STATE OF MICHIGAN

COURT OF APPEALS

MTK FAMILY INVESTMENTS, L.L.C.,

Plaintiff-Appellant,

v

ABDULAMIR BEYDOUN, BEYDOUN PROPERTIES, L.L.C., and I. B. MINI MART II, INC.,

Defendants-Appellees.

UNPUBLISHED
February 11, 2014

No. 311693
Wayne Circuit Court
LC No. 09-031036-CK

Before: JANSEN, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

In this landlord-tenant dispute, plaintiff, MTK Family Investments, L.L.C. ("MTK"), appeals as of right the trial court's judgment after a bench trial awarding MTK $34,239.67, and interest on the judgment at a rate of eight percent annually against defendants, Abdulamir Beydoun, Beydoun Properties LLC, and I.B. Mini Mart II, Inc. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This dispute arises out of a business relationship that spanned nearly 20 years. The principal parties to the case are Elsayed Safiedine ("Elsayed"), member of MTK, and defendant, Abdulamir Beydoun ("Abdulamir"), owner of defendant, Beydoun Properties, L.L.C. ("Beydoun Properties"), and general manager of defendant, I. B. Mini Mart II, Inc.[1] Abdulamir and Elsayed were involved in the ownership and operation of two gasoline stations. One station, the property at issue here, is located at 12711 West Eight Mile Road (the "Gas Station").

Over the course of their business relationship, the two men were involved with three separate written leases covering the Gas Station. Each lease was a month-to-month lease. The first lease, executed on September 1, 1994, called for a monthly rent obligation of $6,000 a month, and a security deposit of $6,000. The parties to this lease were I. B. Mini Mart II, Inc., as

[1] Throughout this opinion, we refer to Abdulamir, Beydoun Properties, and I. B. Mini Mart II, Inc. collectively as "defendants."

tenant, and MTK, then operating as a partnership, as landlord. Imad Beydoun ("Imad"), Abdulamir's brother, co-owner of Beydoun Properties, and owner of I. B. Mini Mart II, Inc., signed this lease on behalf of the tenant. The second lease, executed on November 1, 1994, increased the rent obligation to $7,500 a month. This lease identified the tenant as "I & B #2 Abdul Amir Beydoun," and MTK was identified as the landlord. Abdulamir signed the lease on behalf of the tenant, and also signed the lease as a personal guarantor. The third and final lease was executed on January 1, 2003, and provided for a rent obligation of $10,000 a month. This lease identified the tenant as Beydoun Properties, and identified MTK as the landlord. Abdulamir again signed this lease on behalf of the tenant and as a personal guarantor.

The relationship between Elsayed and Abdulamir soured in 2009. MTK instituted eviction proceedings against defendants, seeking to recover possession of the Gas Station. As a result of this eviction proceeding, defendants vacated the Gas Station on December 30, 2009.

This appeal arises out of a complaint filed by MTK on December 18, 2009. In this complaint, MTK sought monetary compensation for unpaid rent, damage to the Gas Station, unpaid property taxes, unpaid utility bills, and unpaid repair bills. Upon MTK's motion, the trial court granted summary disposition in part and denied summary disposition in part. In its order, the trial court granted summary disposition on the issue of liability for unpaid rent, but denied summary disposition regarding the amount of rent owed to MTK. The trial court found that the monthly rent obligation was at least $10,000 a month, but stated that, if defendants wished to present evidence demonstrating that the rental obligation had been reduced through an oral agreement, defendants could file a motion to reconsider the court's ruling in regard to the rent obligation. The trial court also found that factual issues existed regarding MTK's claims for repairs and damage to the Gas Station.

Approximately two years later, on April 30, 2012, the trial court held a four-day bench trial to decide the remaining issues. On the first day of trial, defendants requested that the trial court disregard the portions of its summary disposition order that found that the amount of rent was at least $10,000. Defendants informed the court that, after attempting to access these records for nearly two years, defendants had finally been granted access to records held by the IRS, and that these records demonstrated the existence of an oral agreement to modify the rent obligation to $8,000 a month. The trial court agreed to disregard the affected portions of its prior order on summary disposition, and heard evidence relating to the alleged modification. After the conclusion of the trial, the trial court found that the lease had been modified, as defendants had argued. The trial court held a later hearing to determine whether MTK was entitled to attorney fees and to determine the rate of interest to be applied to the judgment. The trial court did not believe that the effective lease contained language requiring defendants to pay MTK's attorney fees, and denied MTK's request in that regard. The trial court found that the appropriate interest rate on the judgment was eight percent annually. The trial court awarded MTK a total of $34,239.67, a figure that accounted for one month of unpaid rent at a rate of $8,000 a month, a credit of $6,000 to account for an unreturned security deposit, $8,993 in unpaid property taxes,

$1,009.61 due to an unpaid water bill, and other amounts related to repairs and damage to the Gas Station.[2] Plaintiff now appeals as of right.

II. ANALYSIS

A. THE TRIAL COURT'S AMENDMENT OF ITS PRIOR ORDER

MTK first argues that, in light of the trial court's prior order that set the monthly rental rate at a minimum of $10,000, the trial court was precluded from hearing evidence relating to the verbal agreement to reduce the rent obligation to $8,000 a month. Essentially, MTK claims that the trial court erred in revising its prior summary disposition order absent a motion for reconsideration pursuant to MCR 2.119(F). We disagree.

A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Id*. at 625. Here, MTK claims that the trial court did not have the authority to grant relief absent a formal motion for reconsideration. The interpretation of a court rule is a question of law that is reviewed de novo on appeal. *Acorn Investment v MBPIA*, 298 Mich App 558, 561; 828 NW2d 94 (2012). "Interpretation of a court rule follows the general rules of statutory construction . . . ." *Hill v City of Warren*, 276 Mich App 299, 305; 740 NW2d 706 (2007). Where a rule is unambiguous, "the proper role of a court is simply to apply the terms of the [rule] to the circumstances in a particular case." *Veenstra v Washtenaw Country Club*, 466 Mich 155, 160; 645 NW2d 643 (2002). "The scope of a trial court's powers is also a question of law reviewed de novo on appeal." *Hill*, 276 Mich App at 305.

As a general matter, motions for reconsideration must be filed no later than 21 days after entry of an order deciding the motion. MCR 2.119(F)(1). However, where other rules provide for a different procedure, the trial court may reconsider a prior decision pursuant to those rules and procedures. MCR 2.119(F)(1). MCR 2.119(F)(1) references MCR 2.604(A) as such an example of "another rule provid[ing] a different procedure for reconsideration of an issue . . . ." As provided by MCR 2.604(A):

> . . . [A]n order or other form of decision adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties, does not terminate the action as to any of the claims or parties, and the order is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties.

Here, the trial court's summary disposition order granted MTK's motion in part and denied the motion in part. The order granted summary disposition in favor of MTK on the issue of liability for unpaid rent, but explicitly denied the summary disposition motion on the issue of

[2] The amounts awarded for these repairs and damages were not appealed by MTK, and will not be discussed in this opinion.

the amount of rent due to MTK. In addition, the trial court's order stated that "there are factual issues regarding [MTK]'s claims resulting from alleged repairs and waste to the premises. For this reason, [MTK]'s [m]otion for [s]ummary [d]isposition on the issue of repairs and waste is denied." Thus, it is clear that the order did not adjudicate all the claims between the parties, and did not decide all the rights and obligations of the parties. "The court rules therefore give the trial court explicit procedural authority to revisit an order while the proceedings are still pending and, on that reconsideration, to determine that the original order was mistaken, as the trial court did here." *Hill*, 276 Mich App at 307; see also MCR 2.604(A).

Although the trial court's order stated that the rent obligation was "at least $10,000 per month[,]" the trial court's order also stated that "if the inspection of [MTK's] records in possession of the IRS reflects contractual evidence of a lower or modified figure, [defendants] may file a motion . . . to reconsider the rental amount." Thus, it is clear that, although the trial court previously believed the rental amount to be at least $10,000 a month, that determination was not final, pending inspection of MTK's records held by the IRS. Immediately before trial, defendants informed the trial court that they had only recently been granted access to those documents by the IRS. The trial court acknowledged that the "federal authorities [were] holding on to the materials pretty tight . . . ." Under these circumstances, the trial court's decision to reconsider and revise its prior order in regard to the amount of rent due under the lease was not an abuse of discretion.

B. THE TRIAL COURT'S FINDING THAT THE PARTIES MUTUALLY AGREED TO MODIFY THE LEASE PROVISIONS AND ITS AWARD FOR RENT DAMAGES

MTK next argues that the trial court erred when it concluded that the parties orally agreed to modify the final written lease to reduce the rent obligation to $8,000 a month. We disagree.

"Following a bench trial, we review for clear error the trial court's factual findings and review de novo its conclusions of law." *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). "The clear error standard provides that factual findings are clearly erroneous where there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill*, 276 Mich App at 308. "[T]he clear error standard of review must, by definition, accommodate the possibility of multiple 'right' results, or at least 'permissible' results . . . ." *Id.* at 309. Trial courts are generally given great deference because the trial court is in a better position to examine the facts. *Id.* at 308. In particular, "[a]n appellate court will give deference to the trial court's superior ability to judge the credibility of the witnesses who appeared before it." *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004) (quotations and citations omitted).

MTK argues that the lease could not be modified absent a writing between the parties. The applicable principles of contract modification, in light of anti-waiver clauses or clauses requiring modifications to be in writing, were thoroughly discussed by our Supreme Court in *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 372-373; 666 NW2d 251 (2003) (footnote omitted) (emphasis in original):

> [I]t is well established in our law that contracts with written modification or anti-waiver clauses can be modified or waived notwithstanding their restrictive amendment clauses. This is because the parties possess, and never cease to possess, the freedom to contract even after the original contract has been executed.
>
> However, the freedom to contract does not authorize a party to unilaterally alter an existing bilateral agreement. Rather, a party alleging waiver or modification must establish a mutual intention of the parties to waive or modify the original contract. *Banwell*[*v Risdon*, 258 Mich 274, 278-279; 241 NW 796 (1932).] This principle follows from the contract formation requirement that is elementary to the exercise of one's freedom to contract: mutual assent.
>
> Where mutual assent does not exist, a contract does not exist. Accordingly, where there is no mutual agreement to enter into a new contract modifying a previous contract, there is no new contract and, thus, no modification. Simply put, one cannot unilaterally modify a contract because by definition, a unilateral modification lacks mutuality.
>
> The mutuality requirement is satisfied where a modification is established through clear and convincing evidence of a written agreement, oral agreement, or affirmative conduct establishing mutual agreement to waive the terms of the original contract. In meeting this clear and convincing burden, a party advancing amendment must establish that the parties mutually intended to modify the *particular* original contract, including its restrictive amendment clauses such as written modification or anti-waiver clauses.
>
> Upon proof of an express oral or written agreement, the mutuality requirement is clearly satisfied. This is because where the parties expressly modify their previous contract, rescission of the terms of the prior agreement is a necessary implication. *Reid*[*v Bradstreet Co*, 256 Mich 282; 239 NW 509 (1931).] By the clear expression of the parties, contradictory provisions in the prior agreement are *waived*.

Section nine of the parties' 2003 lease contains an anti-waiver clause.[3] The lease also contains a clause requiring all modifications to be in writing.[4] However, as our Supreme Court

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[3] Section nine of the lease states:

> The Landlord and Tenant agree that the failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease, shall not prevent a subsequent act which would have originally constituted violation from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach and no provision of this

has made clear, these clauses do not bar subsequent modification of the contract by the parties, even if doing so contradicts the express terms of the written agreement. *Quality Prods & Concepts Co*, 469 Mich at 372-373. Defendants need only prove, by clear and convincing evidence, that the parties orally agreed to modify the contract. *Id*. at 373. Once defendants establish that the parties entered into an oral agreement modifying the agreement, "rescission of the terms of the prior agreement is a necessary implication[,]" *id*., and those contradictory provisions, i.e., anti-waiver and written amendment provisions, are waived, see *id*.

Defendants presented clear and convincing evidence that the parties modified the written lease through an oral agreement. At trial, Abdulamir testified that, in 2008, he asked Elsayed to reduce the rent obligation to $8,000 a month. According to Abdulamir, this request was necessitated by the then-recent economic downturn. According to Abdulamir, Elsayed agreed to this reduction. Elsayed was questioned about this agreement at trial, and acknowledged that he agreed to reduce the rent obligation (emphasis supplied):

> *Q*. And it shows that part of this chart—amounts paid and can we agree that the amounts paid started at $8,000 in August of '08?
>
> *A*. That's when he asked me, ask[ed] for some help, thousand a month, *I said fine*. Then he start paying—that's when trouble start [sic].
>
> *Q*. Let me ask you this. You are claiming a differential of $2000 a month, correct?
>
> *A*. Yes.
>
> *Q*. And are you saying the differential should only be a thousand a month that you are claiming?
>
> *A*. It is the time he ask[ed] me he wants money to pay his property tax [sic]. *So I said, fine*. He said I am not going to pay anymore. I will pay $8,000. He always pa[id] that on month-to-month [sic]. Then he stop[ped] paying completely.

Elsayed's testimony also indicates a long history of verbal modifications, despite his denials that any modification occurred. Rent checks from the years 1996, 1997, 1998, and 2002 reflect rental payments that were at times as much as $1,200 less than what was called for by the written lease in effect between the parties, and other times, as much as $2,500 in excess of what was called for by the effective written lease. Despite this, Elsayed testified that MTK accepted defendants' checks, and gave no indication that MTK ever objected or took action to recover any

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> Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord.

[4] Section 19 of the lease states that the lease "cannot be changed, modified [sic], except in writing, signed by the parties against whom enforcement of the change, modification[,] or discharge is sought."

unpaid rent from defendants. Abdulamir also testified that Elsayed never objected, in writing or otherwise, to the $8,000 rent checks. Abdulamir testified that problems arose regarding this lease only after Abdulamir sued one of his companies in July, 2009. Elsayed testified that the two men had been friends for a long period of time, and both men testified that they made prior agreements on a handshake. This evidence further substantiates Abdulamir's testimony that the two men verbally agreed to modify the lease agreement in 2008.

Although Elsayed's wife, Jean Safiedine ("Jean"), and Elsayed both denied the existence of an oral agreement, "[a]n appellate court will give deference to the trial court's superior ability to judge the credibility of the witnesses who appeared before it." *Glen Lake-Crystal River Watershed Riparians*, 264 Mich App at 531 (quotations and citations omitted). Thus, this Court will defer to the trial court's implicit determination that this conflicting testimony was not credible. The evidence described above clearly and convincingly establishes that the parties entered into a verbal agreement to modify the lease. Therefore, the modification is binding and enforceable, despite the presence of anti-waiver and written modification clauses. *Quality Prods & Concepts Co*, 469 Mich at 372-373; see also *Kelly-Stehney & Assoc, Inc v MacDonald's Indus Prods, Inc (On Remand)*, 265 Mich App 106, 119-121; 693 NW2d 394 (2005) (modification was enforceable, despite a contractual provision requiring modifications to be in writing, because clear and convincing evidence existed that the parties modified their prior written contract; one party testified that the parties verbally agreed to the modification, and second party accepted checks reflecting the modification without objection).

The only dissonance remaining between the testimony of Abdulamir and Elsayed relates to the amount of the reduction, specifically, whether the reduction was to $9,000, as indicated by Elsayed, or to $8,000, as claimed by Abdulamir. In its findings of fact, the trial court determined that the rent obligation was reduced to $8,000 through the oral agreement discussed above. This finding is not clearly erroneous. Abdulamir testified that he asked for a reduction to $8,000. From August, 2008, until the final rent check was received for November, 2009, MTK was paid $8,000 each month. Although Jean testified that she called defendants at least 20 times to discuss the rent issue, Abdulamir testified that no representative of MTK ever complained about the $8,000 rent payments. Jean stated that she could not remember if she sent written notices to defendants regarding the rent deficiency, and the trial court found that no such notices were ever sent. Given Abdulamir's testimony, and the fact that from August, 2008, forward, the rental checks reflected payments of $8,000, the trial court did not clearly err when it decided this reduction was to $8,000 a month.

We find unavailing MTK's claim that the rent had been increased to $11,000 a month. The 2003 lease states that the lease "cannot be changed [or] modified, except in writing, signed by the parties against whom enforcement of the change, modification, or discharge is sought." MTK produced no evidence that defendants ever signed a writing acknowledging the increase in rent. Although it is possible to waive such a written modification clause, see *Quality Prods & Concepts Co*, 469 Mich at 372-373, "a party alleging waiver or modification must establish a mutual intention of the parties to waive or modify the original contract[,]" *id.* at 372. MTK has presented no evidence that defendants expressly agreed to the rent increase, nor has MTK presented any other evidence tending to show that defendants acquiesced to the rent increase. Accordingly, the trial court correctly concluded that MTK's unilateral attempt to increase the rent obligation was not effective. See *id*. at 372-373.

Further unavailing is MTK's claim that the trial court erred when it credited a $6,000 security deposit against the judgment. While the parties' 2003 lease agreement contained no provision that a security deposit had been received, the trial properly considered the three leases were related and that the first two leases clearly referenced receipt of a $6,000 security deposit. MTK, then acting as a partnership, first leased the Gas Station to I. B. Mini Mart II, Inc. pursuant to a lease dated September 1, 1994. This lease was signed by Imad, Abdulamir's brother, on behalf of I. B. Mini Mart II, Inc. The November 1, 1994, lease identifies the tenant as "I & B #2 Abdul Amir Beydoun." Abdulamir signed this lease on behalf of the tenant and as a guarantor. The third and final lease is dated January 1, 2003, and identifies "Beydoun Properties" as tenant. Abdulamir also signed this lease as tenant and guarantor. Jamal Safiedine, Elsayed's son and an employee of MTK, agreed that I. B. Mini Mart II, Inc. was the tenant occupying the gas station while he discussed bills dated in the year 2010. Although I. B. Mini Mart II, Inc. is not identified in the 2003 lease, given the close relationships between I. B. Mini Mart II, Inc., Abdulamir, and Beydoun Properties, as well as Jamal Safiedine's testimony, which could easily be understood to mean that I. B. Mini Mart II, Inc. was the actual tenant while the 2003 lease was in force, the trial court did not clearly err when it determined that these three leases were related. See *Hill*, 276 Mich App at 308-309. In addition, MTK filed its complaint against I. B. Mini Mart II, Inc., Abdulamir, and Beydoun Properties. As I. B. Mini Mart II, Inc. and Abdulamir are clearly parties to the first two leases, the trial court properly considered these two leases when it rendered its judgment.

The trial court did not clearly err when it determined that the security deposit was paid, but never returned. When asked if the September 1, 1994, lease called for a security deposit of $6,000, Elsayed replied, "[y]es, I get [sic] a check." Abdulamir testified that, upon execution of this lease, I. B. Mini Mart II, Inc. paid MTK $12,000, a sum that reflected the first month's rent and the security deposit. The second lease, dated November 1, 1994, includes a notation stating "$6,000 update deposit." The 2003 lease makes no mention of a security deposit. However, Elsayed testified that it was his general practice to carry security deposits forward to subsequent leases between the parties. A rational conclusion to be drawn is that, because the security deposit was paid in 1994, no language discussing a security deposit was deemed necessary. Elsayed admitted that he had no evidence that the security deposit was ever returned to defendants, despite testifying that, if the deposit had been returned, he would have a record of the transaction. Abdulamir testified that the security deposit was never returned. Based on this evidence, the trial court did not clearly err when it determined that defendants had previously paid, and were entitled to the return of, the $6,000 security deposit. See *Hill*, 276 Mich App at 308-309.

C. THE TRIAL COURT'S AWARD OF $8,993 FOR UNPAID PROPERTY TAXES AND $1,009.61 FOR AN UNPAID WATER BILL

At trial, defendants admitted responsibility for the 2009 property taxes and for the unpaid water bill. MTK asserts that the trial court erred by granting only $8,993 to compensate MTK for unpaid property taxes, when MTK actually paid $13,146.64. MTK also asserts that the trial court erred by granting only $1,009.61 to MTK for an unpaid water bill, when the bill was actually for $1,276.57. We disagree.

MTK only contests the dollar amount it was awarded in regard to the unpaid property taxes. The trial court awarded $8,993 in unpaid property taxes. At trial, Abdulamir agreed that the tax bills presented by MTK showed a summer tax due in the amount of $3254.84, and a winter tax due in the amount of $5,738.16. When added together, these bills total exactly $8,993. Although Jean testified that she paid a total of $13,146.64 in property taxes, she admitted that this amount included penalties and accrued interest due because the taxes were not paid until November 15, 2011. Thus, the difference between the amount MTK paid and the amount the trial court awarded, $4,153.64, likely covers the accrued interest and penalties. While Abdulamir admitted that he was responsible for paying the property taxes, he also testified that the property tax bills were sent to MTK's business offices, and were then forwarded to him by MTK. He testified that he did not pay the 2009 taxes because the bill was never provided to him, and therefore, he did not know how much was due. Given this testimony, the trial court likely concluded that any penalties and accrued interest were the responsibility of MTK, not defendants. And as MTK has provided no argument demonstrating why it is entitled to recoup the penalties and accrued interest, the trial court did not clearly err when it determined that MTK was entitled to $8,993 in regard to property taxes.

Abdulamir also admitted that he was responsible for an unpaid water bill of $1,276.57. However, he also stated that he never received that bill. In his testimony, Jamal Safiedine stated that he did not believe that this bill was ever forwarded to defendants, and that the new tenant paid the bill to avoid having the water shut off. Neither party has provided any discussion of why the trial court awarded only $1,009.61 in regard to the water bill; however, it is likely that $267 is due to late fees or other penalties assessed because the water bill was not paid on time. As Jamal Safiedine indicated that MTK likely never forwarded the bill to defendants, the trial court most likely determined that MTK was not entitled to recover any late fees or additional expenses incurred beyond the charges incurred for the water itself. As MTK has provided no discussion of the issue, this writer cannot say that the trial court clearly erred when it determined that MTK was entitled only to $1,009.61 in regard to the water bill.

D. THE TRIAL COURT'S DETERMINATION REGARDING THE RATE OF INTEREST ON THE JUDGMENT

Next, MTK argues that the trial court erred when it awarded interest at a rate of eight percent.[5] MTK argues that the lease provides for interest to be paid at a rate of 25 percent. Defendants, on the other hand, argue that the trial court should have awarded interest at a rate of only 3.25 percent. We disagree with both parties. Legal questions, including "questions of statutory interpretation and questions of contract interpretation, are reviewed de novo." *Macomb Co v AFSCME Council 25*, 494 Mich 65, 77; 833 NW2d 225 (2013) (footnotes omitted).

The January 1, 2003, lease provides:

> Throughout the term of this [l]ease, [tenant shall] pay interest at the greater of the stated prime rate as published by NBD Bank, N.A. on the date payment was due

[5] MTK's brief on appeal incorrectly alleges that the trial court awarded five percent interest.

> or the highest legal rate on any installment of Fixed Rent or Additional Rent which is not paid when due, for the period from the date when the same was due and payable to the date the same was paid.

The lease defines "Additional Rent" as "water, sewer, electricity, and any and all other utilities used or consumed on the [p]remises, real estate and personal property taxes and assessments as the same shall become due and owing, all costs of the maintenance and repair of the [p]remises, . . . and all other expenses in connection with the use and occupancy of the [p]remises . . . ."

MTK argues that the language "highest legal rate" equates to an interest rate of 25 percent. This argument is based entirely on portions of Michigan's usury laws, specifically MCL 438.61(3) and MCL 438.41.

As provided by MCL 438.61(3) (emphasis added):

> [I]t is lawful *in connection with an extension of credit* to a business entity by any person other than a state or nationally chartered bank, a state or federal chartered savings bank, a state or federal chartered savings and loan association, a state or federal chartered credit union, insurance carrier, finance subsidiary of a manufacturing corporation, or a related entity for the parties to agree in writing to any rate of interest not exceeding the rate allowed under Act No. 259 of the Public Acts of 1968.

MCL 438.41, which was enacted by 1968 PA 259, states the following:

> A person is guilty of criminal usury when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest on the loan or forbearance of any money or other property, at a rate exceeding 25% at simple interest per annum or the equivalent rate for a longer or shorter period. Any person guilty of criminal usury may be imprisoned for a term not to exceed 5 years or fined not more than $10,000.00, or both.

"Usury is, generally speaking, the receiving, securing, or taking of a greater sum or value for the loan or forbearance of money, goods, or things in action than is allowed by law." *People v Lee*, 447 Mich 552, 556; 526 NW2d 882 (1994) (quotation marks and citations omitted). The purpose of Michigan's usury statute is to protect necessitous borrowers from extortion. *Id*. at 556-557. Here, by executing the lease, MTK did not extend credit to defendants, and defendants did not borrow any sum from MTK. Rather, defendants were required to pay rent "in advance on the first day of each calendar month . . . ." There is simply no rational reason to read the lease provision regarding interest rates as incorporating by reference a criminal statute that, by its own terms, applies only to situations involving the extension of credit.

We reject defendants' argument that they are entitled to a lower interest rate. "Although an appellee need not file a cross-appeal to argue an alternative basis for affirming the trial court's decision, an appellee cannot obtain a decision more favorable than the decision rendered by the trial court." *Truel v City of Dearborn*, 291 Mich App 125, 137; 804 NW2d 744 (2010). Because defendants did not file a cross appeal, they may not obtain a decision on appeal that would

reduce the interest rate, as any reduction in the rate of interest would be more favorable to defendants than that which was ordered by the trial court.

E. THE TRIAL COURT'S REFUSAL TO AWARD ATTORNEY FEES

Finally, MTK argues that the trial court erred when it refused to award MTK $31,729.65 in attorney fees. We disagree.

A trial court's ultimate decision whether to award attorney fees is reviewed for an abuse of discretion. *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690; 828 NW2d 400 (2012). A trial court abuses its discretion when its decision falls outside the range of principled outcomes. *Id.*

Although MTK cites three sections of the 2003 lease in its brief on appeal, MTK does not explain how any of these three sections requires defendants to pay MTK's attorney fees in this matter. MTK also fails to cite a single case, statute, or court rule in its discussion of attorney fees. Nevertheless, MTK asserts that it is entitled to its attorney fees, because "[t]he lease was equally clear, allowing all expenses of Landlord for enforcing this lease at paragraphs [three], 4(C) [and] 5(B) . . . ." "This Court will not search the record for factual support for a party's claim. Further, this Court has held repeatedly that appellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority." *McIntosh v McIntosh*, 282 Mich App 471, 485; 768 NW2d 325 (2009) (citations and quotation omitted). When a party fails to adequately brief its position, or support its claim with authority, that claim is abandoned. *MOSES Inc, v SEMCOG,* 270 Mich App 401, 417; 716 NW2d 278 (2006). As MTK has not explained its position, and has provided no support for its claim regarding attorney fees, MTK has abandoned the issue on appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto