

In The Circuit Court for Baltimore City
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In the Matter of

EARTHA JOY BOST

VS

CANDICE DENISE DISTANCE

X

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPOR

CASE NO. 90331026/CL122817 PAGE 1 of

PARTIES	ATTORNEY(S)
EARTHA JOY BOST VS CANDICE DENISE DISTANCE	PROPER PERSON <div style="font-size: 1.2em; font-family: cursive; margin-left: 100px;">349453</div> ANTON J. S. KEATING, ESQ.

DATE	DOCKET ENTRIES	NO.
11/27/90	ORIGINAL PAPERS AND SHORT COPY OF THE DOCKET ENTRIES FROM THE DISTRICT COURT OF BALTIMORE CITY, FILED.	1
	Transcript of Record, fd	2
	Notice to Counsel in Accordance with Md Rule, 1345, fd	3
	Set-CTF Issu-Case is at Issue	
	Category- OTHER TORT	
2/15/91	Heard & held Sub Anna Written opinion to be submitted <div align="right" style="font-size: 0.8em;">(Hollander, J.)</div>	4
2/15/91	Case heard before the Hon. Ellen Hollander w/o the aid of a jury.	
2/12/91	Motion of atty Anton J. S. Keating to strike app. for deft (trig 1A w/3/5/91)	1A
3/8/91	Memorandum, Opinion and Order of Court that the Decision of the District Court for Baltimore City be and the same hereby is, "Affirmed." Costs to be paid by Appellant. <div align="right" style="font-size: 0.8em;">(Hollander, J.)</div>	5
4-16-91	Original papers & docket entries returned to the D.C.	6 7

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

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Clerk of the Circuit Court for Baltimore City

Appeal No. *CL-122817*

Best

VS.

Distance

Received

Samuel Baykin

Clerk or Deputy of the District Court

Date: *April 16*, 19 *91*

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EARTHA JOY BOST

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IN THE

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CIRCUIT COURT

v.

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FOR

CANDICE DENISE DISTANCE

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BALTIMORE CITY

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Case No. 90331026/CL122817

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3-8-91
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MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction

Eartha Joy Bost ("Bost" or "Plaintiff") filed suit in the District Court for Baltimore City against Candice Denise Distance ("Distance" or "Defendant"). Bost claimed that she and Distance were roommates, and that Distance took many of Bost's personal belongings, which she valued at \$3,325.00.

A trial was held in the District Court for Baltimore City on May 8, 1990, before the Honorable Andre M. Davis. Evidence, including lengthy oral testimony, was presented by both parties. On July 16, 1990, the court concluded the proceedings and entered judgment for Defendant. Bost appealed to the Circuit Court, and oral argument was heard in this court on February 15, 1991.

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 on the record from the District Court, Maryland Rule 1386 provides that the appellate court:

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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.

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 the evidence produced at trial in the light most favorable to the prevailing party. If substantial evidence was presented to support the trial court's decision, it is not clearly erroneous and cannot be disturbed on appeal. Id. Since the trial court is the judge of the weight of 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).

This court is of the view that the trial court's factual determinations in this case, resting heavily on a judgment of

the credibility of the witnesses, were supported by substantial evidence and therefore were not clearly erroneous.

III. Discussion

At trial, the parties were in substantial agreement as to certain factual matters. They agree that Bost and Distance lived together in an apartment located at 6922 McClean Boulevard (the "Apartment"), in Baltimore City. They also agree that there came a time when Bost moved out of the Apartment.

Bost testified that she planned to move on April 7, 1990 (TI.11), and that when she arrived at the Apartment to pack, she discovered that all of her belongings were missing. TI. 15-17. Distance testified that Bost actually moved out of the Apartment on April 5, 1990 and took her belongings with her, except for her Bible. TI. 26. Distance's mother, Mrs. Francis Distance ("Mrs. Distance"), testified, bolstering the Defendant's version of events. She said that on April 5, 1990 Bost arrived at the Apartment, and moved seven or eight bags, apparently containing clothing, down the stairs. She loaded these items into the back of a car. TI. 38-39, TII. 124.¹ Mrs. Distance also testified that Bost informed her that she was moving to the Sinclair Gates Apartments. TI. 38.

1. The record in this case contains two transcripts from the May 8, 1990 and July 16, 1990 hearings. These transcripts are referenced as TI and TII, respectively.

The trial court's decision rested primarily on its evaluation of the credibility of the witnesses. The court was troubled by the diametrically opposed testimony offered by the parties, and after hearing abundant testimony, Judge Davis remarked that "one of the two of you is lying."² TI. 58. In entering judgment for the defendant, Judge Davis determined that Bost failed to meet the burden of proof, and clearly indicated that he did not find the testimony of Bost to be credible. The court stated:

Obviously someone in this case lied. Unfortunately, but magnificently. And when that happens, I'm afraid that the wheels of justice stay right where you find them, and where you found them is where you're going to leave this Court. Because I cannot accept your testimony and reject all the other testimony.

TII. 167.

The record clearly relates two conflicting versions of events. As Rule 1386 makes clear, on review by this court, due regard [is to] be given the opportunity of the lower court to judge the credibility of the witnesses. This court cannot invade the province of the trial court to resolve factual disputes. Moreover, this court could not say from the record that the trial court's ruling was "clearly erroneous in light of the total evidence," or incorrect as a matter of law.

2. At one point, he accused Bost of committing perjury. TI. 56.

Based on the foregoing, it is this 27th day of March, 1991, by the Circuit Court for Baltimore City,

ORDERED that the decision of the District Court for Baltimore City be, and the same hereby is, AFFIRMED. Costs to be paid by Appellant.

Ellen Hollander
Ellen L. Hollander, Judge

cc: Ms. Eartha Joy Bost
Ms. Candice Denise Distance

From: Jennifer Hafner
 To: Ray Connor, Doris Byrne, Sheila Simms, Edward Papenfuse
 Date: Monday, February 01, 2010 12:53:12 PM
 Subject: MSA SC 5458-82-150, 1990 cases

*RC
 3-1-10
 8 pages
 scanned*

These are the remaining 1990 cases. I have updated the work order.

Mayor AND City Council VS LOUDEN Box 1003 Case No. 90211027 [MSA T2691-3640, OR/11/15/36]
 File should be named msa_sc5458_82_150_[full case number]-####

DESSESAURE VS ST PAUL RENTALS Box 1003 Case No. 90211028 [MSA T2691-3640, OR/11/15/36]
 File should be named msa_sc5458_82_150_[full case number]-####

LANGREHR VS HOBBS Box 1010 Case No. 90215022 [MSA T2691-3647, OR/11/15/43]
 File should be named msa_sc5458_82_150_[full case number]-####

OZOLIN VS BOARD OF APPEALS, ET. AL. Box 1060 Case No. 90243035 [MSA T2691-3697, OR/11/16/9]
 File should be named msa_sc5458_82_150_[full case number]-####

WILLIAMS VS BD. OF APPEALS, ET. AL. Box 1129 Case No. 90285042 [MSA T2691-3766, OR/11/16/77]
 File should be named msa_sc5458_82_150_[full case number]-####

BOST VS DISTANCE Box 1204 Case No. 90331026 [MSA T2691-3841, OR/11/17/68]
 File should be named msa_sc5458_82_150_[full case number]-####

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