

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 27th day of May 2021.

Present: Goodwyn, Mims, Powell, Kelsey, McCullough, and Chafin, JJ., and Koontz, S.J.

Abuduleaila Maimaitimin, et al., Appellants,

against Record No. 200545
Circuit Court No. CL-2018-9666

Abudukeyimu Abuduhamiti, Appellee.

Upon appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, for the reasons set forth below, the Court is of opinion that there is error in the judgment of the circuit court.

Therefore, we reverse and remand the case for retrial consistent with this order.

BACKGROUND

This appeal arises from a dispute regarding the management of commercial property located in China. For purposes of our resolution of this appeal, the pertinent facts are not in dispute. Abuduleaila Maimaitimin (“Maimaitimin”) and his wife, Abulaiti Sainaiwaier, (collectively, “Appellants”) are Chinese nationals who own a shopping center in Xinjiang, China (the “Property”). The property contains retail spaces and warehouses that Appellants rent. Before Appellants moved to Virginia in October 2016, they hired Abudukeyimu Abuduhamiti (“Appellee”) to assist them with obtaining passports and selling their personal residence in China. Thereafter, Appellee approached them about a potential buyer for the Property, and they entered into a verbal agreement with Appellee for him to manage the Property and collect the

rents for them until the Property sold in exchange for ten percent of the rents collected, (the “Agreement”). The parties also entered into an oral agreement that Appellee would receive ten percent of the sale proceeds from the sale of the shopping center. Appellants signed a document intended to enable him to sell it. The property remains unsold. Appellee subsequently moved to Virginia in April 2017 and although he made one payment to Appellants in the amount of \$55,000, he has not made any additional payments regarding the rent of the property.

Appellants filed against Appellee a complaint in the Circuit Court of Fairfax County asserting claims for breach of contract, unjust enrichment, and money had and received. Appellants sought \$315,980 for the period of October 1, 2016 through May 30, 2018, representing the rental payments less ten percent. In his answer and grounds of defense, Appellee asserted, among others, the affirmative defense that any enforcement of the alleged Agreement is barred by the statute of frauds. At trial, Appellants introduced evidence supporting the existence of the Agreement, including testimony, recordings of conversations purportedly with Appellee in which he acknowledged the existence of the Agreement, and an unsigned written memorialization of the Agreement that purportedly reflected its terms. In addition, Appellants introduced evidence of the transcript of Appellee’s deposition testimony, in which Appellee denied being a party to the Agreement, and maintained that while he arranged for the \$55,000 payment to Appellants, the Agreement was for his brother to collect the rents, not him.

At the close of Appellants’ evidence, Appellee moved to strike Appellants’ claims. With respect to the breach of contract claim, Appellee argued that the statute of frauds barred its enforcement because the performance called for under the Agreement would not be completed within a year. Appellants responded that the Property could have been sold within a year, so the

statute of frauds did not apply, but even if it did, the statute of frauds should not be applied here because it would perpetrate a fraud.

The circuit court granted the motion to strike with respect to the breach of contract claim, finding the statute of frauds rendered the Agreement unenforceable because the Agreement called for the collection of rent for an undefined duration and could not have been performed within a year. The circuit court acknowledged the possibility that the Property would be sold within a year but found “that possibility alone [was] not enough to satisfy the statute of frauds.” The circuit court later ruled in favor of Appellee on the unjust enrichment and money had and received claims, finding the evidence was insufficient to establish Appellee was enriched or had received any monies. We awarded Appellants this appeal.

DISCUSSION

On appeal, Appellants contend the circuit court erred in granting Appellee’s motion to strike. We agree. Well-settled principles guide our analysis in this case. “[W]hen the trial court grants a motion to strike the plaintiff’s evidence, we review the evidence on appeal in the light most favorable to the plaintiff.” *Collelo v. Geographic Servs., Inc.*, 283 Va. 56, 67 (2012) (internal quotation marks and citation omitted). In considering a motion to strike, “the trial court should resolve any reasonable doubt as to the sufficiency of the evidence in plaintiff’s favor” and should grant it “only when it is conclusively apparent that plaintiff has proven no cause of action against defendant, or when it plainly appears that the trial court would be compelled to set aside any verdict found for the plaintiff as being without evidence to support it.” *Id.* (citation omitted).

The statute of frauds “interposes a bar to the enforcement of certain oral contracts.” *Drake v. Livesay*, 231 Va. 117, 120 (1986). Code § 11-2(8) provides that unless an agreement is in writing and signed by the party against whom enforcement is sought, “no action shall be

brought” to enforce “any agreement that is not to be performed within a year.” However, the statute of frauds “will not be applied when the result is to cause a fraud or perpetrate a wrong, because the object of the statute is to prevent frauds.” *Murphy v. Nolte & Co., Inc.*, 226 Va. 76, 81 (1983).

Here, when the evidence is reviewed in the light most favorable to Appellants, they presented evidence sufficient to establish the existence and terms of the Agreement at trial. While Appellants assert no claim for damages regarding the sale of the property, the evidence of an agreement in that regard supports the reasonable conclusion that the parties contemplated the sale of the property to terminate the rent. Moreover, it is a reasonable inference from the evidence that when Appellee approached Appellants concerning a potential buyer of the property, near the time the parties agreed to the oral contract for the collection of rent, that the parties contemplated that the property would be sold within a year.

Because it is well-settled that the statute of frauds is an affirmative defense, Appellee had the burden to prove that it applied and barred the enforcement of the Agreement. *See Monahan v. Obici Med. Mgmt. Servs., Inc.*, 271 Va. 621, 632 (2006) (stating defendant had the burden to prove its affirmative defense). As the circuit court granted the motion to strike before Appellee presented evidence in this case, the circuit court did not require the Appellee to meet his burden of proof with respect to the statute of frauds defense. Thus, the circuit court erred at that stage of the trial when it determined the statute of frauds barred the enforcement of the Agreement. Finally, we are of opinion that the circuit court erred in finding that the evidence, again considered in the light most favorable to Appellants, was insufficient to support Appellants’ claim for unjust enrichment and monies received.

CONCLUSION

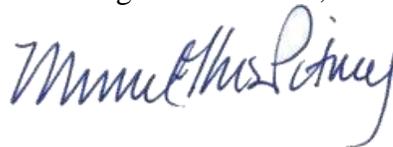
For the foregoing reasons, we hold the circuit court erroneously granted Appellee's motion to strike and in dismissing Appellants' other claims against Appellee. Accordingly, we reverse the circuit court's judgment and remand the case to the circuit court for a retrial consistent with this order.

This order shall be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

Douglas B. Robelen, Clerk

A handwritten signature in blue ink, appearing to read "M. M. [unclear] [unclear]", written over the printed name of the Deputy Clerk.

By:

Deputy Clerk