

In The Circuit Court for Baltimore City
CIVIL

1-2681
Dr- 11-3-47

In the Matter of

CHARLES FAISON

VS

VIVIAN M. JEFFERSON

100608

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPOR CASE NO. 89207040/CL100608 PAGE 1 of

PARTIES	ATTORNEY(S)
<p>CHARLES FAISON</p> <p align="center">VS</p> <p>VIVIAN M. JEFFERSON</p>	<p>PROPER PERSON</p> <p align="right" style="font-size: 1.2em; margin-top: 20px;">589997</p> <p>ARLENE FAYE BAKER,</p>

DATE	DOCKET ENTRIES	NO.
7/26/89	ORIGINAL PAPERS AND SHORT COPY OF THE DOCKET ENTRIES FROM THE DISTRICT COURT OF BALTIMORE CITY, FILED.	1
	TRANSCRIPT OF RECORD, FILED.	2
	NOTICE TO COUNSEL IN ACCORDANCE WITH MD. RULE 1345, FD.	3
	SET-CTF ISSU-CASE IS AT ISSUED.	
	CONTR-CATEGORY	
<i>8/4/89</i>	<i>Def't's motion for oral argument,</i>	<i>4</i>
<i>10/19/89</i>	<i>Def'ts withdraw of motion for oral argument</i>	<i>5</i>
<i>11/29/90</i>	<i>Case submitted to the court for determination with aid of a jury</i>	
<i>"</i>	<i>Held sub curia (Hollander)</i>	
<i>12/30/90</i>	<i>The decision of the District Court is hereby affirmed as to liability and reversed, in part, as to damages</i>	
<i>"</i>	<i>Case remanded to the District Court for entry of an award of damages in the amount of \$1,052.00</i>	
<i>"</i>	<i>Cost to appellee (Hollander)</i>	

CC-66 (1/83) *memo opinion + entered (Hollander) K1056*

CHARLES FAISON
Appellant

v.

VIVIAN JEFFERSON
Appellee

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 89207040/C1100608
* * * * *

AMENDED ORDER

It is this 31st day of January, 1991, by the Circuit Court for Baltimore City, ORDERED that the court's Order of December 20, 1990, be amended to order that costs shall be paid by Appellant.

Ellen Hollander
Ellen L. Hollander, Judge

cc: Mr. Charles Faison
Arlene Baker, Esquire
Attorney for Appellee

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**IMPORTANT: PLEASE DETACH, SIGN AND RETURN TO
APPELLATE TRIAL COURT**

Clerk of the Circuit Court for Baltimore City

Appeal No. *CL-100608*

Charles Faison

VS.

Vivian M. Jefferson

Received

E. Wainwright

Clerk or Deputy of the District Court

Date:

28 Jan., 19 91.

CHARLES FAISON	*	IN THE	
Appellant	*	CIRCUIT COURT	
v.	*	FOR	6
VIVIAN JEFFERSON	*	BALTIMORE CITY	
Appellee	*	Case No. 89207040/CL100608	
* * *	* * *	* * *	* * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction

Vivian Jefferson ("Jefferson" or "Appellee") instituted suit in the District Court for Baltimore City against Charles Faison ("Faison" or "Appellant"), claiming that Faison breached a lease agreement in connection with the property known as 4710 Mary Knoll Road located in Baltimore County, Maryland (the "Property"). Jefferson alleged that Faison failed and refused to deliver possession of the premises, and sought damages for the breach.

The case was tried on February 27, 1989 before the Honorable Keith E. Mathews in the District Court for Baltimore City. Evidence, including oral testimony and exhibits, was presented by both parties. The court concluded that Faison breached the lease agreement and awarded damages to Jefferson in the amount of \$1177.00. Faison appealed, and oral argument was heard in this court on November 29, 1990.

II. Scope of Review

This is an appeal on the record. See Md. Code Ann., Cts. & Jud. Proc. Art., Sec. 12-401(d). In appeals taken on the record from the District Court, Md. Rule 1386 provides that the appellate court shall:

review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses.

As Rule 1386 makes clear, this court, functioning as an appellate or reviewing court, may reverse the decision of the lower court as to factual determinations only if, on the record, it appears that the trial court's determination was clearly erroneous. Ryan v. Thurston, 276 Md. 390, 392 (1975). Moreover, it is incumbent upon this court, in its appellate capacity, to consider the evidence produced at trial in the light most favorable to the prevailing party, i.e., Jefferson. If substantial evidence was presented to support the trial court's decision, it cannot be deemed clearly erroneous, and must not be disturbed on appeal. Id. As the trial court is the judge of the weight of the evidence, the appellate court may not substitute its judgment for that of the trial court. Id.

With respect to questions of law, the reviewing court must, of course, decide whether legal questions were properly

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resolved. Thus, where the determination is one involving a conclusion of law, the clearly erroneous standard does not apply. "The lower court's interpretations of law enjoy no presumption of correctness on review: the appellate court must apply the law as it understands it to be. Rohrbaugh v. Estate of Stern, 305 Md. 443, 447 (1986).

This court is of the view that the trial court's factual determinations in this case were not clearly erroneous, and were supported by substantial evidence. The trial court heard two conflicting versions of events, and it was for the trial court to assess the credibility of the witnesses. This court cannot substitute its judgment, on appeal, regarding credibility.

III. Discussion

A. Venue

Preliminarily, at trial and on appeal, Faison sought a change of venue on the grounds that all of the parties resided in Baltimore County and the Property is located in Baltimore County. At trial, the Court held that Faison waived his right to contest venue.

Md. Rule 3-326 governs venue at the District Court. Rule 3-326(a) permits the defense of improper venue to be raised by motion before or at commencement of trial. The Rule makes clear that Faison's Motion concerning venue was timely raised, and was not waived, as the trial court said. Nevertheless, as Code, Cts. & Jud. Proc. Art. Sec. 6-201(a) makes clear, venue did lie in Baltimore City.

Section 6-201(a) provides that a civil action may be brought in a county¹ where the Defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. At oral argument, Faison advised the Court that, at all material times, he has been employed in Baltimore City. Accordingly, venue in Baltimore City was proper.

B. Breach

At trial, the parties were in substantial agreement on many factual matters. It is undisputed that, on July 25, 1988, the parties executed a written Lease Agreement (the "Agreement") with respect to the Property. Moreover, by the terms of that Agreement, the lease was to become effective on August 15, 1988. It is also undisputed that as of August 15, 1988, and for several days thereafter, Faison never surrendered the Property to Jefferson. The heart of the controversy centers on the question of who committed the breach.

Jefferson contends that she repeatedly asked Faison to surrender possession, took measures to commence her occupancy at the agreed upon time, and that Faison breached the lease by failing and refusing timely to surrender the Property. Faison, on the other hand, argues that the parties orally agreed to extend the commencement date of the lease to September 1, 1988, that he was in the process of securing an alternative place to live, made preparations to move out, and would have

1. The word "County" as used in this section includes the City of Baltimore. Chappel v. Lacey, 77 Md. 172 (1893).

surrendered possession if Jefferson wanted him to do so. He alleged that Jefferson cancelled the Lease and demanded the return of her deposit money. Tr. at 31,53-61.²

The parties concur that the Agreement was executed July 25, 1988. Tr. at 11,54; Plaintiff's Exhibit A. By its terms, the Lease was to begin on August 15, 1988 and last for a period of one year. Tr. at 12; Plaintiff's Exhibit A. Appellant claims she never agreed to extend the occupancy date to September 1st. She stated that she gave the Defendant a check in the amount of \$625.00 as a security deposit at that time. Tr. at 12. She claims she never moved into the Property because Faison would not vacate. Tr. at 13. Faison, according to both Jefferson and Faison, was still in the house at the end of August. See, e.g., Tr. at 14,59-60.

Faison contends that the parties agreed to an extension of the occupancy date until September 1, 1988. Tr. at 25,59-60. He further testified that it was Jefferson who decided not to move in, and she asked for a refund. Her money was returned. Tr. at 30,54-59.

Faison testified to a variety of plans which he said would have enabled him to vacate the Property in a timely manner. Many of his exhibits, however, support Plaintiff's position that Faison was not in a position to vacate the Property by

2. "Tr." refers to the transcript of the trial held at the District Court.

August 15, 1988.³ Indeed, he conceded that as of August 29, 1988, although he was preparing to move, he still occupied the Property. Tr. at 54.

Judge Mathews concluded that the parties entered into a Lease Agreement, with occupancy to be as of August 15, 1988, and that Faison breached. Tr. at 61. The record clearly supports the trial court's determinations, and this court sees no reason or basis to disturb the trial court's decision. This court cannot invade the province of the trial court to assess the credibility of the witnesses. Judge Mathews' decision as to the effective date of the Agreement is supported by Jefferson's testimony as well as the written terms of the Agreement. Moreover, this court cannot say from the record that the trial court's conclusions were clearly erroneous in light of the evidence, or otherwise incorrect as a matter of law. Accordingly, the decision of Judge Mathews will be affirmed as to liability.

With respect to damages, Plaintiff proved considerable expenses which she incurred as a result of Faison's breach. The damages for which Jefferson sought recovery included lost wages for a period of two weeks -- time which Jefferson claims she took from work in order to accomplish the move. Judge Mathews reasonably allowed recovery of one week's wages, a decision with which this court cannot quarrel. However, as to

3. For example, Defendant's Exhibit 1 is an Application for Lease dated August 23, 1988 -- a period of several days after the agreed upon occupancy date of August 15. Defendant's Exhibit 4 is a letter of August 24, 1988, recommending Faison as a sublesor. That date, too, is after the occupancy date of August 15. Faison further testified that on August 25th, he rented storage space for his possessions. Tr. at 48-49.

the calculation of the amount of wages for that one week period, this court must differ with the trial court's award.

Jefferson testified that she earned \$850.00 every two weeks, plus \$250.00 in expense money. Tr. at 20. If Plaintiff did not work, however, then it follows that she would not be entitled to any expense money. Judge Mathews' calculation of the lost wages for a period of one week included \$125.00 in expense money, which this court will not allow. Accordingly, it is this 20th day of December, 1990, by the Circuit Court of Baltimore City,

ORDERED, that the decision of the trial court be affirmed as to liability and reversed, in part, as to damages. The case shall be remanded to the District Court for entry of an award of damages in the amount of \$1,052.00. Appellee shall pay costs.

Ellen L. Hollander
Ellen L. Hollander, Judge

cc: Mr. Charles Faison
Arlene F. Baker, Esquire
Attorney for Appellee

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MSA SC 5458-82-150

Dates: 1989-1994

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