

COURT OF APPEALS OF OHIO

JUL 16 2020

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

REALTY TRUST SERVICES, L.L.C., :

Plaintiff-Appellee, :

No. 108968

v. :

RASHID MOHAMMAD, :

Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**

**RELEASED AND JOURNALIZED: July 16, 2020**

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Civil Appeal from the Berea Municipal Court  
Case No. 19CVGo1673

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***Appearances:***

Lieberman, Dvorin & Dowd, L.L.C., and Darren J. Dowd,  
*for appellee.*

Sam A. Zingale, *for appellant.*

EILEEN T. GALLAGHER, A.J.:

{¶ 1} Defendant-appellant, Rashid Mohammad, appeals a judgment of the Berea Municipal Court rendered against him and in favor of plaintiff-appellee, Realty Trust Services, L.L.C. (“Realty Trust”) on its complaint for forcible entry and detainer. Mohammad claims the following two errors:



1. The trial court failed to find that the evidence showed that the parties entered into a contract to extend the lease for another year.
2. The trial court erred in not concluding that the landlord failed to properly terminate the tenant's month to month holdover tenancy.

{¶ 2} We find no merit to the appeal and affirm the trial court's judgment.

### **I. Facts and Procedural History**

{¶ 3} Realty Trust, as agent for Venugopalan Cheriya and Maya K. Puthenveetil ("owners"), manages property located at 11511 Elizabeth Circle, Strongsville, Ohio. In July 2015, Mohammad and Realty Trust entered into a residential lease agreement allowing Mohammad and his family to occupy the property. The term expired on July 31, 2016, and provided that after the original term expired, the lease would automatically renew unless the tenant provided the owner with a 60-day notice of intent to end the lease.

{¶ 4} The lease automatically renewed twice and was scheduled to expire on July 31, 2018. However, the parties negotiated new terms and executed an addendum to the lease that extended the lease term to June 30, 2019. Regarding future lease renewals, the addendum provided, in relevant part:

Landlord and Tenants hereby agree to extend the Term of the Lease, retroactively, for one (1) 11-month period commencing on August 1, 2018 and terminating on June 30, 2019 (the "Term"). It is expressly understood that the Lease shall not be extended past the termination date stated herein, unless otherwise mutually agreed upon by the parties in writing at least sixty (60) days prior to the expiration of the Term.

{¶ 5} Andrew Morris, a broker at Realty Trust, testified at trial that on April 2, 2019, Realty Trust sent an automatic email message to Mohammad, inquiring as

to whether Mohammad intended to remain on the property after the lease was due to expire on June 30, 2019. The automatic message stated, in relevant part:

Just wanted to check in and ask if you were planning to stay in your home with us after that time? \* \* \* We would like to communicate to the owner of your home, your plans well in advance and make sure either there is a smooth renewal, if that is mutually agreed to, or if you do for some reason feel the need to leave, that this is done smoothly as well with no hitches.

{¶ 6} Mohammad did not respond to the message, and Realty Trust sent another message, dated April 27, 2019, asking whether Mohammad intended to remain in the home. On April 30, 2019, Mohammad replied that he and his family wished to stay in the house “one more year.” That same day, Morris advised Mohammad that he would communicate Mohammad’s wishes to the owners, but informed Mohammad that the owners wished to sell the property and would likely not accommodate his request to extend the lease.

{¶ 7} Morris testified that neither the owners nor Realty Trust agreed to extend the lease beyond June 30, 2019. According to Morris, the parties neither negotiated new terms nor executed an extension of the lease, and Realty Trust refused to accept rent for the month of July 2019.

{¶ 8} On July 1, 2019, Realty Trust served a statutory three-day notice on Mohammad, advising him that he and his family had to vacate the property. On July 15, 2019, Realty Trust commenced a forcible entry and detainer action against Mohammad in the Berea Municipal Court. A magistrate conducted a hearing, granted judgment in favor of Realty Trust, and ordered restitution of the property

by August 30, 2019. Mohammad filed timely objections to the magistrate's decision. The trial court overruled the objections and adopted the magistrate's decision. Mohammad filed a timely notice of appeal and a motion to stay execution of the trial court's judgment pending appeal, which was granted.

## **II. Law and Analysis**

### **A. Standard of Review**

{¶ 9} We review a trial court's decision to adopt, reject, or modify a magistrate's decision for an abuse of discretion. *In re K.V.*, 8th Dist. Cuyahoga No. 108441, 2019-Ohio-5126, ¶ 10, *see also Chuang Dev. L.L.C. v. Raina*, 10th Dist. Franklin Nos. 15AP-1062 and 16AP-500, 2017-Ohio-3000, ¶ 27. An abuse of discretion implies a decision that is unreasonable, arbitrary, or unconscionable. *State ex rel. DiFranco v. S. Euclid*, 144 Ohio St.3d 571, 2015-Ohio-4915, 45 N.E.3d 987, ¶ 13. When applying the abuse-of-discretion standard, a reviewing court may not substitute its judgment for that of the trial court. *Vannucci v. Schneider*, 8th Dist. Cuyahoga No. 105577, 2018-Ohio-1294, ¶ 22.

### **B. Contract**

{¶ 10} In the first assignment of error, Mohammad argues the trial court erred in granting judgment in favor of Realty Trust and ordering restitution of the property because the evidence showed that the parties entered into a contract to renew the lease for another year. Mohammad contends the parties had an enforceable contract to extend the lease.

{¶ 11} To be enforceable, a contract must have an offer, acceptance, consideration, and a manifestation of mutual assent. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16. Mohammad argues that Realty Trust's email inquiring as to whether he intended to stay in the house for another year constituted an offer to extend the lease. He further contends that he accepted the offer and created a binding contract when he responded with an email stating his desire to stay another year. Realty Trust, however, contends that Realty Trust's emails did not constitute an offer to renew the lease but rather an invitation to negotiate the terms of a new lease. Thus, we must determine if Realty Trust's emails to Mohammad, inquiring about his plans to either stay or vacate the property, constituted a valid offer, the acceptance of which would create a binding contract.

{¶ 12} An offer is defined as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Reedy v. Cincinnati Bengals, Inc.*, 143 Ohio App.3d 516, 758 N.E.2d 678 (1st Dist.2001). "The key concept involves giving the addressee the apparent power to conclude a contract without further action by the other party." Restatement of the Law 2d, Contracts, Section 24, Comment a (1981). In other words, a valid offer, the acceptance of which would create an enforceable contract, must contain terms that are "reasonably certain." Restatement of the Law 2d, Contracts, Section 33(1) ("Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain."). For

example, price is an essential term of a contract, without which there cannot be an enforceable contract. *Alligood v. Procter & Gamble Co.*, 72 Ohio App.3d 309, 311, 594 N.E.2d 668 (1st Dist.1991). Thus, to prove the existence of a contract, the proponent of the contract must show that “both parties consented to the terms of the contract, that there was a ‘meeting of the minds’ of both parties, and that the terms of the contract are definite and certain.” *Nilavar v. Osborn*, 137 Ohio App.3d 469, 484, 738 N.E.2d 1271 (2d Dist.2000), quoting *McSweeney v. Jackson*, 117 Ohio App.3d 623, 631, 691 N.E.2d 303 (4th Dist.1996).

{¶ 13} The addendum to the parties’ lease agreement stated that the lease would terminate on June 30, 2019, “unless otherwise mutually agreed upon by the parties in writing at least sixty (60) days prior to the expiration of the Term.” Realty Trust’s emails, dated April 2, 2019, and April 27, 2019, asked whether Mohammad and his family wanted to renew the lease. The emails explained that Realty Trust wanted to know whether Mohammad wished to remain on the property so it could communicate his intentions to the owners and a renewal could be “mutually agreed to.” The emails did not offer any definite terms for a new lease such as the amount of rent to be paid or the date a renewed lease would terminate. Because the emails did not contain any material terms, they did not constitute an offer but rather an invitation to negotiate a contract. Without a valid offer, no renewal contract existed, and the lease expired on June 30, 2019. Therefore, the trial court properly concluded that Realty Trust’s emails did not constitute an offer to renew the lease, but merely a request to negotiate a possible renewal.

{¶ 14} The first assignment of error is overruled.

### C. Holdover Tenancy

{¶ 15} In the second assignment of error, Mohammad argues that even if the parties did not have a written contract to renew the lease, his continued occupation of the house gave rise to an implied contract for a new lease agreement. Mohammad contends that because he remained in the house after the lease expired, Mohammad assumed the status of a holdover tenant.

{¶ 16} Mohammad failed to assert his claim that he was a holdover tenant in the trial court. A party who fails to raise an argument in the trial court forfeits the right to raise it on appeal. *State v. Awan*, 22 Ohio St.3d 120, 489 N.E.2d 277 (1986), syllabus. Therefore, Mohammad forfeited any claim he might have as a holdover tenant.

{¶ 17} Moreover, even if the holdover tenant issue were not forfeited, there is no evidence that Mohammad was a holdover tenant. A holdover tenancy is a periodic tenancy that exists according the terms of the prior tenancy, but only if, after the lease expires, the tenant continues to pay rent and the landlord accepts the payments. *Kazmaier v. Fat Jacks, L.L.C.*, 6th Dist. Wood Nos. WD-09-048 and WD-09-057, 2010-Ohio-3627, ¶ 18. The *Kazmaier* court explained, in relevant part:

“When a tenant holds over beyond the lease term and pays rent according to the former terms, the law implies a contract on the tenant’s part to hold over for an additional term under the same conditions which governed the prior term. \* \* \* *The election to hold the tenant to a new term lies with the landlord and his acceptance of rent implies an election to treat the tenant as a holdover.* *Baltimore &*

*Ohio RR. Co. v. West* (1897), 57 Ohio St. 161, 165-166, 49 N.E. 344  
\* \* \*”

(Emphasis added.) *Id.*, quoting *Craig Wrecking Co. v. S.G. Loewendick & Sons, Inc.*, 38 Ohio App.3d 79, 81, 526 N.E.2d 321 (10th Dist.1987).

{¶ 18} Realty Trust did not accept rent payments from Mohammad after the term of the lease expired. (Tr. 6.) Although Mohammad made rent payments on September 3, October 7, and November 12, 2019, these payments were made in the form of a supersedeas bond pursuant to the trial court’s order staying the judgment pending appeal. Mohammad and his family were not holdover tenants, and no contract, express or implied, was ever executed to extend the lease term. Therefore, the trial court properly granted judgment in favor of Realty Trust and ordered restitution of the property.

{¶ 19} The second assignment of error is overruled.

{¶ 20} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Berea Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27  
of the Rules of Appellate Procedure.

Eileen T. Gallagher

EILEEN T. GALLAGHER, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and  
RAYMOND C. HEADEN, J., CONCUR

FILED AND JOURNALIZED  
PER APP.R. 22(C)

JUL 16 2020

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By Greg Hercik Deputy