

Circuit Court for Montgomery County
Case No. 481256V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0345

September Term, 2023

MESACK KEMAJOU, *ET AL.*

v.

EMMANUEL MBANKEU, *ET AL.*

Nazarian,
Zic,
Robinson, Dennis M., Jr.,
(Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 1, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

‘80 percent of success is showing up.’

—Woody Allen¹

Active Solidarity Ltd. (“SAGI”), a nonprofit created to send its members’ remains back home to Cameroon, was founded in 2009. The organization grew and helped many members. In 2016, one of SAGI’s members died. When funds were to be disbursed to send the individual’s remains to Cameroon, the person in charge of disbursing the funds, Mesack Kemajou, refused to do so and declined to explain his reasons. A few of SAGI’s founding members became concerned and, after some investigation, came to believe that Mr. Kemajou had embezzled from SAGI. From there, litigation ensued among Mr. Kemajou and his associates and the founding members. After some procedural twists and turns that lie at the heart of this appeal, the Circuit Court for Montgomery County entered a declaratory judgment and a permanent injunction in favor of the founding members and awarded them attorneys’ fees. Mr. Kemajou and his associates then tried multiple ways to undo the judgment.

On appeal, Mr. Kemajou and his associates list nine issues that boil down to four: whether the circuit court abused its discretion in (1) granting declaratory judgment to the founding members, (2) granting a permanent injunction, (3) denying Mr. Kemajou’s motions to vacate the judgment, and (4) denying his motion to stay judgment pending appeal. We affirm the circuit court’s judgments.

¹ William Safire, *On Language; The Elision Fields*, N.Y. TIMES, August 13, 1989 (§ 6), at 18.

I. BACKGROUND

A. The Creation Of SAGI.

On August 9, 2009, Emmanuel Mbankeu, Patrice Nzenang, Jules Herve Noutcha (the “Founding Members”), and some other individuals founded a nonprofit called Active Solidarity Ltd., abbreviated as SAGI based on its French translation. SAGI’s purpose is to “facilitate the repatriation of the remains of fellow [Cameroonians] in the event of their death in the USA.” SAGI accomplished this by raising funds from the organization’s members each time a member died.

The day after SAGI’s creation, the founding members added Mesack Kemajou to the organization. Mr. Kemajou was entrusted with running the day-to-day operations of SAGI “until the election of an executive board, as required by the SAGI’s bylaws and internal rules.” Even after an executive board was elected, Mr. Kemajou remained deeply connected to and involved with SAGI until the events begetting this lawsuit.

Sometime in 2016, a SAGI member died and Mr. Kemajou was asked to distribute funds to send the member’s body back to Cameroon. He refused without explanation. The Founding Members became concerned and confronted Mr. Kemajou, but he refused repeatedly to explain himself. This refusal, along with the fact that SAGI was missing money, led the Founding Members to believe that Mr. Kemajou was embezzling funds from the organization.

On October 10, 2016, after the confrontation, Mr. Kemajou sent the following email to all SAGI members:

It is brought to your attention that the members below have been excluded from SAGI for threat, misleading, false statement [sic], and for attempting to destabilize SAGI.

Please remove them from your database:

1. MBANKEU DJEUHON Emmanuel
2. YONGA MBAKOP Pierre Paul
3. NOUTCHA Jules Herve
4. Nzenang Patrice

ARTICLE 8:

SAGI has the authority to exclude any member or an association whose behavior may disrupt or destabilize SAGI.

After this email circulated, the Founding Members became increasingly worried about the organization's future and sought an accounting of SAGI's funds. And after reviewing documents Mr. Kemajou provided them, the Founding Members believed that Mr. Kemajou had directed all of SAGI's funds to his wife, Aline.

B. Procedural History.

When the Founding Members confronted Mr. Kemajou again, this time with documentation, Mr. Kemajou retaliated by filing, on October 18, 2016, a complaint against the Founding Members in the circuit court. He alleged, among other things, that the Founding Members' embezzlement allegations amounted to defamation. After discovery, both sides decided to dismiss the case pursuant to a tolling agreement that all parties signed on April 12, 2019. As part of this agreement, Mr. Kemajou agreed to provide an accounting of SAGI's funds. According to the Founding Members, he refused to cooperate.

The tolling agreement provided that the litigation could be revived if the accounting was not completed, and so on April 10, 2020, the Founding Members filed a new complaint in the circuit court, this time seeking a declaratory judgment and injunctive relief against Mr. Kemajou, Mrs. Kemajou, and SAGI itself (all of whom are now appellants). The complaint breaks down into three sections. The *first* section alleged causes of action relating to Mr. Kemajou’s refusal to conduct an accounting of SAGI’s funds despite his agreement to do so. The *second* section asked the circuit court to enter a declaratory judgment clarifying the meaning of SAGI’s corporate documents and determining whether some of Mr. Kemajou’s actions—such as electing himself as SAGI’s president or unilaterally changing the bylaws—were valid. The *third* section of the complaint alleged that Mr. Kemajou defamed the Founding Members in the email he sent to the thousands of SAGI members asserting that they had been excluded based on “threat, misleading, false statement [sic], and for attempting to destabilize SAGI.”

After this complaint was filed, the litigation resumed in earnest:

- **September 16, 2020: The Appellants moved to dismiss the complaint.** They raised three major contentions: (1) there were certain formal deficiencies in the complaint, (2) the circuit court lacked jurisdiction to hear the case, and (3) the Founding Members lacked standing because only associate organizations could sue SAGI. After a hearing on December 9, 2020, the circuit court dismissed the Founding Members’ motion based on a lack of signatures but allowed them to refile it within thirty days.

- **The Founding Members amended their Complaint, then, on January 15, 2021, filed a Second Amended Complaint.**
- **March 17, 2021: The Appellants moved to dismiss the amended complaint.** The Appellants argued that the complaint should be dismissed for a variety of reasons. They argued *first* that the tolling agreement, signed on April 11, 2019, included a limitations period of one year, and that by their count the Founding Members had to file their claim by April 11, 2020. But when the COVID-19 pandemic hit, the Supreme Court of Maryland issued a tolling order that extended all limitations periods. To calculate the new deadline, the parties needed to determine how many days were in the limitations period as of March 15, 2020, then add fifteen days to the date filings could resume to establish the new deadline. The Appellants argued that the final filing deadline for the Founding Members was August 31, 2020, and that the amended complaint filed in January 2021 was untimely. The Appellants argued *second* that some of the Founding Members' claims, such as the assertion that Mr. Kemajou had no authority to amend SAGI's bylaws unilaterally, were brought too late. *Finally*, the Appellants argued that the Founding Members lacked standing, and that Montgomery County was an improper venue. After a hearing on June 9, 2021, the circuit court held that (1) the amended complaints were timely under the tolling agreement with the extensions afforded by the Supreme Court's order and (2) because the amended complaints related back to the original 2020 complaint, there were no limitations issues. On July 12, 2021, the Appellants

answered the Second Amended Complaint and asked the court to deny the Founding Members' requests for relief.

- **Trial was scheduled, then rescheduled.** The trial originally was scheduled for December 2022, but the Appellants sought a continuance. The court granted the motion, and trial was set for March 6, 2023.
- **February 22, 2023: The Appellants file another Motion For Continuance.** As the new trial date approached, the Appellants requested a second continuance, asserting that their attorney had recently withdrawn their appearance. This motion was denied on March 3, 2023, and the March 6 trial date remained.
- **March 6, 2023: Trial.** On the morning of trial, the Founding Members and their counsel appeared, but the Appellants did not. After some effort to contact them and ascertain their intentions, the trial went forward without them. The Founding Members offered and examined witnesses and entered documents into evidence, and the court ruled in their favor, specifically:
 - (1) the court entered a declaratory judgment finding that Mr. Kemajou had no authority to expel the Founding Members from SAGI unilaterally and that the Founding Members were entitled to have their positions restored;
 - (2) the court entered an injunction directing Mr. Kemajou to turn over all documents, information, and control relating to SAGI; and

- (3) the court awarded attorneys’ fees to the Founding Members on the grounds that Mr. Kemajou had acted in bad faith and violated the Maryland Solicitation Act.

The court entered the final declaratory judgment and permanent injunction on April 13, 2023.

- **April 22, 2023: The Appellants appealed the judgment.**
- **April 24, 2023: The Appellants filed a motion to revise or vacate the judgment.**
They argued that the SAGI bylaws admitted at trial were falsified and that the evidence was insufficient to prove that Mr. Kemajou was not cooperating with the Founding Members.
- **May 4, 2023: The Appellants opposed the attorneys’ fee award.**
- **May 17, 2023: The circuit court denied the motions and affirmed its March 6th judgment.**
- **May 27, 2023: The Appellants appealed the May 17th Order.**
- **June 2, 2023: The Appellants file a Motion To Stay Enforcement Pending Appeal.**
- **June 12, 2023: The circuit court held a contempt hearing against Mr. Kemajou.**
While the Appellants sought to challenge the judgment, the Founding Members filed an emergency motion for judgment of civil contempt alleging that Mr. Kemajou was not complying with the terms of the judgment (which had been

appealed but not stayed). After taking testimony and receiving evidence, the circuit court concluded that Mr. Kemajou had not complied with the judgment:

[H]e is taking action in direct contradiction to Judge McGuckian’s order. He has been . . . ordered that he is permanently restrained or enjoined from . . . participating in any activity related to SAGI I find that he . . . basically carried on as normal after the order went into effect and I also . . . find that he is taking action on behalf of SAGI.

I also find that he is acting in direct contradiction of the order by not providing the plaintiffs with a full accounting verified under oath of all assets, documents, and bank accounts titled in the name of SAGI I also find that he has not turned over . . . any of the bank accounts.

The circuit court ordered Mr. Kemajou to turn over all information by June 14, 2023, else he would be found in contempt. The final contempt order was entered on June 13, 2023.

- **June 12, 2023: The Appellants appealed the contempt order.**
- **June 26, 2023: The circuit court denied the motion to stay pending appeal.**
- **July 24, 2023: The Appellants appealed the denial of the motion to stay pending appeal.**

II. DISCUSSION

The Appellants’ brief lists nine issues on appeal,² but they distill to whether the

² Appellants’ brief lists their Questions Presented as:

1. Was it erroneous for the Court not to dismiss Appellees’ complaints, considering: 1) the question of improper venue, and 2) Appellees’ lack of standing to sue (a) Appellant Aline Kemajou, spouse of Appellant Mesack Kemajou and a non-

Continued . . .

board member of SAGI without fiduciary duties, and (b) SAGI as non-founding members and nonmembers?

2. Did the Circuit Civil Court possess the requisite subject matter jurisdiction to hear allegations of embezzlement?

3. Was it a procedural error for the Court to hear the case in circumstances where: 1) it deviated from the stipulated procedure or process post the attorney's appearance being withdrawn, 2) Appellants did not timely receive notification of the denial pertaining to his request for postponement of the March 6, 2023, trial and 3) Appellants lacked legal representation during the trial proceedings?

4. Did the Court inadvertently overlook the prerequisite of entering the obligatory default judgment prior to the issuance of the final judgment?

5. Was it erroneous for the Court to enter the final judgment without the proposed findings of fact and conclusions of law being filed and served on the Appellants?

6. Was there a lapse when the Court granted remedies beyond the scope sought in the complaint?

7. Was there an oversight when the Court deemed the evidence sufficient to substantiate the rationale behind the judgment?

8. Was there an oversight when the Court deemed the evidence sufficient to substantiate the rationale behind the judgment?

9. Was there an error when the Court denied Appellants' motion to reconsider or vacate the judgment founded upon falsified evidence and false testimony, did not stay the judgement pending appeal, enforced a judgement that unreasonably curtail [sic] the temporal and geographic parameters of Appellant Mesack Kemajou's right compete, and granted Appellees' attorney's fee petition?

Founding Members' brief list their Questions Presented as:

I. Did the Circuit Court for Montgomery County commit reversible error in:

Continued . . .

circuit court abused its discretion in granting and repeatedly upholding the declaratory judgment, the permanent injunction, and the award of attorneys’ fees.

We review the issues appealed by Appellants—as embodied in the order granting the declaratory judgment and permanent injunction, the orders denying both motions to vacate, and the denial of the motion to stay judgment pending appeal—for abuse of discretion. *See Converge Servs. Grp., LLC. v. Curran*, 383 Md. 462, 477 (2004) (“declaratory judgment generally is a discretionary type of relief”); *Maryland Comm’n on Hum. Rels. v. Downey Commc’ns., Inc.*, 110 Md. App. 493, 521 (1996) (a trial court’s denial of an injunction request lies “within the sound discretion of the circuit court”); *Das v. Das*, 133 Md. App. 1, 15 (2000) (denial of a motion to vacate reviewed for abuse of discretion); *Waters v. Smith*, 27 Md. App. 642, 651 (1975) (trial court’s decision to grant or deny a stay of proceedings pending appeal reviewed for abuse of discretion).

A. The Record Supports The Circuit Court’s Decision To Deny The Appellants’ Attempts To Overturn The Declaratory Judgment/Permanent Injunction Order.

Before addressing the merits of this appeal, it is important to recall how this case

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1. Denying the Appellants’ Motion to dismiss for improper venue?
 2. Denying Appellants’ Motion for postponement filed on the eleventh hour?
 3. Holding trial in the absence of Appellants who had fair and adequate notice of the trial?

* * *

- II. Is an Appellate Court allowed to review issues raised for the first time on Appeal?

got here. When Mr. Kemajou was accused initially of embezzling SAGI’s funds, he sued the Founding Members for defamation in the Circuit Court for Montgomery County—not in Prince George’s County, where the Appellants now claim this case should have been brought. Then, in an attempt to resolve their differences outside of court, both parties decided to sign a tolling agreement that stated, among other things, Mr. Kemajou would provide an accounting of SAGI’s funds and, if he didn’t, the Founding Members had a year to reinstate any litigation. And when Mr. Kemajou refused to cooperate with the Founding Members, they sued him to obtain both a declaratory judgment and permanent injunction, just as the Tolling Agreement anticipated. After much litigation between the two parties, the case went to trial in March 2023. The Appellants never showed up to trial and, after taking evidence and testimony, the circuit court granted the relief the Founding Members requested.

This is not, then, and never was a default judgment case. *Compare* Md. Rule 2-613. What happened here is that one side appeared for trial and proved its case without resistance or opposition, and the court entered judgment accordingly—not as a sanction or consequence of the Appellants’ failure to appear, but because the Founding Members satisfied the elements of their claims. And that’s the backdrop against which we consider the Appellants’ (unsuccessful) attacks on the circuit court’s decisions.

The Appellants seek to assert *nine* different contentions, many of which are difficult to understand, while others are wholly unsubstantiated. For instance, they state that the “judgment entered in this case was founded upon a disturbing foundation of fabricated

evidence,” but then provide no citations to the record or to evidence they sought to submit to the circuit court and couldn’t. And, as mentioned previously, they continue to argue Montgomery County was the improper venue even though Mr. Kemajou was the first to file suit there. We will focus on the decisions the Appellants actually appealed—the declaratory judgment, permanent injunction, the denial of the motions to vacate, and the denial of the motion to stay.³

B. The Circuit Court Did Not Abuse Its Discretion In Granting The Declaratory Judgment.

The primary purpose for a declaratory judgment is to “settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” *Converge Servs. Grp., LLC.*, 383 Md. at 478 (citations omitted). A court can enter a declaratory judgment “if it will serve to terminate the uncertainty or controversy giving rise to the proceeding.” *Id.* at 485 (citations omitted). Additionally, we grant declaratory relief and construe declaratory judgment “liberally.” *Id.* at 478. But it is an inappropriate remedy in certain circumstances, such as when there is no justiciable controversy or when there is already a special remedy available to the complainant. *Id.*

Here, the Founding Members sought a declaratory judgment from the circuit court to resolve disputes about the rights and authority of certain individuals under SAGI’s bylaws. Specifically, they wanted to know, among other things, whether the bylaws granted Mr. Kemajou the authority not only to expel the Founding Members from the organization,

³ We will not consider the contempt appeal, as the Appellants haven’t offered any argument to challenge it.

but to appoint himself unilaterally as president of the nonprofit. Because, the Founding Members alleged, Mr. Kemajou had violated SAGI’s bylaws, their request to have their rights formally settled and recognized was appropriate for declaratory relief. Additionally, the circuit court had the discretion to clarify what SAGI’s bylaws allowed members and founders to do, *see id.*, and there is nothing in this record to suggest, let alone prove, that the circuit court abused its discretion.

C. The Circuit Court Did Not Abuse Its Discretion In Granting The Permanent Injunction.

A party seeking a permanent injunction “must allege and prove facts ‘that [they] will sustain substantial and irreparable injury as a result of the alleged wrongful conduct.’” *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 457–58 (2012) (*quoting El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 355 (2001)). Irreparable injury exists when other forms of relief, and especially money, cannot compensate for the harm:

‘[The injury] is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice—in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily, adequately, and completely compensated for with money.’

Id. at 458 (*quoting El Bey*, 362 Md. at 356).

In the circuit court, the Founding Members demonstrated not only that they had suffered harm, but also that a monetary award would not suffice because his *ultra vires*

activity otherwise would continue. The Founding Members had emphasized the ongoing nature of Mr. Kemajou’s actions and his failure to account for them:

[Mr. Kemajou] takes all of the money, he had a ATM card and then [was withdrawing] money, paying his mortgage in the organization’s bank account, never done any accounting.

This case, we decided to take a different strategy because we realize that the complaint seeking accounting was giving us a lot of runaround. The purpose now is to restore the [Founding Members] to that position as founding members so that there could be an oversight on how the organization is ran.

The [Founding Members are] not trying to get money from this organization, nobody’s being paid, but the person that has gotten millions over the years is [Mr.] Kemajou and his wife, of course, [Mrs.] Kemajou And the person suffering is the organization that is not represented by counsel.

The record demonstrates that the Appellants were harming SAGI, the Founding Members, and the individual SAGI members who expected reasonably that the nonprofit would send their remains one day to Cameroon. This harm, along with Mr. Kemajou’s uncooperative stance, established sufficiently that merely awarding the Founding Members or SAGI monetary relief would not have solved the core problem. In fact, the court’s judgment would eventually be vindicated, as Mr. Kemajou’s noncompliance continued and escalated to the point that a contempt hearing had to be held to force Mr. Kemajou to stop. A permanent injunction was an appropriate solution and the circuit court did not abuse its discretion in awarding it.

D. The Circuit Court Did Not Abuse Its Discretion When It Denied The Appellants’ Motions To Vacate.

Maryland Rule 2-535(b) states that “[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake,

or irregularity.” But not just any type of fraud: “Only extrinsic fraud will justify the reopening of an enrolled judgment; fraud which is intrinsic to the trial itself will not suffice.” *Bland v. Hammond*, 177 Md. App. 340, 351 (2007). “Fraud is extrinsic when it actually prevents an adversarial trial, but is intrinsic when it is employed during the course of the hearing or trial” *Id.* The question, then, is “not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being submitted to the fact finder at all.” *Id.* (quoting *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990)).

The Appellants claim that the circuit court erred in denying their motions to vacate the attorneys’ fees award and the declaratory judgment/permanent injunction order because “evidence admitted into the records was fabricated to intentionally mislead the court.” They assert further that “SAGI’s bylaws admitted into evidence are falsified, and their authenticity questionable because of no signatures,” and that “[the Founding Members] also repeatedly falsely claimed to have registered SAGI, yet they did not submit a copy of the registration.” But even if these accusations were supported by the record—and there is literally nothing in the record that supports them, not least because the Appellants didn’t appear for trial—this type of alleged fraud could not support a motion to vacate. Again, only extrinsic fraud allows for the granting of a motion to vacate. *Id.* Extrinsic fraud exists only when a party prevents an adversarial trial from happening. *See id.* (extrinsic fraud includes false promises of a compromise, keeping the opponent away from court, or when an attorney sells out their client to the opposing side). Intrinsic fraud that leads to an unjust

result, the best spin the Appellants can place on this case, does not suffice. *Id.* Because the Appellants never appeared for trial, they forfeited the opportunity to create at least some basis for their fraud claim, and the circuit court denied their motions to vacate appropriately.

E. The Circuit Court Did Not Abuse Its Discretion When It Denied The Motion To Stay Judgment Pending Appeal.

When evaluating whether a trial court should have stayed a judgment pending appeal, the “question is whether it is likely that [the party] will prevail on appeal.” *General Motors Corp. v. Miller Buick, Inc.*, 56 Md. App. 374, 388 (1983). Moreover, the appellant must have made “a ‘*strong showing*’ that [they are] likely to prevail on the merits of [their] appeal.” *Id.* at 389 (quoting *Virginia Petrol. Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)). “That, of course, is tantamount, in most cases, to proving the likelihood that the trial judge committed some reversible error.” *Id.*

The Appellants argue here that the circuit court denied their motion to stay judgment erroneously because it “represents a significant departure from established legal principles, jeopardizing Appellants’ right to a fair and impartial review of the unfavorable decision.” This conclusory statement offers us no understanding of how the circuit court might have erred. Nor did the Appellants’ filings in the circuit court: the memorandum of law the Appellants submitted with their motion discusses at length why the court should enter an *injunction* pending appeal, not a stay. See *M.P.G. Constr., Inc. v. Dep’t Transp. & Dev., State of La.*, 878 So. 2d 624, 630 (La. Ct. App. 2004) (“A stay differs from an injunction

in that a stay is issued for the benefit of the court rather than the benefit of the litigants and does not require a showing of irreparable harm.”).

Regardless, the Appellants’ claims of impending success on appeal aren’t supported by the record. They claim that Mr. Kemajou was the only founding member of SAGI. SAGI’s bylaws list the Founding Members as, well, founding members. Then, the Appellants contend that the Founding Members committed fraud and were more than capable of “manipula[ting] evidence to serve its purpose and mislead the Court,” but again—remember, they never appeared for trial—the record contains no evidence supporting these assertions. The Appellants argue that the Founding Members lacked standing because they “were neither founding members of SAGI nor were they members of SAGI at the time the suit was filed.” But again, on the face of the bylaws themselves, the Founding Members literally *were* founding members of SAGI, and even though they were excluded from SAGI at the time of the initial suit, Mr. Kemajou assumes for these purposes that his decision to exclude them was authorized. It wasn’t. And finally, the Appellants argue yet again that venue was improper. But venue *was* proper,⁴ not to mention that it’s the county where Mr. Kemajou himself first brought suit. None of these arguments

⁴ When it comes to venue, “a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation.” Md. Code (1973, 2020 Repl. Vol.), § 6-201(a) of the Courts and Judicial Proceedings Article (“CJ”). Multiple defendants also may be sued “in the county where the cause of action arose.” CJ § 6-201(b). The circuit court found that Montgomery County was the proper venue after the Founding Members established that Montgomery County is where (1) Mr. Kemajou worked, (2) SAGI had some members, (3) SAGI’s bylaws were created, and (4) the events in dispute arose.

come close to forming a “*strong showing*” that the Appellants would have won on appeal.

See General Motors Corp., 56 Md. App. at 389.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANTS TO PAY
COSTS.**