

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1308

EFFSTATHIA LIKOUSAS

vs.

LOUIS MAKRIS & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This case began when Efstathia Likousas filed a summary process complaint against Louis Makris and Sofia Makris (together, Makrises) for possession of a home that the parties shared in Lynn. The Makrises counterclaimed for breach of contract and unjust enrichment. A jury found in favor of the Makrises on the counterclaims, and the judge denied Likousas's motion for a new trial. An amended judgment then entered for the Makrises in the amount of \$516,602 (the amount found by the jury as breach of contract damages) with prejudgment interest. Likousas appeals.²

¹ Sofia Makris.

² Earlier in the case, judgment entered for Likousas on the summary process complaint. The Makrises did not appeal from that judgment. The Makrises' remaining counterclaims are also not at issue on appeal.

Likousas's primary argument is that the judge should have excluded certain unspecified testimony under the parol evidence rule. Likousas raised no such objection at trial, however, and has therefore waived the issue. See Hoffman v. Houghton Chem. Corp., 434 Mass. 624, 639 (2001) ("The consequence of the failure properly to object at trial is to waive the issue on appeal"). To the extent Likousas seeks review of the denial of her motion for summary judgment, she fails to explain why this case warrants a departure from the general rule that "the denial of motions for summary judgment and partial summary judgment will not be reviewed on appeal after a trial on the merits." Deerskin Trading Post, Inc. v. Spencer Press, Inc., 398 Mass. 118, 126 (1986).

The remaining issues raised by Likousas are unsupported by reasoned analysis or citations to legal authority and do not rise to the level of adequate appellate argument. See Mass. R. A. P. 16 (a) (9), as appearing in 481 Mass. 1628 (2019); Cameron v. Carelli, 39 Mass. App. Ct. 81, 85-86 (1995). Nonetheless, we will briefly address each in turn.

As Likousas acknowledged at oral argument, her challenge to the sufficiency of the evidence on unjust enrichment is moot because the judgment awards the Makrises only breach of contract damages. Likousas's reliance on the doctrine of unclean hands fails for the same reason. Because unclean hands is an

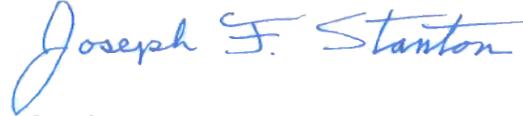
equitable doctrine, it "generally has no application to an action at law for breach of contract." Saggese v. Kelley, 445 Mass. 434, 444 (2005).

Likousas asserts summarily that there was no "privity of contract" and that the jury's verdict was against the weight of the evidence. But on a motion for a new trial, a judge must not set aside a verdict as against the weight of the evidence unless "it is determined that the jury 'failed to exercise an honest and reasonable judgment in accordance with the controlling principles of law.'" O'Brien v. Pearson, 449 Mass. 377, 384 (2007), quoting Robertson v. Gaston Snow & Ely Bartlett, 404 Mass. 515, 520, cert. denied, 493 U.S. 894 (1989). Here, the judge concluded that there was sufficient evidence for the jury to find the existence of a binding oral contract that Likousas breached. The judge further concluded that the verdict "did not discernibly result from bias, misapprehension, or prejudice

against [Likousas]." Likousas has not shown, or even argued, that this was an abuse of discretion. See O'Brien, supra.

Amended judgment affirmed.

By the Court (Green, C.J.,
Wolohojian & Shin, JJ.³),



Clerk

Entered: June 10, 2021.

³ The panelists are listed in order of seniority.