Circuit Court for Baltimore City
Case No. 24-C-21-004309

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2333

September Term, 2022

SEAN SHERWOOD, ET AL.

v.

OLD REPUBLIC NATIONAL TITLE INSURANCE CO.

Wells, C.J.,
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: February 22, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

In this appeal from a ruling by the Circuit Court for Baltimore City, appellants XXtreme Investments, LLC, and its sole owner Sean Sherwood (hereinafter collectively referred to as "Mr. Sherwood") assert clear error in the court's grant of judgment in the amount of $42,981.40 in favor of appellee Old Republic National Title Insurance Company ("Old Republic") in a subrogation action for its payment of a claim on behalf of its insured, Temple View Capital Funding, LLC ("Temple View"). Mr. Sherwood asks us to consider whether the trial court clearly erred in entering judgment in that amount based on the evidence admitted at trial.[1] For the reasons that follow, we will affirm the judgment of the trial court.

BACKGROUND

In October 2021, Old Republic commenced a lawsuit sounding in breach of contract and unjust enrichment against Mr. Sherwood. In its complaint, Old Republic explained that after purchasing property at 1725 Wilmington Avenue, Baltimore City, in 2011, Mr.

[1] The questions, as presented *verbatim* in Mr. Sherwood's brief, are:

1. Did the trial court commit clear error as a matter of fact in its reliance on Scrivener's email as the primary basis for its award?

2. Did the trial court commit clear error as a matter of law in finding that defendants were in arrears in real property tax payments, based solely on the testimony of one individual without supporting and authenticating evidence?

3. Did the trial court commit clear error as a matter of law in failing to consider the failure of plaintiff to reasonably mitigate its losses?

4. Did the trial court commit clear error as a matter of law in failing to specify a theory of law under which the award was made?

Sherwood refinanced the debt on the property in 2020, by taking out a deed of trust in favor of Temple View. Old Republic insured Temple View pursuant to a lender's policy of title insurance.

According to Old Republic, at the time of the closing on the refinance deed of trust, Mr. Sherwood knew, but did not disclose, that there were outstanding taxes due on the property, resulting from a 2013 tax sale. Although Mr. Sherwood should have paid off the outstanding taxes at the time of closing, he did not do so, thereby permitting the taxes to continue to exist as a lien encumbering the insured property.

After Temple View's demand that Mr. Sherwood pay the outstanding taxes, and Mr. Sherwood's failure to do so, according to Old Republic, Baltimore City commenced foreclosure proceedings on the property. To protect its insured lender, Old Republic was required to redeem the property from tax sale, by paying off the outstanding taxes in the amount of $40,861.20, and incurring associated legal fees and expenses in the amount of $2,120.20, thereby becoming the assignee and subrogee of Temple View. After its redemption of the property, Old Republic made further demand that Mr. Sherwood repay the total of its $42,981.40 damages, but he refused.

Mr. Sherwood answered and moved to dismiss the complaint, averring, *inter alia*, that all taxes post refinancing had been paid and that the lender should have held back any prior unpaid taxes at settlement. The circuit court denied Mr. Sherwood's motion to dismiss. The matter proceeded to a bench trial on February 27, 2023.

In his opening statement, Mr. Sherwood's attorney asserted that Mr. Sherwood believed that he had paid "everything that was due to the City of Baltimore" and settled on

the refinance of the deed of trust on the property in good faith. Outstanding taxes, if any, counsel argued, should have been discovered by a title agent prior to settlement of the refinance deed of trust, and any negligence on the part of the title company should not fall on Mr. Sherwood. Therefore, any loss "should actually be covered by the title company which conducted the settlement."

Justin Wenk, vice president of Temple View, testified that it is Temple View's usual practice to obtain a lender's policy of title insurance upon making or refinancing a loan and that it had done so in relation to Mr. Sherwood's refinance loan. On that particular type of loan, the customer is responsible for taxes and insurance on the property, and Temple View relies on the borrower to make those payments.

Pursuant to a letter from attorney James Truitt, Temple View learned there were "multiple years" of delinquent taxes on the Wilmington Avenue property that had to be cured. Temple View notified both Mr. Sherwood and its title insurer of the delinquency. According to Mr. Wenk, Mr. Sherwood responded that "he would not be paying them."

Mr. Sherwood was later notified in writing that non-payment of the taxes was a default provision of the deed of trust. Mr. Sherwood did not make payment of the delinquent taxes in response to that second notification, so Old Republic resolved the claim under Temple View's lender's policy.

Edward Scrivener, a delinquent accounts manager who oversees tax sales for Baltimore City, explained that property owners, secured lenders, and other interested parties have the right to redeem a property from tax sale until a judge grants the lienholder a judgment foreclosing the right of redemption. If a property goes into tax sale and the city

holds the tax sale certificate—meaning there are no bidders on the property—the property will generally go into another tax sale three years later if the property is not redeemed, and it will continue to accumulate liens and related fees. If the property owner seeks to redeem the property after a judgment foreclosing the right to redeem has been granted, the city will require that the liens, attorney fees, and interest be paid to the attorney and subsequent fees paid to the city. Mr. Scrivener acknowledged that if a property goes to more than one tax sale, the city's system might occasionally double bill, so his office performs manual calculations to come up with the correct lien and redemption amounts.

With respect to Mr. Sherwood's property, Mr. Scrivener conducted an analysis of the amount due for redemption on February 19, 2021. On that date, he emailed Jonathan Allyn of Old Republic, stating that the property was originally in the 2013 tax sale, but there were no bidders, so the city held the certificate. The 2013 tax sale consisted of one miscellaneous bill for $197.27, metered water charges of $414.72, and real property taxes, for a total of $2,180.75. The property then went into the 2016 tax sale, which included the 2013 tax sale, liens and interest from 2013 through 2016, and metered water for a total amount of $11,504.50.[2] The property again went into tax sale in 2019 because there were still no bidders and the property was not redeemed. Thus, the total amount due to redeem through February 19, 2021, was $41,699.92, which included 2016 tax sale charges, plus

[2] Mr. Scrivener acknowledged that the email may have contained a typo in which 2014/15 was entered twice, but he confirmed the total redemption amount was "true and accurate to the best of [his] knowledge, information, and belief[.]"

interest and delinquent water fees. Mr. Scrivener's email (Exhibit 9) was admitted into evidence without objection by Mr. Sherwood's attorney.

On cross-examination, Mr. Sherwood's attorney questioned Mr. Scrivener about the miscellaneous bill line item—admittedly only "a minor amount"—in the amount of $197.227, stating that he "didn't know that we had three-tenths of a cent." Counsel also asked if the tax department ever made errors in their billing, to which Mr. Scrivener responded that "the tax sale department doesn't issue bills." Mr. Sherwood's attorney inquired how the department allocates taxes paid in one bulk payment when a property owner owns several properties, to which Mr. Scrivener responded "we would hope that the owner would specify what the funds were for."

As Old Republic's final witness, Colleen Dougherty, an Old Republic recovery and claims administrator, testified that as a result of the letter sent by Temple View's counsel putting Old Republic on notice of the delinquent tax claim, Jonathan Allyn had reached out to Baltimore City to determine the delinquent taxes on the Wilmington Avenue property. In response, he received Mr. Scrivener's email. In addition, services provided by James Truitt, the attorney for the private tax lien purchaser, added $2,120.20 to the claim. Ms. Dougherty denied any reason "to believe their payoffs were incorrect."

Upon receipt of the payoff amount, Old Republic made payment to Mr. Truitt in the amount of $2,120.20 for the legal fees and to the city in the amount of $40,861.20 for "all of the past due taxes that were rolled up into the 2019 tax sale[.]" Copies of the checks paid in relation to the claim were admitted into evidence.

As a result of "essentially paying XXtreme and Mr. Sherwood's property taxes[,]" Ms. Dougherty continued, Old Republic made a demand upon Mr. Sherwood to reimburse it for the amount paid on his behalf. Mr. Sherwood called Ms. Dougherty and said he was going to gather information because he did not understand why or how he could owe that amount to Baltimore City, but he did not follow up, nor pay any of the amount demanded.

Mr. Sherwood testified in his defense that he owned five properties in Baltimore City and that he routinely wrote one check to pay the property taxes for all his properties. In relation to the Wilmington Avenue property, he knew taxes were delinquent in 2016, but he believed the delinquency was approximately $2,300. He had entered into a consent agreement relating to that delinquency and had been making payments directly to the city law department.

When he refinanced the loan on the Wilmington Avenue property in 2020, Mr. Sherwood believed that he was paying "all the necessary expenses[,]" including the delinquent taxes, by merging them into the refinance loan. In his view, the property was in good standing in relation to property taxes, and he did not owe the amount claimed in the lawsuit. He, however, produced no business records, cancelled checks, or credit card receipts to support that statement. Even were he to accept Mr. Scrivener's assertion of a delinquency, Mr. Sherwood believed that the delinquent taxes totaled $11,504.

In closing argument, Old Republic's attorney explained that the $11,504 had ballooned by three years' interest accruing at 18% per year, plus additional metered water and property taxes not reflected in earlier records, to reach the $42,000 figure. And Mr. Sherwood, still the owner of the property, had received the benefit of Old Republic's

payment of that amount on the title insurance policy and had not repaid the benefit, thereby "essentially free riding on Old Republic's money."

Mr. Sherwood's attorney argued in closing that Old Republic had presented no evidence that "anyone authenticated the amount of money owed to the City of Baltimore." There was only the email from Mr. Scrivener regarding the amounts owed, but no "underlying documentation of these figures[,]" including individual yearly bills or computation of interest. Therefore, in counsel's view, Old Republic had not met its burden of proving the actual amount owed. In addition, Mr. Sherwood had testified credibly that he believed he was up to date on his tax payments.

In rebuttal closing argument, Old Republic countered that it was Mr. Scrivener's job to perform precisely the function of determining the amount owed, and that he had done just that. He had created a very detailed analysis and report as a routine part of what he does on behalf of Baltimore City, submitted it to the insurer, and the claim was paid. Mr. Sherwood had received the benefit of the payment and now had to pay it back.

The trial court pointed out that Mr. Scrivener had been available for cross-examination concerning the amount that was due in taxes and that Mr. Sherwood could have subpoenaed additional documents if he believed there was an accounting problem. The Court had "no difficulty" relying on Mr. Scrivener's figures "because those are the only figures actually that I have, and even under cross examination those figures—it was not brought to light that those figures were inaccurate." There was also nothing that "would persuade this Court to believe that Mr. Scrivener made an error in this case." Therefore, the bottom line was that Mr. Sherwood had been sued for the amount that was paid for his

taxes and associated legal expenses and "he cannot be unjustly enriched in this way[,]" so the money paid out under the title insurance policy must be paid back.

The court entered judgment in favor of Old Republic in the amount of $42,981.40. Mr. Sherwood noted a timely appeal.

DISCUSSION

Mr. Sherwood contends, as he did below, that he had paid all the taxes on the Wilmington Avenue property and that there was no outstanding balance at the time of trial. In his view, the claimed amounts by Baltimore City were based on its "internal accounting errors and failure to properly credit paid tax payments to the subject property."

As a result, Mr. Sherwood asserts that the trial court should not have entered judgment in favor of Old Republic—based in large part on Exhibit 9, the email from Mr. Scrivener setting forth the redemption amount—because the email contained "multiple clear errors on its face" and did not include "background documents[,]" such as authenticated metered water bills, property tax bills, and breakdowns of interest accrued and applied, to support Mr. Scrivener's accounting. In the absence of any such documentation, Mr. Sherwood concludes, the circuit court clearly erred in entering judgment in the amount of $42,981.40 in favor of Old Republic.[3] We disagree.

In a matter tried without a jury, we "review the case on both the law and the evidence." Md. Rule 8-131(c). We will not set aside the judgment of the trial court on the

[3] Mr. Sherwood makes no specific claim of error relating to the accounting of Mr. Truitt's legal fees and expenses.

evidence unless it is clearly erroneous, and we give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Urban Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship,* 340 Md. 223, 229-30 (1995). In addition, we consider the evidence in the light most favorable to the prevailing party and "decide not whether the trial [court's] conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence." *Id*. at 230. In making this decision, we "assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court." *Mercedes-Benz of N. Am., Inc. v. Garten*, 94 Md. App. 547, 556 (1993).

The short answer to Mr. Sherwood's claim is that the trial court, in entering its judgment, properly relied on the competent evidence before it. And, considering that evidence in the light most favorable to Old Republic, the prevailing party, we hold that the trial court's conclusions of fact were supported by a preponderance of the evidence. We explain.

Old Republic called Mr. Scrivener as a witness to provide the factual basis for its claim of damages. Mr. Scrivener, a Baltimore City account manager whose duty is to oversee city tax sales, testified that the total due to redeem Mr. Sherwood's property through February 19, 2021, was $41,699.92, which included 2016 tax sale charges plus interest and delinquent water fees. Mr. Scrivener acknowledged that Exhibit 9, his email itemizing the amounts due, may have contained a typographical error in which liens relating to 2014/15 were entered twice, but he confirmed that the total amount due, as set

forth in his email, was "true and accurate to the best of [his] knowledge, information, and belief[.]"[4]

Mr. Sherwood did not dispute Mr. Scrivener's expertise in tax sales, nor object to the admission into evidence of his email comprising Exhibit 9. Mr. Sherwood then had the opportunity to cross-examine Mr. Scrivener vigorously about any perceived errors in his accounting, but he asked the witness only about a minor miscellaneous line item in the email and produced no documents to contradict Mr. Scrivener's testimony.

In his own defense testimony, Mr. Sherwood acknowledged a 2016 tax delinquency on the property, but he claimed that the property was then in good standing in relation to property taxes. Despite his appellate claim that he had "marked property tax bills for the relevant years indicating no balance due," Mr. Sherwood acknowledges that "none of these bills [were] introduced to the trial court[,]" appearing to fault Old Republic for failing to introduce into evidence documents that purportedly would prove his own case, while declining to do so himself. And, when Mr. Sherwood professed not to understand how the amount owed could have risen from approximately $11,500 to the claimed total of almost $42,000, Old Republic's attorney explained that the increased amount encompassed three

[4] In his brief, Mr. Sherwood also argues that removing the tax liens that were double-counted in Mr. Scrivener's email did not remove the interest based on those double-counted taxes, but he did not raise that concern during his cross-examination of Mr. Scrivener or before the trial court during closing argument. Therefore, he failed to preserve it for appellate review. *See Heineman v. Bright*, 140 Md. App. 658, 671 (2001) ("Under Maryland Rule 8-131(a), this Court ordinarily will not decide any non-jurisdictional issue unless the issue plainly appears by the record to have been raised in or decided by the trial court.").

years of interest at 18%, plus additional charges, an accounting that Mr. Sherwood did not attempt to refute.

Mr. Sherwood now claims "multiple clear errors" in Mr. Scrivener's email, "unsupported and unauthenticated figures[,]" and "many and meaningful mathematical errors[,]" but he offered little to no evidence to this effect at trial and cannot do so now. Assuming, as we must, the truth of the evidence presented at trial, and reviewing that evidence in a light most favorable to Old Republic, we have no difficulty in concluding that the trial court did not err in determining, by a preponderance of the evidence, that the insurer was entitled to the judgment entered in its favor.[5]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

[5] To the extent that Mr. Sherwood argues that the trial court did not "specify a theory of law under which the award was made" and erred by "failing to analyze and make any findings regarding the theories under which [Old Republic] sued[,]" we point out that the court explained that Mr. Sherwood had been sued for the amount that Old Republic paid for his taxes and legal expenses and "he cannot be unjustly enriched in this way[.]"

In considering a trial court's rulings, an appellate Court "must assume that the [lower] court carefully considered all the various grounds" that the parties asserted. *Thomas v. City of Annapolis*, 113 Md. App. 440, 450 (1997). Moreover, trial courts are assumed to know the law and correctly apply it, and a court is "not required to set out in detail each and every step of [its] thought process." *Id.* Even in the absence of a specific finding of each element of unjust enrichment, it is clear that the trial court considered the alleged tort and determined that Mr. Sherwood was unjustly enriched to the detriment of Old Republic. It did not err or abuse its discretion in doing so.