Circuit Court for Worcester County
Case No. C-23-CV-17-000026

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1874

September Term, 2017

T.T.G., LLC,

v.

RLD RENTAL PROPERTIES LTD

Leahy,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 7, 2018

In late 2015, appellant T.T.G., LLC, the owner of a shopping center known as the "Golden Pond," entered into an agreement with appellee, RLD Rental Properties Ltd.[1] The agreement, which was captioned as a "letter of intent," contemplated that appellant would sell the Golden Pond property to appellee. After appellant refused to sell the property to appellee, appellee filed a complaint in the Circuit Court for Worcester County for breach of contract and specific performance. Following a two-day trial on the breach of contract claim, a jury found that the agreement constituted an enforceable contract, and awarded appellee $50,000 in damages as a result of appellant's breach. The circuit court, at a subsequent hearing, acknowledged the jury's finding that the letter of intent constituted a valid contract, and ruled in favor of appellee on its specific performance claim, ordering appellant to sell the Golden Pond property to appellee pursuant to the contract.

Appellant timely appealed, and presents four issues for our review, which we reprint verbatim:

1. Can a document entitled "GOLDEN POND LETTER OF INTENT WITH DEPOSIT," and beginning with the provision, in all capital letters, "THIS LETTER OF INTENT" relating to a certain parcel of realty known as "The Golden Pond," a strip shopping center, be properly interpreted by the trial judge and jury as a contract to sell that property?

2. Where such document provides for contingencies which were never fulfilled, may it properly be enforced by a trial judge and jury as a contract for the sale of the property?

[1] Appellee was doing business as Red Light District Lingerie at the time the agreement was signed, but is now known as RLD Rental Properties Ltd.

3. Where such document expressly provides that said property "will be taken off the market [pending the potential buyer] managing the property during 13 months period" and in the interim continuing to pay rent for a space therein which the potential buyer already occupied, may it properly be enforced as a contract for the sale of the property?

4. Was the evidence sufficient to support the jury's verdict?

We hold that appellant failed to preserve these arguments for appellate review, and accordingly affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Although we shall not reach the merits of appellant's contentions, we provide a summary of events related to the execution of the contract at issue. As stated above, appellant is the owner of the Golden Pond shopping center located in Ocean City, Maryland. Appellee, one of appellant's tenants, began leasing space in the shopping center in 2005. On October 1, 2015, appellant entered into an agreement with appellee and its principals, Ofir Bouzaglo ("Bouzaglo") and Yosef Benzakan ("Benzakan"). Anthony Mariani ("Mariani") executed the agreement on behalf of appellant, a limited liability company.[2]

The agreement, titled "Golden Pond Letter of Intent with Deposit," referred to appellant as "Seller" and appellee as "Buyer," and stated, in relevant part, that:

> In consideration of the premises and the mutual covenants herein contained[,] Seller does[,] hereby bargain and sell unto Buyer, and Buyer

[2] Mariani and Bouzaglo both signed the agreement on October 1, 2015, and Benzakan signed on November 4, 2015. All of their signatures were notarized by Mariani's administrative assistant.

does hereby purchase from Seller all the improved property known as "The Golden Pond" . . . .

The purchase price of the property is Eight Hundred Thousand Dollars ($800,000) of which the deposit of Fifty Thousand ($50,000) will be paid to [Mariani] at the signing hereof, and the balance of $750,000 shall be paid by Buyer . . . .

* * *

The Golden Pond Property will be taken off the market, being a part of retirement "sell out." Sale price will be held by the Seller at Eight Hundred Thousand Dollars ($800,000) for the Buyer who will be managing the property during 13 months [sic] period.

During the term of October 1st, 2015 – October 31, 2016 the Buyer will be paying rent for the occupied space by extending the current (December 3, 2010) existing lease under the same rent term & conditions.

* * *

This contract contains the final and entire Agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions or representation not herein written. This Contract shall be binding upon and insure [sic] to the benefit of the parties, and their heirs.

* * *

Settlement date will be appointed on/or before November 1, 2016. Time *is* of the essence in this contract. Any changes to this agreement will be on amicable terms by both Buyer and Seller by creating and signing an addendum.

* * *

Because a no doc mortgage has been supplied by the Seller, Buyer will dense [sic] forth to pay all title examination charges, the costs of the preparation of all necessary documents, notary fees, recordation and transfer taxes, recording costs and other customary settlement charges shall be paid by the Buyer; however, if upon examination, title should be found defective, Seller shall pay the cost of the title examination.

* * *

> Upon payment as aforesaid, Seller, who warrants that it is the owner of the property, shall execute and deliver a deed for the property containing covenants of special warranty and further assurance, which shall convey the property to Buyer. . . .

Pursuant to the parties' agreement, Bouzaglo gave Mariani a check for $50,000, which Mariani deposited. Two weeks later, at Mariani's request, Bouzaglo gave him another $50,000, this time in cash.[3] After executing the agreement on October 1, 2015, Bouzaglo managed the Golden Pond property for the next thirteen months. In addition to collecting rent and common maintenance charges from the other tenants on Mariani's behalf, Bouzaglo handled another tenant's lease renewal.

In April 2016, Bouzaglo began texting Mariani about setting a settlement date to complete the sale of the property. According to Bouzaglo, Mariani resisted proceeding to closing on November 1, 2016, as required by the agreement. Specifically, after Bouzaglo hired an attorney, Mariani became upset and said that he did not want to deal with an attorney. Mariani also objected to Benzakan's involvement in the deal, citing prior negative experiences with Benzakan.

On October 19, 2016, appellee, through counsel, sent a letter to Mariani informing him that appellee intended to proceed to settlement on November 1, 2016, at 1:00 p.m. Bouzaglo continued to contact Mariani about settlement, but it was not until the morning of November 1, that Mariani informed Bouzaglo he would not be attending the settlement.

[3] Of the $100,000 that Bouzaglo gave to Mariani, $50,000 came from Benzakan.

That day, Bouzaglo and Benzakan went to their attorney's office and signed a number of documents, including a promissory note for $750,000, and a mortgage securing the property. A deed was also prepared for settlement, but was never executed because Mariani refused to attend.

A few weeks later, Mariani sent a check to Bouzaglo for $50,000. However, Bouzaglo did not cash the check because he did not want to cancel the parties' deal, and because the check was made payable only to him. Mariani also texted Bouzaglo, offering to return the $50,000 in cash, but Bouzaglo refused Mariani's offer.

On May 10, 2017, appellee filed an amended complaint against appellant in the Circuit Court for Worcester County, alleging that the parties had entered into a contract on October 1, 2015, and that appellant had breached that contract by failing to attend the November 1, 2016 settlement and deliver the deed for the Golden Pond property to appellee. The amended complaint contained two counts: Count I (Specific Performance) sought to compel appellant to transfer title and possession of the Golden Pond property to appellee, and Count II (Breach of Contract) sought monetary damages. On May 23, 2017, appellee requested a jury trial.

The case was bifurcated for trial with the breach of contract claim to be tried first. After a two-day jury trial on October 23 – 24, 2017, the jury determined that appellant and appellee had entered into a contract for the sale of the Golden Pond property, that appellant had breached the contract, and that appellee was entitled to $50,000 in damages. Following the jury's verdict, the court stated that it would hold a separate hearing on appellee's request

for specific performance, but advised the parties that it did not "anticipate an evidentiary hearing on this."

On October 25, 2017, the court held a hearing on appellee's claim for specific performance. No additional evidence was presented, and the parties offered no substantive arguments. Because the entire presentation of the specific performance claim was extremely brief, we reprint it in full:

> THE COURT: We're here on the specific performance complaint -- count which was not addressed yesterday, obviously, by the jury inasmuch as it's an equitable matter. Does either side wish to be heard on that?
>
> [APPELLEE'S COUNSEL]: Well, I guess just for a few seconds, Your Honor. I think it's more than appropriate for the Court to issue specific performance in this matter. The jury has found it's a contract. It's enforceable, settlement occurred, there's a ready, willing and able buyer, and I think the Court should order it to be done pursuant to the terms of the contract as reflected in general in the settlement sheet, which is one of the exhibits before the court, similar in fashion to the way it was prepared with the previous settlement documents. Obviously, some minor things would have to be changed in them. But as to that specific issue, I have nothing else to say.
>
> I have a couple other things to bring to the -- to request the Court after that's decided.
>
> THE COURT: Okay. Sir?
>
> [APPELLANT'S COUNSEL]: Nothing really of any substance, Your Honor, other than I obviously don't consent to it. *But in light of the jury's verdict, I have an understanding what the Court will likely do*.

(Emphasis added).

The court, acknowledging that the jury had already found the existence of a valid contract, and opining that the jury's verdict was "entirely correct," proceeded to rule on the specific performance issue. Finding no adequate remedy at law, the court ordered appellant

to specifically perform its obligations under the contract. The court entered a written order on November 15, 2017, and appellant noted its appeal on November 27, 2017.

DISCUSSION

Appellant presents four arguments on appeal: (1) the court and the jury could not have properly interpreted the "letter of intent" as a contract of sale; (2) even if there were a contract, the evidence showed that a contingency had not been met; (3) based on appellant's interpretation of a provision that the property would be "taken off the market," there could be no enforceable contract; and (4) the jury's verdict was not supported by sufficient evidence. All four arguments challenge whether there was sufficient evidence to establish the existence of an enforceable contract. We need not reach the merits of those arguments, however, because appellant failed to move for judgment at the close of the evidence, and therefore did not preserve them for appellate review. We explain.

As stated above, appellee's amended complaint contained two counts. Count I (Specific Performance) sought equitable relief, and Count II (Breach of Contract) sought monetary damages. On the breach of contract claim, the jury heard extensive evidence concerning the execution of the letter of intent as well as the parties' arguments whether the letter of intent constituted an enforceable contract. In rendering its verdict, the jury expressly found that appellant and appellee had entered into a contract for the sale of the Golden Pond property and that appellant had breached that contract. At a separate hearing the following day, the court (and the parties) acknowledged the jury's findings concerning

the existence of the contract and appellant's breach. Based on those findings, the court ordered appellant to specifically perform the contract.

Appellant contends that both the court and jury erred in finding that the document was an enforceable contract. However, once the jury rendered its verdict on the breach of contract claim, the jury's findings bound the court in its assessment of the specific performance claim:

> [W]here issues presented in an action at law are triable before a jury, those issues must be presented to a jury notwithstanding that they are also raised in an additional or alternative equitable action, and that, in ruling upon the equitable claim, *the court is bound by the jury's determination of the common issues*.

Hawes v. Liberty Homes, Inc., 100 Md. App. 222, 229 (1994) (emphasis added). Here, the "common issue" between the breach of contract and specific performance claims was whether the letter of intent constituted an enforceable contract. Accordingly, the jury's findings of the existence of a valid contract and appellant's breach of the contract bound the court in its resolution of the specific performance claim. *See id*. at 230 (holding that after jury found a breach of contract, court could not have denied specific performance on the grounds that there was no contract, or that appellant had not breached the contract). Indeed, the brevity of the specific performance hearing evinces the parties' understanding that the jury's findings were so binding.

In light of this immutable principle that the jury's findings in an action at law are binding in an alternative equitable claim, we conclude that appellant failed to preserve any challenge to the existence of the contract or its breach. All of appellant's arguments are

based on the notion that the "letter of intent" could not be interpreted or enforced as a contract. Because all of appellant's arguments are, at their core, a challenge to the sufficiency of the evidence concerning the existence and breach of a contract—issues that were submitted to the jury—our ability to review them on appeal depends on whether appellant moved for judgment at the close of the evidence. *Mathis v. Hargrove*, 166 Md. App. 286, 311 (2005) ("The law is well settled that we will not review a challenge to the sufficiency of the evidence where there is a failure to move for judgment at the conclusion of all the evidence.").

Here, appellant failed to move for judgment at the conclusion of the evidence. It therefore may not challenge on appeal the jury's determination that the "letter of intent" constituted an enforceable contract, or its determination that appellant breached the contract. Accordingly, we hold that appellant failed to preserve its arguments for appellate review.[4]

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

[4] Additionally, we note that when appellee moved for judgment on the breach of contract claim, appellant responded that this case was "one for the jury to decide."