanan*, 199 N.Y. at 284 (A breach is material when it "leaves the subject of the contract substantially different from what was contracted[.]").

In addition to proving a material breach, a party seeking rescission must also demonstrate that it has no adequate remedy at law and that the parties may be substantially restored to the *status quo ante contractu. See, e.g., Rudman v. Cowles*

Communications, Inc., 30 N.Y.2d 1, 13–14 (1972); *Slezak v. Stewart's Shops Corp.*, 20 N.Y.S.3d 704, 705 (N.Y. App. Div. 2015).

Finally, New York imposes an implied covenant of good faith and fair dealing upon parties to a contract. *511 W. 232nd Owners Corp. v. Jennifer Realty Co*., 98 N.Y.2d 144, 153 (2002). In New York, this covenant:

> embraces a pledge that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.
>
> While the duties of good faith and fair dealing do not imply obligations inconsistent with other terms of the contractual relationship, they do encompass any promises which a reasonable person in the position of the promisee would be justified in understanding were included.

Id. (citations and quotation marks omitted).

The trial court found that Cipriano had breached its duties to the Munawars regarding payment of their pro rata share of real estate taxes, that the breach was material, that the Munawars had no adequate remedy at law, and that rescission would restore the parties to their positions before the lease agreement was executed. This evidence was uncontested, and it was sufficient to support the court's findings by clear and convincing evidence.

The starting point of our analysis is § 5.01 of the lease agreement, which states in pertinent part (emphasis added):

> Commencing on the Possession Date and continuing throughout the entire term of this Lease, Tenant agrees to pay its proportionate share of Real Property Taxes (as defined below). Tenant shall pay that portion of such Real Property Taxes equal to the product obtained by multiplying the total Real Property Taxes by a fraction, the numerator being the square foot area of the leased premises, and the

denominator of which shall be the total square footage, minus the first floor area of the tenant with the largest first floor, of all leased first floor area in the Shopping Center.

Notwithstanding anything in this Article V to the contrary**, if any tenant of the Shopping Center pays directly for the Real Property Taxes on a separately assessed tax parcel within the Shopping Center** (whether such payment is made to Owner directly to or the taxing authority) rather than paying a pro rata share of the Real Property Taxes, **then the real property taxes for such separately assessed parcel shall be deemed excluded from the definition of Real Property Taxes under this Lease and the square footage of such tenant's premises shall be excluded from the denominator in the immediate preceding paragraph** for purposes of computing Tenant's proportionate share of the Real Property Taxes.

Tenant will make monthly escrow payments towards its proportionate share of all Real Property Taxes, **such amount to be set by Owner**. Owner will bill Tenant periodically for its **proportionate share** of said Real Property Taxes, **accompanied by copies of the appropriate tax bills.** The total billing for Tenant's proportionate share of Real Property Taxes less the amount previously paid by Tenant will result in an adjustment whereby **Tenant will receive either a credit equivalent to the excess of Real Property Taxes paid which may be deducted by Tenant from the next monthly payment of Real Property Taxes or shall pay the balance due to Owner for additional taxes within ten (10) days of receipt of the bill. The monthly amount to be paid on account will be revised each year by Owner** to more closely reflect one twelfth (1/12th) of Tenant's share of Real Property Taxes due for the next Tax year. Tenant shall, on or before the Possession Date, reimburse Owner for its proportionate share of the then current tax year's Real Property Taxes covering the period from the Possession Date through the end of the current tax year, together with an amount sufficient to bring current its Real Property Taxes escrow fund as aforesaid. During any year, Owner, from time to time, may revise its estimate of the Real Property Taxes which will be due for that year and the monthly payments to be made by Tenant on account thereof.

The first paragraph of § 5.01 sets out the formula for calculating a tenant's pro rata share of real estate taxes. The variables in the formula include the size of the premises leased by the tenant, the size of the first floor area leased by the anchor tenant, and how

much of the shopping center is leased. The second paragraph contains an adjustment to the allocation formula if the shopping center consists of more than one parcel for real estate tax purposes, and the landlord choses to allocate tenants' tax charges accordingly. (The evidence at trial was that the Cipriano Square Shopping Center extended over three separately assessed parcels, identified in the record as "Parcel 2," "Parcel 5," and "Parcel 6." The premises leased by the Munawars was located in Parcel 6.)

Although § 5.01 reserves to Cipriano a great deal of flexibility in deciding the amount to bill an individual tenant on a monthly basis, it obligates Cipriano to provide copies of tax bills to tenants, and to revise the amount charged to a tenant "to more closely reflect one twelfth (1/12th) of Tenant's share of Real Property Taxes due for the next tax year." A tenant would have the reasonable expectation that the amount of taxes charged to it reflected its actual obligation under the formula spelled out in § 5.01. Such an expectation would be enforceable through the implied covenant of good faith and fair dealing because that covenant "encompass[es] any promises which a reasonable person in the position of the promisee would be justified in understanding were included." *511 W. 232nd Owners Corp.*, 98 N.Y.2d at 153.

Cipriano also argues that there was no breach because it was contractually obligated to adjust the amount of real estate taxes charged to the Munawars. Cipriano is correct that such a provision exists in the contract, but the trial court based its finding of breach on the initial overcharges and Cipriano's refusal to explain the basis by which it calculated

the Munawars' share of the taxes, a refusal that continued into the litigation. Cipriano had ample opportunities to explain how its determination of the Munawars' portion was fair and reasonable but it declined to do so. For these reasons, we conclude that the trial court's finding that Cipriano breached the lease agreement was supported by clear and convincing evidence.

The trial court did not explicitly find that Cipriano's breach was willful. In this context, "willful" means "voluntary and intentional, but not necessarily malicious[.]" Black's Law Dictionary 1834 (10th Ed.). There was evidence before the court that Cipriano's alleged overbilling and refusal to provide information to the Munawars was both voluntary and intentional, and Cipriano doesn't argue otherwise on appeal.

We turn now to whether the breach was "material." In New York, a breach is material if it "leaves the subject of the contract substantially different from what was contracted[.]" *Callanan*, 199 N.Y. at 284. The unrebutted evidence was that Cipriano was charging the Munawars about 30% more than was proper according to the formula in § 5.1. Vassello, Cipriano's corporate designee, was unable to explain how the tax allocation formula applied to the Munawars. A lease agreement that calls for a tenant to pay 130% of its pro rata share of taxes assessed to a shopping center is substantially

different from a lease that requires the tenant to pay its pro rata share. The court's finding as to materiality was not clearly erroneous. [4]

[4] We would reach the same result if we reviewed *de novo* the trial court's material breach finding. In addition to what we've already said, we would follow the lead of courts applying New York law and look to Restatement (Second) of Contracts § 24, which sets out factors to be considered in deciding whether a breach is material. *Frank Felix Associates*, 111 F.3d at 288; *Dancing Waters, Inc. v. 1526 Broadway Corp*., 464 N.Y.S.2d 140, 141 (1983). Application of the § 241 factors clearly points to the conclusion that the breach was a material one.

Section 241 states (our own commentary is interspersed in italics):

> **Circumstances Significant in Determining Whether a Failure Is Material**
>
> In determining whether a failure to render or to offer performance is material, the following circumstances are significant:
>
> (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected[:]
>
> > *The primary benefit that the Munawars would receive from the lease agreement is the use of the premises. But the Munawars also had the reasonable expectation that their rent, CAM, and tax payments would conform to the terms of the lease. This expectation was frustrated by Cipriano's actions.*
>
> (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived[:]
>
> > *For the reasons stated by the trial court, we conclude that the Munawars had no adequate remedy at law.*
>
> (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture[:]
>
> > *As explained in page 18 of this opinion, Cipriano forfeited nothing.*

(Footnote continued. . . .)

Similarly, we find no error in the court's conclusion that the Munawars were without an adequate remedy at law. The court's analysis focused on § 27.01 of the lease agreement, which provides that any monetary judgment in favor of the Munawars could be recoverable only from Cipriano's net proceeds in the event that it sold the shopping center and that "no personal judgment . . . shall give rise to any right of execution or levy against [Cipriano's] assets." The court concluded that "there is no way whatsoever [for the Munawars] to get a penny, even if [they] have a judgment," until Cipriano sells the center. We agree with the trial court's reading of the lease agreement.

In its brief, Cipriano asserts that the court erred as a matter of law because the Munawars had other possible remedies, specifically, actions for an injunction, specific

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(Footnote continued. . . .)

> (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances[:]
>
> > *There is no basis for a conclusion that Cipriano would cure its failures. Cipriano ignored the requests from the Munawars and only partially complied with the requests for information from the Munawars' counsel. Cipriano's post-breach conduct is also relevant. Cipriano's corporate designee was unable to explain in discovery how it actually calculated the tax charges. In short, there is nothing in the record to indicate that Cipriano has any interest in adjusting or otherwise remedying the excessive charges.*
>
> (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing[:]
>
> > *Cipriano's behavior has not comported with standards of good faith and fair dealing. See pages 14 of this opinion.*

performance, or declaratory judgment. We don't agree. First, injunction and specific performance actions are equitable, and therefore are not "remedies at law." Second, although Cipriano is correct that a court in a declaratory judgment action might issue a monetary judgment as ancillary relief, such a judgment would not be enforceable as a practical matter against Cipriano for the reasons discussed in the previous paragraph.

Finally, Cipriano argues that the trial court erred in finding that rescission would restore the parties to the status quo prior to the contract. Cipriano asserts that rescission will leave it "without the benefit of a ten year commercial lease" that it had with the Munawars. Cipriano misapprehends the purpose of the no forfeiture requirement. It is not to give the breaching party the benefit of the bargain that it would have had but for its breach. Instead, the purpose of the no forfeiture requirement is to return the parties to their positions before they entered into the contract. Before the lease agreement was signed, Cirpriano had an empty storefront. As a result of the judgment rescinding the lease, Cipriano was free to lease the space to someone else. There was no forfeiture.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.