

**IN THE MAGISTRATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

MICHAEL ELLIOT POWELL, Settlor and )  
Trust Protector of Family of Truth Allah Trust )  
an Express Trust Organization d/b/a )  
Registered Trust Agent, )  
 ) Civil Action No.: 22MS165122  
Plaintiff, )  
 )  
v. )  
 )  
ARCAN CAPITAL, d/b/a CB Lofts )  
 )  
Defendant. )  
 )

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**FINAL JUDGMENT ORDER**

The parties having come before this Court on November 30, 2022, for an evidentiary hearing regarding the above-referenced matter, based on the evidence and testimony presented at the evidentiary hearing, the Court enters judgment in favor of Defendant in regards to Plaintiffs' claims, and therefore, the Court HEREBY makes the following findings of facts and conclusions of law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. FINDINGS OF FACT**

Michael Elliot Powell, Settlor and Trust Protector of Family of Truth Allah Trust ("Elliot" or "Plaintiff") initiated this action against Defendant Arcan Capital d/b/a CB Lofts ("Arcan" or "Defendant") with the filing of his Statement of Claim on April 11, 2022 (the "Complaint"). This matter came before this Court on November 30, 2022 for an evidentiary hearing.

In the Complaint, Plaintiff seeks \$15,000.00 for breach of the Apartment Lease Contract ("Lease") entered into between Powell and CB Lofts, LLC for an apartment rental at 2430 Cheshire Bridge Road, Unit 331, Atlanta, Georgia 30324 (hereinafter referred to as "CB Lofts"). Plaintiff

testified that he moved into CB Lofts on February 8, 2022, and that on February 9, 2022, his car was broken into while it was parked in the parking garage for CB Lofts. Plaintiff claims that his car was broken into while in the parking garage, that his apartment had black mold under the kitchen sink, the community pool had green algae, and the premises was generally unsecure and unsanitary. *See, e.g.*, Complaint.

At the hearing, Keyana Kenney, a corporate representative for Arcan, testified that she is the Regional Manager over five properties, including CB Lofts. Ms. Kenney testified as to how Arcan maintains its business records in the ordinary course of business, and she had sufficient testimony to qualify her as the corporate representative of Defendant. Ms. Kenney also offered sufficient testimony regarding the evidence offered by Arcan under the hearsay exception for business records. She further testified that as to the parking garage: Arcan provided at least one security officer or courtesy officer on the premises 24/7 during the time Elliot resided at the property, the resident parking garage was secured by a floor to ceiling gate that could only be accessed through a tenant's key fob or if a tenant buzzed someone in, and no other car thefts occurred during the time that Elliot resided at the property. Plaintiff did not offer into evidence any documentary damages evidence related to the car break in, and Plaintiff did not offer into evidence a copy of the police report from the car break in.

As to the alleged black mold under the sink and the community pool, Plaintiff testified that he never used the community pool. Additionally, he also testified that he did not suffer any damages relating to the condition of the community pool. Plaintiff testified that he suffered from an allergic reaction in relation to the black mold condition. However, Plaintiff testified that he did not seek medical treatment and that he did not have any damages associated with the black mold. Moreover, Defendant inspected the unit in regard to Plaintiff's complaint and took photos

regarding the condition of the unit. Defendant also hired a professional to perform a mold inspection, and the mold inspection report determined that there was no visual mold growth or odor present in the apartment and specifically underneath the sink.

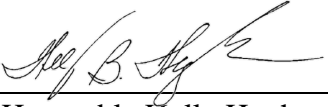
**I. CITATION OF AUTHORITY**

“Where a party sues for damages, it has the burden of proof of showing the amount of loss in a manner in which the trial judge can calculate the amount of the loss with a reasonable degree of certainty.” *See Nelson v. Hamilton State Bank*, 331 Ga.App. 419, 421(2) (2015) (citation and punctuation omitted). *See also Lockwood v. Fed. Deposit Ins. Corp.*, 330 Ga.App. 513, 517(2)(b) (“[I]n an action on a promissory note, the plaintiff has the burden of proving that the defendant is indebted to him and in a definite and correct amount”). Here, Plaintiff failed to offer any proof of any damages in support of any claims. Specifically, as to the alleged conditions of his apartment at CB Lofts and the community pool, Plaintiff testified that he did not suffer any damages. As to the car break in, Plaintiff failed to meet his burden of proof showing the amount of any loss. Therefore, the Court awarded judgment in favor of Defendant on all of Plaintiff’s claims.

**CONCLUSION**

Based on the evidence and testimony offered at the evidentiary hearing, this Court exercises its authority as the trier of fact and renders judgment in favor of Defendant on the ground that based upon the facts and the law Plaintiff has shown no right to relief. The Court hereby awards judgment in favor of Defendant and dismisses Plaintiff’s Statement of Claim against the Defendant with prejudice.

SO ORDERED, this 2nd day of December, 2022.

  
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The Honorable Holly Hughes, Judge,  
Magistrate Court of Fulton County

**PREPARED AND SUBMITTED BY:**

/s/ Milinda L. Brown

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