UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2087

September Term, 2014

BLUE MAX INN, INC., ET AL.

v.

ROSEMARY HOLTZNER

Kehoe,
Leahy,
Raker, Irma, S.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 9, 2016

This case arises from a complaint for specific performance filed by Blue Max Inn, Inc. ("Blue Max"), Neal Rider, and Bernadette Bosley against Rosemary Holtzner[1] in the Circuit Court for Baltimore County. (Mr. Rider and Ms. Bosley are the owners of Blue Max and do not assert an interest different from that of the corporation.) Following a trial, the circuit court issued a final judgment denying Appellants' request for specific performance. Appellants filed a motion to alter and amend the court's judgment, which was denied without a hearing. Appellants appealed and present the following questions for our review, which we rephrase:

> 1. Did the trial court err in denying Appellants' request for specific performance?
>
> 2. Did the trial court err in denying Appellants' motion to alter and amend the court's judgment?
>
> 3. Did the trial court err in failing to hold a hearing before denying Appellants' motion to alter and amend the court's judgment?

As we will explain, the answer to Appellants' questions is "no." We will affirm the judgment of the circuit court.

BACKGROUND

Ms. Holtzner was the owner of property located at 11415 Philadelphia Road, White Marsh, Maryland. There are two structures located on the property: her residence and a larger building that has been used as a restaurant. Since approximately 2001, Blue Max has operated a bar and restaurant known as "The Rustic Inn" in the second structure.

[1]Ms. Holtzner passed away while this appeal was pending in this Court. Charles S. Holtzner, the personal representative of her estate, has been substituted as appellee.

In 2008, the then-owner of Blue Max, Michael Bayne, entered into an agreement to sell the stock in the corporation to Rider.[2] During the course of their negotiations, Bayne and Rider met with Holtzner, at which time Holtzner agreed to the transfer. Rider and Holtzner executed a writing (the "2008 Agreement") that stated in its entirety:

> October 2008
>
> To Who It May Concern:
>
> > I, Rosemary Holtzner, Owner of the premises, 11415 Philadelphia Road, White Marsh, Maryland 21162 will hereby lease the above mentioned property to NEAL RIDER President of Blue Max Inn Inc. trading as the Rustic Inn starting October 2008.
> >
> > /s/ Rosemary Holtzner
> > /s/ Neal Rider

It is undisputed that Rider and Holtzner orally agreed to a monthly rent and that the rent was timely paid until the dispute giving rise to this appeal.

As time passed, Holtzner noticed an increase in the number of motorcycles and what she perceived to be motorcycle gangs frequenting The Rustic Inn. She broached the issue with Rider on several occasions. The matter came to a head in August of 2012, when Holtzner and Rider had an argument in the kitchen of The Rustic Inn. During the argument, Holtzner again voiced her concerns. According to Holtzner, Rider responded

[2] It is unclear from the material in the extract when Bosley acquired her interest in Blue Max.

by walking into the bar area and bringing back an individual who was a member of a local motorcycle gang or club. Holtzner testified that this individual threatened her.

Shortly thereafter, Holtzner notified Rider that she was cancelling the lease and that he had thirty days to vacate the premises. This action triggered at least three separate court actions ensued between the parties.

The first was a landlord/tenant action filed by Holtzner, presumably in the District Court, seeking to evict Blue Max as a tenant holding over. It is not clear from the extract how, when, or whether this action was resolved.

The second lawsuit was filed by Appellants and was docketed as Civil Action No. 03-C-12-10176. Appellants sought a declaratory judgment stating that the 2008 Agreement as well as contemporaneous and subsequent oral statements constituted an enforceable lease agreement. The circuit court, the Honorable John J. Nagle, III, presiding, denied this relief after a trial on the merits. Although a copy of the judgment is not in the record, it is clear that: (1) at a minimum, Judge Nagle concluded that the 2008 Agreement was not an enforceable agreement;[3] (2) the court entered judgment accordingly; (3) Appellants did not appeal; and (4) the judgment became final before the trial court entered judgment in the current action.

[3] In her brief, Holtzner suggests that the scope of the declaratory judgment was broader and encompassed not only the 2008 Agreement but also the parol statements by the parties.

The third action, which is the one before us, was filed by Appellants while the declaratory judgment action was pending. In this action, Appellants sought specific enforcement of the "contract of lease, including its written and oral terms," as well as an order directing Holtzner to dismiss the landlord/tenant action. Appellants asserted that Holtzner represented to Rider that (1) the lease would continue to be in effect until he retired or sold the business; and (2) the monthly rent would remained fixed for that period. They sought a judgment requiring Holtzner to act accordingly. In her answer, Holtzner alluded to Civil Action No. 03-C-12-10176 but did not raise *res judicata* as a defense.[4]

[4]Had Holtzner done so, we would have considered whether the final judgment in Civil Action No. 03-C-12-10176 barred the present action. *See Powell v. Breslin*, 430 Md. 52, 63–64 (2013) ("In Maryland, the doctrine of res judicata precludes the relitigation of a suit if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action."). From what we can glean from the record, the privity and final judgment requirements were satisfied.

It also appears that the "claim" presented in the current case was the same as the "claim" advanced in Civil Action No. 03-C-12-10176 . *See Prince George's County v. Brent*, 414 Md. 334, 341–42 (2010) (Maryland has adopted the "transactional" concept of a claim articulated by the Restatement 2d of Judgments § 24). Section 24 states (emphasis added):

> **Dimensions of "Claim" for Purposes of Merger or Bar -- General Rule Concerning "Splitting."**
>
> (1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar . . . the claim extinguished includes *all* rights of the plaintiff to remedies against the

(continued...)

At trial, Holtzner testified that certain additional terms, such as the amount of rent, were agreed to orally, but that no agreement, oral or otherwise, was ever made regarding the term of the Lease. Rider testified to the contrary. To support his contention, Appellant's counsel introduced into evidence an agreement between Rider and A&M Amusements, LLC., dated October 16, 2008. In that agreement, which was also signed by Holtzner, A&M Amusements agreed to lease coin-operated amusement machines to Rider for an initial term of ten years and continuing in ten year increments thereafter.

After trial was concluded, the trial court issued a written opinion. It made the following pertinent findings regarding the evidence:

> During testimony, [Appellants] entered [the 2008 Agreement] into evidence . . . a document characterized as a "lease" signed by both parties.
>
> * * *
>
> Mr. Rider also testified an oral contract was made between the parties that would allow [Appellants] to rent the property from [Holtzner] until they retire or sell the business. [Holtzner] denies the oral contract.

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[4](...continued)
defendant with respect to all or any part of the *transaction,* or series of connected transactions, out of which the action arose.

(2) What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Res judicata is an affirmative defense and the trial court cannot be faulted for not addressing the issue.

> [Appellants] also entered [the A&M Agreement] into evidence an Agreement of Sales . . . . The Court acknowledges this agreement and recognizes the signature of [Holtzner]. However, the agreement is not an additional lease nor does it provide any insight to the Court of key information that is necessary in a valid lease that is missing from the proposed lease. In other words, the Agreement does not state forth terms of duration for [Appellants] to rent the property from [Holtzner] which [Appellants] argue in the oral contract.

Based on these findings, the court concluded:

> Under Maryland law, a leasehold interest in land for a term of one year or more must be in writing to comply with the statute of frauds. If a lease of more than one year is not written and signed by the parties, it then "has the force and effect of an estate or interest at will only, and has no other or greater force or effect, either in law or equity." [Md. Ann. Code (1974, 2010 Repl.) §§ 5-101 & 5-102 of the Real Property Article ("RP")].

The court then recognized that, despite the deficiencies in the 2008 Agreement, the parties nevertheless had a landlord-tenant relationship but that specific performance was unwarranted because:

> The Court does find now that the lease is incomplete and uncertain as it leaves out critical material information as to the term of duration of rent, creating a leasehold at will. Therefore, the Court denies [Appellants'] request for specific performance based upon the reasons previously stated.

Analysis

(1)

In their brief, Appellants present several intertwined contentions. First, they argue that the trial court's focus on whether there was an enforceable lease agreement between the parties was misplaced because Appellants sought an injunction to enforce "the

contract of lease." Although they couch their argument in different terms, they concede that the 2008 Agreement, taken in conjunction with the parties' parol statements, is not an enforceable lease.[5] Nonetheless, they assert that the 2008 Agreement constitutes an "agreement to lease," and was enforceable in equity. The principle Appellants cite is a correct one but is not applicable in this case.

Appellants' first problem is that there was conflicting testimony as to what exactly the parties agreed to orally. To be sure, Rider testified that Holtzner agreed that the lease would last for Rider's life or until he sold the business but this testimony was flatly contradicted by Holtzner, who adamantly and repeatedly denied that such any such oral agreement existed.[6] The trial court discounted the significance of the agreement with

[5] *See, e.g.*, *Forsyth v. Brillhart*, 216 Md. 437, 440 (1958):

> A contract required to be in writing under the Statute of Frauds cannot be enforced if it be partly written and partly oral . . . . [I]n order to make enforceable a contract within the Statute of Frauds, [a] document or writing, formal or informal . . . [must] state with reasonable certainty, (1) each party to the contract either by his own name, or by such a description as will serve to identify him, or by the name or description of his agent, and (2) the land, goods or other subject-matter to which the contract relates, and (3) the terms and conditions of all the promises constituting the contract and by whom and to whom the promises are made." (Citations omitted.)

[6] We cannot find, in either Appellants' brief or the record, any support for Appellants' claim that Holtzner agreed to the terms as indicated by Rider. Quite the contrary, she explicitly denied these allegations, both when she was questioned by counsel and when she was questioned by the court.

A&M because it "does not state . . . terms of duration for [Blue Max] to rent the property[.]" We defer to the trial court's assessment of the credibility of witnesses and the weight to be afforded evidence. *See* Md. Rule 8-131(c)[7] That the trial court chose to credit Holtzner's testimony over Rider's, even in the face of additional circumstantial evidence presented by Appellants in support of Rider's testimony, does not render the court's findings clearly erroneous. *See Fitzzaland v. Zahn,* 218 Md. App. 312, 322 (2014) ("[I]f there is any competent, material evidence to support the circuit court's findings of fact, we cannot hold that those findings are clearly erroneous.").

Second, even if the trial court had believed Rider, the court could not have granted Appellants the relief they sought because, as the trial court noted, the parties' agreement failed to comply with the Statute of Frauds. As the court observed, RP §§ 5-101[8] and

[7]Rule 8-131(c):

> **Action Tried Without a Jury.** When an action has been tried without a jury, the 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.

[8]RP § 5-101 states:

> Every corporeal estate, leasehold or freehold, or incorporeal interest in land created by parol and not in writing and signed by the party creating it, or his agent lawfully authorized by writing, has the force and effect of an estate or interest at will only, and has no other or greater force or effect, either in law or equity.

5-102,[9] when read together, dictate that their agreement, evidenced by the 2008 Agreement as well as the parol oral agreements, created an interest at will "'and has no greater force or effect, either in law or equity.'" Accordingly, the parol agreement between the parties concerning the amount of rent is enforceable but only in the context of a tenancy at will. A parol agreement that purports to change the term of the lease to something other than a tenancy at will is unenforceable. A different result would render the Statute of Frauds a dead letter. *See Lambdin v. Przyborowski,* 250 Md. 108, 111 (1968) ("[A] written contract which omitted [vital terms] . . . could be cured by an oral agreement, [but] the Statute of Frauds would not be satisfied."), *overruled in part on other grounds, Paape v. Grimes*, 256 Md. 490 (1970).[10]

We recognize that "a lease invalid at law may be enforced in equity as a contract to lease[.]" *Saul v. McIntyre,* 192 Md. 413, 417 (1949) (*Saul II*). In such cases, remedies can

[9]RP § 5-102 states:

> Section 5-101 of this title is not applicable to a leasehold estate not exceeding a term of one year.

[10] For this reason, Appellants' reliance on *Saul v. McIntyre*, 190 Md. 31, 37–38 (1948) (*Saul I*), is unavailing. The defect in the lease at issue in *Saul I* had nothing to do with the Statute of Frauds. Rather, the lease premises were owned by tenants by the entireties but, apparently purely by oversight, only one spouse signed the lease. The other spouse, however, was aware of the lease, consented to it, and later signed a contract with the tenant that referred to the lease. *Id.* at 36. Based upon its interpretation of the parties' conduct, the Court of Appeals concluded that the parties had entered into successive oral leases, each for a term of one year, and that the landlords were obligated to continue to perform for the current lease year. *Id.* at 37. Moreover, the Court in *Saul I* explicitly stated that it was *not* considering whether the lease was valid under the Statute of Frauds. *Id.*

include specific performance of the contract to lease; however, "[o]ne of the fundamental rules of equity is that the court will not decree specific performance of a contract unless it is definite and certain in all its terms and free from ambiguity." *Trotter v. Lewis,* 185 Md. 528, 532 (1946).

Appellants' arguments notwithstanding, the trial court made it quite clear that it denied Appellants' request for specific performance because the parties never agreed on the length of the term of the lease. This conclusion was factually and legally sound, and it is unclear why Appellants are arguing that the trial court did not address their equity claim for specific performance when, in fact, the court did precisely that.

(2)

Appellants also assert that the trial court abused its discretion by denying their motion to alter and amend the judgment and for doing so without granting them a hearing on the motion as they had requested. We have held that the trial court did not err in entering judgment in favor of Holtzner. The court did not abuse its discretion in declining to change its mind. In addition, the court was not obligated to grant Appellants' request for a hearing. *See* Md. Rule 2-311(e) ("When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case *whether* a hearing will be held, but it may not *grant* the motion without a hearing.") (Emphasis added).

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANTS.