

89209044  
CASE NO.

Part 1 of      Parts

In The Circuit Court for Baltimore City  
**CIVIL**

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T-2691  
11-3-51

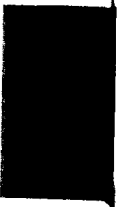
In the Matter of

DEBORAH ETHERIDGE

VS

JAMES KNIGHT, JR.

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100737



IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY   APPOR  

CASE NO. 89209044/CL100737 PAGE   1   of       

PARTIES	ATTORNEY(S)
DEBORAH ETHERIDGE	PROPER PERSON
VS	
JAMES KNIGHT JR.,	PROPER PERSON

DATE	DOCKET ENTRIES	NO.
7/28/89	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>8-7-89</i>	<i>Plff's request for oral argument</i>	<i>2</i>
<i>8-2-89</i>	<i>Ordered that the motion to extend time to transmit the record is "Granted" for 30 days (Kaplan, J).</i>	<i>3 1/2</i>
<i>12-4-89</i>	<i>Case submitted to the court for determination w/ the aid of a jury (Hollander J)</i>	
<i>12-4-89</i>	<i>Case held Sub-Curia</i>	
<i>1-12-90</i>	<i>The decision of the District Court of Md. is hereby "Reversed in part and Remanded in part."</i>	
<i>1-12-90</i>	<i>Memo Opinion and Order fd. (Hollander J)</i>	
<i>4-12-90</i>	<i>Original papers + docket entries returned to the D.C.</i>	

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

*Clerk of the Circuit Court for Baltimore City*

Appeal No. *CL 100734*

*Etheridge*

VS.

*Knight*

Received

*Pat Rose*

*Clerk or Deputy of the District Court*

Date:

*4/12*

, 19

*90*

DEBORAH ETHERIDGE	*	IN THE
Appellant	*	CIRCUIT COURT
v.	*	FOR
JAMES E. KNIGHT, JR.	*	BALTIMORE CITY
Appellee	*	Case No. 89209044/CL100737
* * *	*	* * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Factual Summary

Deborah Etheridge ("Etheridge"), a real estate agent, was hired by Marlene Buntz ("Buntz") to act as agent for the sale of Buntz's home located at 1642 Northwood Court in Baltimore (the "Property"). Etheridge had an oral contract with Buntz to provide brokerage services in connection with the sale of the Property. T.20-21.<sup>1</sup> Etheridge was to receive a sales commission from Buntz equal to eight percent (8%) of the total sales price.

Thereafter, Buntz entered into a contract of sale for the Property with James E. Knight, Jr. ("Knight") for \$45,000. Accordingly, Etheridge's commission, as originally agreed to by Buntz, would have amounted to \$3,600. T.21.

As the closing approached, Knight experienced financial difficulties. The Seller then agreed to pay Knight's share of the settlement costs, at closing. In return, Knight promised

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1. "T" stands for reference to the transcript of the proceedings before the trial court, included in the record on appeal.

to pay a consultant's fee to Etheridge in the amount of \$3600, in lieu of the settlement costs for which Knight otherwise would have been responsible. Id. Moreover, as a result of the consultant's fee agreement, Buntz was relieved of her obligation to pay the 8% sales commission to Etheridge.

Etheridge bases her claim against Knight on a written agreement, dated February 8, 1987, in which Knight agreed to pay her \$3,600 as a consultant's fee for her help in connection with Knight's purchase of the Property (the "Agreement"). The fee was due on August 31, 1987. See Joint Exhibit 1.<sup>2</sup> Etheridge testified to the services she furnished to Knight in connection with the Agreement. Since Knight never paid Etheridge the consultant's fee, she instituted suit in the District Court. Trial was held on April 19, 1989, and judgment was entered in favor of Knight. Etheridge appealed, and oral argument was heard in this court on December 4, 1989.

## II. Scope of Review

This is an appeal on the record. See Md. Code Ann., Cts. & Jud. Proc. Art. Sec. 12-401(d) (Cum. Supp. 1989). In appeals taken on the record from the District Court, Maryland Rule 1386 provides that the appellate court:

will 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.

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2. The record on appeal was initially marked by a lack of clarity, because the important documents relied on by the trial judge were not entered into evidence. See T.13-14. At the appellate hearing, the parties mutually agreed to supplement the record with those documents which they agreed were considered by the trial court. These documents were received as joint exhibits.

A reviewing court may reverse the decision of the trial court regarding a factual determination only if, on the record, it appears that its determination was clearly erroneous. Ryan v. Thurston, 276 Md. 390, 392 (1975). It is incumbent upon the appellate court to "consider evidence produced at trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." Id. at 392. Since the trial court is the judge of the weight to be attached to the evidence, "the appellate court should not substitute its judgment for that of the trial court on its findings of fact but will only determine whether the findings are clearly erroneous in light of the total evidence." Id.

As to questions of law, the reviewing court must determine whether legal questions were properly 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).

### III. Discussion

This court is of the view that the trial court's factual determination as to liability was clearly erroneous. It is undisputed that Knight never paid Etheridge the consultant's fee for the services she rendered. The trial court erroneously

concluded that Knight was not obligated to Etheridge on the Agreement. T.21-23.<sup>3</sup>

Knight conceded at trial that he agreed to pay Etheridge the consultant's fee. T.11. He claimed financial problems prevented him from paying. T.11-12; T.14. Knight also claimed at trial that he never paid Etheridge because of a later agreement reached with her. According to Knight, repairs were needed for the roof of the Property, and he and Etheridge subsequently agreed, orally, that he could deduct the cost of fixing the roof from the \$3600 he owed Etheridge on the Agreement. T.12-14

On appeal, the parties agree that Knight promised to pay Etheridge the sum of \$3,600, and that the money was never paid. The parties also agree that the settlement costs were paid by the seller of the Property, despite an indication to the contrary on the settlement sheet (Joint Exhibit 2). Knight candidly stated on appeal that, in his view, he owes Etheridge the difference between the \$3600 and the cost of the roof repairs. Etheridge strongly disputes Knight's contention regarding any agreement concerning the roof.

At trial, Knight referred to pictures he had with him regarding the condition of the roof (T.12),<sup>4</sup> but no testimony was offered by him as to the cost of the repairs. At oral

3. The trial court inferred that responsibility for the sales commission was shifted to Knight to avoid a deficit to the seller at the time of settlement. No testimony was offered at trial to support the court's conclusion.

4. The pictures were not made a part of the record. Knight brought them with him to the appellate argument, but Etheridge would not agree to include them as joint exhibits. They have, however, been placed in the court file.

argument, he offered documents as to the nature and cost of the repairs, stating he believed they were presented at trial.<sup>5</sup> Although this issue was raised below, it clearly was not addressed by the trial court. Rule 1370(b), which applies here, provides, in pertinent part:

If it shall appear to the appellate court that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment from which the appeal was taken, or that the purposes of justice will be advanced by permitting further proceedings in the cause, then the appellate court, instead of entering a final order affirming, reversing or modifying the judgment from which the appeal was taken, may order the case to be remanded to the lower court, or may order the taking of testimony or the introduction of additional evidence to clarify the record.

Since the rules of procedure place the responsibility for resolving such a factual dispute with the trial court, it follows that this case must be remanded to the trial court to address this issue pursuant to the provisions of Rule 1370(b). Cf. Kowell Ford, Inc. v. Doolan, 283 Md. 579, 584-85 (1978).

To summarize, the judgment relieving Knight from any liability under the Agreement is clearly erroneous in light of all the evidence, and must be reversed. It is undisputed that Knight promised to pay Etheridge \$3600, and he has not done so, by his own admission. On remand, the court should determine whether the parties, in fact, had a subsequent agreement concerning the roof and, if so, the terms of such an agreement. Further, if the court finds that such an agreement was made, the court must then address the question of the necessity of the repairs, and whether the cost of the repairs was fair and reasonable.

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5. No such documents were kept in the court record, and this court simply cannot determine if such documentation was presented.



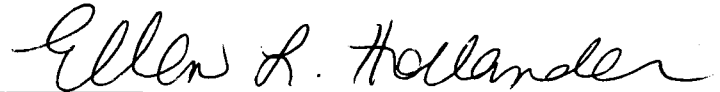
ORDER

Therefore, for the foregoing reasons, it is this 12<sup>th</sup>  
day of January, 1990, by the Circuit Court for Baltimore City,

ORDERED that the judgment of the District Court in favor  
of Appellee be, and the same hereby is, REVERSED;

And it is further ORDERED, that the case is REMANDED to  
the District Court for Baltimore City for further proceedings  
consistent with this opinion.

Costs to abide the final determination of this litigation.



Ellen L. Hollander, Judge

cc: Ms. Deborah Etheridge  
2337 North Calvert Street  
Unit Three  
Baltimore, Maryland 21218

Mr. James E. Knight, Jr.  
1642 Northwood Court  
Baltimore, Maryland 21218

CIRCUIT COURT FOR BALTIMORE CITY DATE PRINTED / /

PRESIDING JUDGE .....

COURTROOM CLERK .....

STENOGRAPHER .....

ASSIGNMENT FOR: *Monday, Dec. 4, 1989*

CASE NUMBER - *89209044 / CL 100737*  
CASE TITLE - *Ethridge vs Knight*  
CATEGORY -  
PROCEEDING -

DEFENSE ATTORNEY -  
PLAINTIFF ATTORNEY -

*Sub curia*

*1-12-90 Case Reversed & Remanded*

TYPE OF PROCEEDING: (\_\_\_ JURY) ( NON-JURY) (\_\_\_ OTHER)

DISPOSITION: (CHECK ONE)

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- (\_\_\_ SUB CURIA) (\_\_\_ MOTION DENIED)

JUDGE SIGNATURE *Ellen Hollander* DATE *12/4/89*

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Programmed in *Microsoft SQL Server* and *Cold Fusion 7.0* by Nancy Bramucci.  
Technical support provided by Wei Yang, Dan Knight, Tony Darden, and Matt Davis.  
Version 2.8.1