

Circuit Court for Baltimore City
Case No. 24-C-15-000398

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2346

September Term, 2016

PETER M. FERRARO

v.

L. CABRERA, INC., *et al.*

Kehoe,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: July 22, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

After a bench trial, the Circuit Court for Baltimore City ruled in favor of Peter M. Ferraro (“Appellant”), who loaned \$100,000.00 to L. Cabrera, Inc. and 4528-30 Harford Road, LLC (“Appellees”). The court found: (1) Appellees breached their contract with Appellant by not paying a balloon payment; (2) Appellant was not entitled to interest for the initial thirty-six month period; (3) Appellant was not entitled to late fees for payments that were received ten days after their due date; and (4) Appellant was not entitled to attorney’s fees related to the collection of the outstanding debt. Following the verdict, Appellant filed a Motion to Alter/Amend Judgment or for New Trial, which was denied. Subsequently, Appellant filed a Motion to Correct Judgment, which was also denied.

Appellant files this timely appeal and presents six questions for our review, which we have rephrased and reorganized for clarity:

- I. Whether the circuit court erred in miscalculating the total amount paid by Appellee’s on the Note?
- II. Whether the circuit court erred in finding that Appellant was not entitled to interest for the initial thirty-six month payment period?
- III. Whether the circuit court erred in finding that Appellant was not entitled to the 12% interest provided for in the Note for any principal balance remaining after the maturity date of the Note?
- IV. Whether the circuit court erred in finding that Appellant was not entitled to late fees?
- V. Whether the trial court erred in denying Appellant’s motion to correct the judgment?
- VI. Whether the circuit court erred in finding that Appellant was not entitled to attorney’s fee’s pursuant to the fee provision in the Note?

In his brief, Appellant states, “this appeal comes down to math” and he is correct. Neither party, in its briefs, could provide to this Court an accurate depiction of what the actual numbers were, merely that the court erred. As such, this Court has applied the primary school maxim of ‘show your work’ to this case. Each figure adduced will be directed to a footnote with the equation used in hopes that it may clear up confusion of inconsistent summations. Regardless, this Court does not sit as a mathematician, here to clear up any inconsistent figures. Rather, we are here to determine whether or not – with the evidence provided before it – the Circuit Court of Baltimore City erred in its reasoning. For the reasons that follow, we will affirm in part and remand the case back to the circuit court on the issues of: (1) 12% interest and (2) late fees.

FACTUAL AND PROCEDURAL BACKGROUND

On March 17, 2008, Appellant and Appellees executed a promissory note (“the Note”) for the purchase of interest in an LLC in conjunction with the sale and renovation of a business. The purchase was to cover the restaurant property, improvements to the property, and operations in the principal amount of \$400,000.00. Appellees received a loan for \$300,000.00 from a bank and a loan from Appellant for the remainder. The amount was to be paid in thirty-six consecutive monthly principal installments, payable on the 17th day of each month, beginning on May 17, 2008 and ending on April 17, 2011.

The first thirty-five payments to be paid were to be in the amount of \$1,021.87, inclusive of interest, while the thirty-sixth and final payment was to be \$90,815.18. Additionally, the Note accounted for two interest provisions – one until maturity at 9% per

annum and the other after maturity at 12% per annum. The Note also stated that, should Appellees be late on any payment, “[Appellees] shall pay a late payment penalty of Five Percent (5%) of the payment then due.” If the Note was forwarded to an attorney for collection, Appellees were to pay “all costs and expenses of collection including reasonable attorney’s fees of fifteen percent (15%) of the unpaid balance of the Principal Amount then outstanding.” Over the life of the loan, Appellees were to pay \$126,580.63 inclusive of interest. Appellees requested that Appellant open up a bank account at Baltimore County Savings Bank (“BCSB”)¹ so that the payments could be deposited directly to Appellant. The bank account was opened, and Appellees made subsequent payments to that account.

Bank records show that Appellees made payments to the BCSB account starting on June 14, 2008 until October 27, 2014. According to bank records introduced at trial, Appellees made seventy-five payments of \$1,021.84, one payment of \$999.88, one payment of \$2,043.74², and one payment of \$1,022.87.³ In sum, and according to the records produced to this Court, Appellees made payments totaling \$81,726.33.⁴ Appellant

¹ The bank was purchased by First National Bank, therefore some of the statements provided at trial say First National instead of BCSB.

² According to the bank records, attached to the joint extract received by this Court, on December 5, 2012, a payment was made for \$2,043.74, which would account for the missing October payment.

³ Two payments were made on September 29th and October 1st of 2012. The first payment was \$102.87 and the second was \$920.00, bringing the total to \$1,022.87.

⁴ $(1,021.84)(75) + (999.88 + 2,043.74 + 1,022.87) = 80,704.49$. Both parties note an omitted payment, either in May of 2008 or January of 2012. Acknowledging an omitted payment, and with the calculation adduced by this Court, Appellees paid \$81,726.33. This

claims this amount is to be \$79,706.56, while the trial court ruled the amount paid was \$81,336.71. Clearly, the true number of what Appellees paid is in contention. Appellees claimed it defaulted on the loan because Appellant did not provide it with a payoff statement in order to refinance the loan and pay off the balloon payment.

On January 26, 2015, Appellees filed a Complaint for Declaratory Judgment and to Quiet Title against Appellant regarding a dispute regarding the Note. The complaint alleged that in the months prior to the balloon payment due date, it requested Appellant to provide it with a payoff statement so that it could be presented to mortgagors in order for the balloon payment to be paid. Appellant responded with affirmative defenses and filed a complaint alleging breach of guaranty. On September 6, 2016, Appellant filed an amended complaint alleging default, breach of contract, and breach of guaranty.

A bench trial was conducted on November 3, 2016, where the court found: (1) Appellees did not show that Appellant breached the covenant of good faith and fair dealing; (2) Appellees did not show that Appellant breached its contract with Appellees; (3) Appellees were in default by failing to pay the full amount due and owing on the Note; (4) Appellant had failed to show that it was entitled to late fees, attorney's fees, and interest collected; and (5) Appellees paid \$81,336.71 and that the amount due on the loan was \$18,663.29 plus 12% interest. Appellant filed a Motion to Alter/Amend Judgment or, in the alternative, for a New Trial with request for a hearing. That motion was denied without a hearing. On January 10, 2017, a day after Appellant filed a notice of appeal to this Court,

figure excludes a withdrawal, mentioned in Appellant's Reply Brief at n. 1., on February 28, 2014.

Appellant filed a motion to correct judgment with the circuit court because he believed the final order did not reflect the 12% interest in the recorded judgment. It is from the final judgment and the denial of the Motion to Alter/Amend Judgment or for a New Trial that Appellant appeals.

DISCUSSION

I. Total Amount Paid by Appellees

A. Parties' Contentions

Appellant contends that the trial court miscalculated the amount of money Appellees paid towards the principal balance. In its ruling, the trial court found that Appellees paid \$81, 336.71, an amount that Appellant believes is unsupported by the evidenced adduced at trial. In the same vein, Appellant contends, “[a]dmittedly, the documentation presented by both parties regarding payments and interest calculations contained errors and discrepancies; however, none of the evidence, in any combination, found by the undersigned comes up with \$81, 336.71...”

Appellees contend that the circuit court likely relied on the bank statements to calculate what was paid towards the loan. Instead of relying on the bank statements, Appellees argue Appellant relies solely on a spreadsheet created by his sister, which was also based on the bank statements. Considering how this Court came up with an entirely different figure than both the trial court and the individual litigants, we are inclined to affirm the circuit court because we do not believe the circuit court erred. Instead, we believe the evidence was inconsistent and “contained errors and discrepancies.”

B. Standard of Review

We review whether the trial court erred in determining the actual amount paid by Appellees under the clearly erroneous standard. *See Garcia v. Foulger Pratt Development, Inc.*, 155 Md. App. 634,654 (2003) (“when, as here, an action is tried without a jury, we review the case on both the law and the evidence. We will not set aside the judgment of the trial court on the evidence unless clearly erroneous.”). Under the clearly erroneous standard, this Court neither sits as a second trial court, one in which we review all the facts to determine whether the Appellant has proven his case, nor do we weigh conflicting evidence. Rather, our task is limited to deciding whether the circuit court’s factual findings were supported by substantial evidence. To that end, we review all of the evidence admitted during trial in the light most favorable to the prevailing party. *See Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 455-56 (2004).

C. Analysis

This Court will only look at the evidence given to the trial court to determine whether its factual findings are supported by the evidence. It is not in our purview to assume what weight the trial judge placed on individual evidence unless articulated. Instead, we merely determine if the evidence supports the judge’s findings.

During trial, Appellant entered the bank statements from BCSB into evidence. The account was used solely for Appellees to deposit loan payments. The bank statements “reflect[ed] all of the payments that were deposited into [Appellant’s] account for this

loan.”⁵ After receiving the bank statements, Appellant entered them into a spreadsheet. Appellant created the spreadsheet in Microsoft Excel with help from his sister, who is not an expert in accounting and was unavailable to testify to its accuracy at trial.

During the trial, Jay Estabrook testified regarding the spreadsheet created by Appellant. Mr. Estabrook stated that though he did not create the spreadsheet, he reviewed it for Appellant and discussed the timing in which the review occurred. After numerous objections by Appellees’ counsel, the trial court allowed the spreadsheet into evidence with the caveat that any arguments “go more to the weight that the Court will give to the document.”

The trial judge had multiple sets of documents, all showing different calculated figures. The bank statements from BCSB, which this Court discussed *supra* note 5, showed a total deposit of \$81,726.33; Appellant’s spreadsheet, which showed a deposit totaling \$78,684.69; Appellees’ spreadsheet, which showed a total payment of \$78,683.72; and Appellees’ second spreadsheet showing a total payment of \$78,681.17. Finally, in Appellees’ brief they calculate a total payment of \$82,100.27. There are too many figures here to truly determine what amount was paid to Appellant. In fact, there are many errors and discrepancies that Appellant wishes this Court to ignore in selecting the lowest possible payment amount. We are unsure of the equation that the trial judge used to determine how much was paid by Appellees to Appellant; however, we do not find any error in light of the confounding evidence presented to the trial court. Accordingly, we are neither going

⁵ There was a payment of \$25.00 into the account in order for the account to be opened.

to vacate and enter a new judgment, nor remand with appropriate instructions. Instead, we affirm the finding of the trial court holding that the court did not err in its calculation of the total amount paid.

II. Interpretation of the Note

Two of Appellant’s questions presented to this Court concern the interpretation of the Note, which serves as a contract between Appellant and Appellees. As such, this portion of the discussion will be limited to the review of the Note.

STANDARD OF REVIEW

The interpretation of a contract is a legal question and is subject de novo review. *See Thomas v. Capital Medical Management Associates, LLC*, 189 Md. App. 439, 454 (2009) (“where the order involves an interpretation and application of Maryland statutory and case law, we must determine whether the lower court’s conclusions were legally correct under a de novo standard of review.”) (internal citations omitted). *See also Metalcraft, Inc. v. Pratt*, 65 Md. App. 281 (1985) (implying that notes operate as contracts); *Nationwide Mutual Ins. Co., et al v. Regency Furniture, Inc.*, 183 Md. App. 710, 722 (2009) (“the interpretation of a contract is a legal question subject to de novo review.”).

When an appellate court interprets a contract on review, we follow the maxim of the objective theory of contract interpretation, which focuses on the text. Our task is to “determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.” *Id.* (internal citations omitted) (internal quotation marks omitted).

1. Whether the trial court erred in finding that Appellant was not entitled to interest for the initial thirty-six month payment period.

A. Parties' Contentions

Appellant alleges that the trial court, “disregarded the 9% interest on the first thirty-six payments. Instead, the trial court gave Appellees an interest free loan from its inception in 2008 to their final default in 2014.” He further contends “[i]t is incongruous for the trial court to find the note valid and enforceable, but ignore the interest provisions as calculated on the amortization schedule.” Appellees claim, “Appellant testified to no details on the interest calculations in the chart created by his sister. He was not able to articulate how the interest was calculated.” (internal references omitted).

B. Analysis

Appellant contends that the trial court, essentially, gave Appellees an interest-free loan from date of signing until default. We disagree. For the reasons that follow, we shall affirm the trial court.

Admitted into evidence was the Note that explained the interest rate owed, stating:

...[T]he Maker promises to pay to the order of the lender *interest on the unpaid balance of the Principal Amount from the date hereof and continuing until the maturity of this Note (whether by acceleration, declaration, extension, or otherwise) at a fixed rate of interest equal to nine percent (9%) per annum.* Interest shall accrue on the unpaid balance of the Principal Amount from the date hereof until the maturity of this Note (whether by acceleration, declaration, extension or otherwise)...

(emphasis added). The Note also states: “the Principal Installments *together* with interest thereon shall be as follows: The first thirty five (35) payments shall be One Thousand

Twenty One Dollars and Eighty Seven Cents (\$1,021.87).” (emphasis added). To this Court, that means that the first thirty-five payments will be \$1,021.87, which includes the 9% interest. Therefore, we hold that there was no error in the court’s finding.

2. Whether the trial court erred in finding that Appellant was not entitled to the 12% interest provided for in the Note for any principal balance remaining after the maturity date of the Note?

A. Parties’ Contentions

Appellant alleges the trial court, “in finding that Appellees had breached the agreement and the 12% interest rate was valid, should have calculated damages based on the accrual of the 12% interest from the maturity date of the loan.” Appellees argue that Appellant failed to prove his interest and thus there was no error on part of the trial court.

B. Analysis

The trial court ruled, “[t]he balance due on the principal amount, I find as a finding of fact, is \$18,663.29 plus interest at a rate of 12 percent, pursuant to Exhibit No. 1 from October 27 of 2014.”

The Note states:

After the maturity of the Note...the Maker promises to pay to the order of the Lender upon demand, interest on the unpaid balance of the Principal Amount from the date of such maturity until the Principal Amount together with all accrued and unpaid interest thereon is paid in full at a fixed rate of interest equal to twelve percent (12%) per annum. Interest shall be computed on the basis of a 365-day year and the actual number of days elapsed.

It is this Court’s interpretation of that note that everything following the thirty-sixth payment should have included 12% interest. After examination of the bank records, we

hold that the thirty-sixth payment was supposed to have been made in May 2011. Therefore, the 12% interest should have been included in that payment. Because the trial court found this Note valid and binding, we remand it back to the trial court with instructions to include the post-maturity interest from May 2011 to October 2014.

3. Whether the trial court erred in finding that Appellant was not entitled to late fees?

A. Parties' Contentions

Appellant contends that the trial court erred when it found that Appellant was not entitled to late fees. He states “there was no allegation of unconscionability or violation of public policy with the late fee provision. . . [n]or was there any allegation that the provision was ambiguous.” Further, Appellant argues that Appellee testified he understood that after ten days, late fees would be assessed, and the trial court “made an error of law...about the proof of late payments.” Appellees provide no argument on late fees, save to mention, “Appellant failed to prove his interest, late fees and attorney’s fees and it is not err for the Circuit Court to deny these items,” and “Appellant failed to explain the calculation of late fees.”

B. Analysis

The trial court ruled that “[Appellant] has failed to show to this Court, and consequently meet his burden of proof, regarding entitlement to late fees...” The Note, which the trial court found valid and enforceable,⁶ calls for late fees if a payment is more

⁶ In ruling that the Note was valid and enforceable, the trial court specifically noted that the agreement was executed under seal. As such, the trial court entered judgment in favor of Appellant on motion for judgment midway through the trial.

than ten days late. Furthermore, the Note, in pertinent part, states: “if any payment due hereunder between maker and Lender is delinquent by more than ten (10) days, Maker shall pay a late payment penalty of Five Percent (5%) of the payment then due.”

A cursory review of the bank statements provided by Appellant show that Appellees were late on more than one occasion during the life of this loan. According to the Note, payments were “payable on the seventeenth day of each month, beginning on May 17, 2008 and ending on April 17, 2011.” Attached to its brief, Appellant provided a table showing twenty-one days that Appellees was late. According to the valid and enforceable contract, late payments were to be 5% of the standard monthly fee of \$1,021.87, which would be \$51.09 per payment.⁷ If Appellees were in fact late on 21 payments, that accounts for a payment of \$1,072.96.⁸ Because the trial court found the Note to be valid and enforceable, the trial court was required to “determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.” As such, we remand the issue of late fees to the trial court to determine if late fees should be applied in this case and, if so, to properly calculate such late fees.

4. Whether the trial court erred in denying Appellant’s Motion to Correct the Judgment?

A. Parties’ Contentions

Appellant argues that should this Court choose not to vacate the damages award, this Court should consider whether the trial court erred in denying his motion to correct a

⁷ $(\$1,021.87)(0.05) = 51.0935$

⁸ $(51.0935)(21) = \$1,072.9653$

clerical error in the judgment. The order rendered from the trial court, he argues, was in error because the trial court judge ruled the balance due “on the principal amount...is \$18,663.29 plus interest at a rate of 12 percent... from October 27 of 2014.” However, the Notice of Recorded Judgment, filed by the clerk, states only the judgment of \$18,663.29 “[p]lus interest at a rate of 12% and [c]osts” with no mention of the accrual date.

B. Analysis

Maryland Rule 2-535 allows the trial court, or the appellate court, to correct any clerical mistakes committed during the trial level. *See* Md. Rule 2-535 (“[c]lerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be correct before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.”). Because we are remanding this issue back to the trial court for further clarification, we need not answer this question. Rather, we leave the issue for the trial court to correct. This Court finds that this is, in fact, a clerical error.

III. Denial of Attorney’s Fees

Appellant’s remaining question asks whether the trial court erred in finding that Appellant was not entitled to attorney’s fees. Because this specific question is not reviewed under the two aforementioned standards, we separate it from the others.

A. Parties’ Contentions

Appellant asserts that the trial court erred when it found that Appellant was not entitled to attorney’s fees. He contends, “[o]nce again, the trial court’s findings are

inconsistent. The trial court found the Note to be valid and enforceable...[y]et at the same time, the trial court refused to allow Appellant to recover attorney’s fees and costs of collection as contemplated in the Note.” Appellees contend that Appellant failed to prove his damages, and in doing so has “failed to show [the trial court], and consequently meet his burden of proof, regarding entitlement to late fees, attorney fees, and interest as prayed by him in his complaint.”

B. Standard of Review

We review a trial court’s decision to deny or to award attorney’s fees and costs for abuse of discretion. *See Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436, 476 (2018); *see also, Petrini v. Petrini*, 336 Md. 453, 468 (1994) (“Decisions concerning the award of counsel fees rest solely in the discretion of the trial judge.”). A trial court’s awarding, or denial, of attorney’s fees will not be reversed unless the court’s discretion was exercised arbitrarily or the judgment was clearly wrong. *Id.* It should be noted that an abuse of discretion should only be found in extraordinary, exceptional, or egregious cases. *See Aventis Pasteur, Inc. v. Skevofilax*, 365 Md. 405 (2007).

C. Analysis

In pertinent part, the Note calls for attorney’s fees if the case is referred to an attorney for collection. It states, “[i]f this Note is forwarded to an attorney for collection after maturity hereof (whether by acceleration, declaration, extension or otherwise), the Maker shall pay on demand all costs and expenses of collection including reasonable attorney’s fees of fifteen percent (15%) of the unpaid balance of the Principal Amount then understanding.” The circuit court, in analyzing this issue, states:

... I find as a finding of fact, that the Defendant Counter-Plaintiff, Mr. Ferraro, has failed to show to this Court, and consequently meet his burden of proof, regarding entitlement to late fees, attorney's fees, and interest as prayed by him in his complaint.

I find as a finding of fact that the Plaintiffs Counter-Defendants have paid principal amount of \$81,336.71. The balance due on the principal amount, I find as a finding of fact, is \$18,663.29 plus interest at a rate of 12 percent, pursuant to Exhibit No. 1 from October 27 of 2014. Judgment is therefore entered in favor of the Plaintiff Counter – the Counter-Plaintiff Defendant, Mr. Ferraro, in the amount of \$18,663.29 plus interest of 12 percent from October 27 of 2014, pursuant to Exhibit No. 1.

It appears, from our review of the trial transcript, that the trial court committed no capricious act that would amount to an abuse of discretion. In fact, it appears that the trial court made this decision based on the evidence adduced at trial. Therefore, we hold that the trial court did not abuse its discretion in denying Appellant attorney's fees.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED IN PART AND
CASE REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID HALF BY
APPELLANT AND HALF BY APPELLEES.**