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RECENT DEVELOPMENT

UTHUS V. VALLEY MILL CAMP, INC.: ABSENT AN AGREEMENT INDICATING TENANCY, AN OCCUPANT OF REAL PROPERTY IS A LICENSEE AGAINST WHOM THE LANDOWNER MAY BRING A TRESPASS ACTION.

By: Chelsea Roberts

The Court of Appeals of Maryland held that an agreement permitting an employee to occupy an apartment on his employer's land created a license and not a tenancy because no rental payments were made, and the employee did not have exclusive possession. *Uthus v. Valley Mill Camp, Inc.*, 472 Md. 378, 402, 246 A.3d 1225, 1240. On *de novo* review, the Court of Appeals of Maryland affirmed the Court of Special Appeals holdings: (1) the Circuit Court for Montgomery County properly exercised jurisdiction over a landowner's trespass claim because no landlord/tenant relationship existed between the landowner and its employee; and (2) the landowner brought a valid trespass claim. *Id.* at 385, 402-03, 246 A.3d at 1229, 1240. The Court of Appeals of Maryland further held the landowner is not required to bring a wrongful detainer action in the district court but is permitted to bring a trespass action in circuit court to regain possession of the property. *Id.* at 402-03, 246 A.3d at 1240.

Valley Mill Camp, Inc. ("Valley Mill") operates a children's camp in Germantown, Maryland. The land on which the camp operates is owned by Seneca Joint Venture ("Seneca"). Seneca is comprised of multiple partners, including Bruce Uthus ("Uthus"), his family, and Valley Mill. Valley Mill leases the land from Seneca. Uthus worked at the camp and Valley Mill provided him with a rent-free apartment on the campgrounds. The record reflected the possibility of an oral agreement between Valley Mill and Uthus, concerning his residing in the apartment as part of his employment, but no written agreement existed.

In 2017, Valley Mill terminated Uthus' employment and requested he vacate the campground. Uthus refused to leave and Valley Mill filed a trespass action in the Circuit Court for Montgomery County. The circuit court granted Valley Mill's motion for summary judgment on its trespass claim and ordered Uthus to vacate. The circuit court denied Uthus' motion to amend on grounds that Valley Mill had exclusive possession.

Uthus appealed to the Court of Special Appeals of Maryland, arguing the circuit court erred in granting summary judgment, either because the circuit court lacked subject matter jurisdiction, or alternatively, no trespass occurred because Uthus was in physical possession of the property. The Court of Special Appeals affirmed the circuit court holding jurisdiction was proper in the circuit. The Court of Special Appeals further held Valley Mill made a valid trespass claim.

Uthus filed a petition for writ of certiorari in the Court of Appeals of Maryland, arguing the district court had exclusive jurisdiction either because the action involved a landlord-tenant matter, or alternatively, because Valley Mill was required to bring a wrongful detainer action over one for trespass. The Court of Appeals of Maryland granted certiorari.

In reviewing *de novo*, the court had to determine if the circuit court's legal conclusions as to jurisdiction and Valley Mill's trespass claim were correct. *Uthus*, 472 Md. at 385, 246 A.3d at 1229. The court first decided the issue of jurisdiction. *Id.* at 385-86, 246 A.3d at 1230. Under Maryland Code, circuit courts have original jurisdiction over all cases, except in instances where jurisdiction is limited. *Id.* at 386, 246 A.3d at 1230 (citing Md. Code Ann., Cts. & Jud. Proc. § 1-501 (LexisNexis 2021)). In Maryland, the district court has exclusive jurisdiction over landlord-tenant and wrongful detainer actions. *Id.* at 386, 246 A.3d at 1230 (citing Md. Code Ann., Cts. & Jud. Proc. §4-401 (LexisNexis 2021)).

To determine if the oral agreement between Uthus and Valley Mill created a landlord-tenant relationship, the court had to ascertain “what a reasonable person in the position of the parties would have thought the arrangement meant,” by examining the defining characteristics of a tenancy: possession, owner recognition, and rental payments. *Uthus*, 472 Md. at 388, 246 A.3d at 1231 (quoting *Delauter v. Shafer*, 374 Md. 317, 324-25 (2003)). When these characteristics are present in an agreement, a landlord-tenant relationship exists. *Uthus*, at 389, 246 A.3d at 1231-32.

Conversely, where a person resides on a property because of an agreement that does not contain the indicia of tenancy, the person is considered a licensee. *Uthus*, 472 Md. at 389, 246 A.3d at 1232. A license permits the licensee to use the land and does not confer possessory interest to the licensee. *Id.* (citing *Supervisor of Assessments v. Hartge Yacht Yard, Inc.*, 379 Md. 452, 468 (2004)). The landowner may revoke the license at any time. *Uthus*, 472 Md. at 389, 246 A.3d at 1232 (citing *Balt. & Ohio R.R. Co. v. Potomac Coal Co.*, 51 Md. 327, 330 (1879)).

Determining whether an unwritten employment agreement creates a tenancy or a license, depends upon finding indicia of a tenancy. *Uthus*, 472

Md. at 391-92, 246 A.3d at 1233 (citing *Delauter*, 374 Md. at 325-27). Notably, where an owner recognizes an occupant as a tenant, and the occupant/tenant pays rent, a right to convey a possessory interest is likely intended. *See id.* The court found the request by Valley Mill for Uthus to vacate upon his termination, partnered with an absence of rent payments, indicated the oral agreement did not create a tenancy. *Uthus*, 472 Md. at 392, 246 A.3d at 1234.

The court then turned to Uthus' wrongful detainer argument. *Uthus*, 472 Md. at 393, 246 A.3d at 1234. Assuming, *arguendo*, a landlord-tenant relationship existed, Valley Mill was not required to bring a wrongful detainer action over one for trespass. *Id.* Due to the permissive term "may" in the detainer statute, Valley Mill, could bring either a trespass or wrongful detainer action. *Id.* at 395, 246 A.3d at 1255 (referencing Md. Code Ann., Real Prop. § 14-132 (LexisNexis 2021)). Thus, Valley Mill may pursue a trespass action in circuit court. *Uthus*, 472 Md. at 399-400, 246 A.3d at 1238-39.

Concluding the trespass action was within the circuit court's jurisdiction, the Court of Appeals of Maryland turned to Valley Mill's trespass claim. *Uthus*, 472 Md. at 401, 246 A.3d at 1239. In a valid trespass claim, the "plaintiff must establish: 1) an interference with a possessory interest in his property; 2) through the defendant's physical act or force against that property; and 3) which was executed without his consent." *Id.* (quoting *Uthus v. Valley Mill Camp, Inc.*, 243 Md. App. 539, 555, 221 A.3d 1040, 1049 (2019)).

The court found Valley Mill met the first element because Uthus interfered with Valley Mill's possessory interest. *Uthus*, 472 Md. at 401, 246 A.3d at 1239. Where a landlord-tenant relationship exists, a tenant having a possessory right may exclude others from the property. *Id.* The court found that Valley Mill was a tenant because it leased the campground from Seneca; thus, Valley Mill retained exclusive possession of the property. *Id.* at 401-02, 246 A.3d at 1239. When Uthus refused to leave the campground, he interfered with Valley Mill's possessory interest; thus meeting the first element. *Id.* at 402, A.3d at 1239. Furthermore, the court found that because Valley Mill did not consent to Uthus' physical act of remaining on the property, the second and third elements were met. *Id.* at 402, 246 A.3d at 1240. Accordingly, the court found Valley Mill established all three elements of a valid trespass claim. *Uthus*, 472 Md. at 402, 246 A.3d at 1240.

In *Uthus*, the Court of Appeals of Maryland clarified which venues are proper for plaintiffs to bring trespass actions against licensees, and

established a test for analyzing the ownership interest of an occupant in the absence of an explicit agreement. This holding may, however, have a harmful impact on those with limited access to housing. People with housing insecurity are likely to look favorably upon an arrangement with their employer where housing is a benefit of employment. Without tenancy rights, however, this situation places the employee at the mercy of the employer. An at will employee may be fired and told to vacate the same day further burdening an already vulnerable class. Moreover, the negative effect of this holding will likely extend to other vulnerable classes who may unwittingly agree to a rent-free living arrangement out of naivety or desperation.