Circuit Court for Montgomery County
Case No. 397081-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 563

September Term, 2016

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CUSTOMS LABORATORY SERVICES, LLC,

v.

ALIYA GROSFELD, *et al.*

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Eyler, Deborah S.,
Graeff,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: August 14, 2018

Appellant, Customs Laboratory Services, LLC (CLS), seeks review of an order of the Circuit Court for Montgomery County denying its Motion to Extend Discovery and Modify Scheduling Order.

Appellant CLS, had filed an action against appellees, Aliya Grosfeld (Grosfeld) and Tariff Solutions, LLC, for claims of breach of duty of loyalty, conversion, unfair competition, violation of the Maryland Uniform Trade Secrets Act, and tortious interference with contract, all based on allegations that Grosfeld appropriated, and used, confidential documents from CLS in order to start her own competing business, Tariff Solutions, LLC.

During Grosfeld's deposition, near the end of the time allotted for discovery, she produced three flash drives[1] containing documents that were on her home computers but were the property of CLS. Based on that disclosure, CLS moved to extend discovery in order to allow time to retain a forensic computer specialist to determine *when* Grosfeld had accessed those files.

As discovery had been previously extended by joint motion, the circuit court denied the request and proceeded to schedule a trial date. Grosfeld and Tariff Solutions, LLC prevailed at trial and judgment was entered accordingly.

[1] The terms "flash drive" and "thumb drive" are used interchangeably by CLS throughout the record. Merriam-Webster defines a "flash drive" as "a data storage device that uses flash memory; *specifically*: a small rectangular device that is designed to be plugged directly into a USB port on a computer and is often used for transferring files from one computer to another — called also *thumb drive*" *Flash Drive*, Merriam-Webster, https://www.merriam-webster.com/dictionary/flash%20drive (last visited Aug. 8, 2019).

In this appeal, CLS challenges the court's denial of its Motion to Extend Discovery and Modify the Scheduling Order, as well as the denial of its motion for reconsideration.

We affirm for the reasons discussed below.

## BACKGROUND

The business of CLS is the analysis of various footwear samples to determine the appropriate tariff classification and import duty for importers, law firms, and custom house brokers. Grosfeld was hired by CLS's predecessor company in 1999 and in 2009 became CLS's lab director, where she remained until she resigned in mid-October 2014. During the course of her employment, Grosfeld copied onto portable storage devices, and emailed to her personal email address, thousands of CLS lab reports, spreadsheets, client information, diagrams, and pricing information. In the two months prior to ending her employment with CLS, Grosfeld established her own competing company, Tariff Solutions, LLC.

On October 30, 2014, CLS filed suit in the Circuit Court for Montgomery County seeking a temporary restraining order, preliminary and permanent injunction, and damages against Grosfeld and Tariff Solutions, LLC. The complaint contained claims for breach of duty of loyalty, conversion, unfair competition, and violation of the Maryland Uniform Trade Secrets Act. These claims were based on allegations that Grosfeld "misappropriated … information and/or property belonging to [CLS], including some or all of the trade secrets and confidential proprietary techniques, procedures and processes" in order to "undermine [CLS's] business, to improperly solicit [CLS's] clients and to otherwise

unfairly compete with [CLS]." The complaint was later amended to add Jeannine Lynch (Lynch), another CLS employee, as a defendant, as well as to add claims of tortious interference with contract against Grosfeld and Tariff Solutions, LLC, and a breach of contract claim against Lynch.[2]

On May 26, 2015, CLS mailed its first set of interrogatories, request for admissions and production of documents, the certificate of which was docketed by the court on June 3, 2015. Included was a request for production of "[a]ll documents in your possession that were taken or removed from [CLS's] offices or computer networks, including by means of email transmission, whether or not you claim that you had authority to remove any such documents."[3] On June 25, 2015, the parties filed a joint motion to extend discovery and modify the scheduling order, which was granted by the court on July 6. The extension moved the close of discovery from July 13 to September 14.

On August 27, 2015, nearly at the close of discovery, during her deposition, Grosfeld produced three flash drives containing CLS data and documents that she maintained on her personal home computer. On September 11, 2015, as a result of this production, CLS moved to again extend discovery and modify the scheduling order in order

[2] The claims against Lynch were dismissed and are not implicated in this appeal.

[3] Subsequently, at trial, Grosfeld testified that she responded to that request "that there were no documents taken or removed from the networks." She qualified her response by saying that her attorney had taken issue with the language "taken or removed," finding them ambiguous because she only copied documents and information without removing or taking them.

to allow it time to consult a forensic computer expert. Grosfeld opposed the extension and the court summarily denied the motion on September 30, 2015.

CLS promptly filed a motion for reconsideration, for which arguments were heard during the scheduled settlement conference/pre-trial hearing on October 8, 2015. The court determined that "this case is almost a year old and we did extend it once. I'm going to deny the motion for reconsideration."

## DISCUSSION

### Standard of Review

"On an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court." Md. Rule 8-131(d). In accord, Maryland appellate courts have consistently held that, "discovery orders[,] 'being interlocutory in nature, are not ordinarily appealable prior to a final judgment terminating the case in the trial court.'" *Harris v. State*, 420 Md. 300, 314 (2011) (quoting *In re Foley*, 373 Md. 627, 634 (2003)).

A final judgment having been entered, review of the denial of CLS's motions are now ripe for our consideration.

Because "the circuit court has the inherent power to control and supervise discovery as it sees fit[,]" *Sibley v. Doe*, 227 Md. App. 645, 659 (internal quotations and citation omitted), *cert. denied*, 448 Md. 726 (2016), we review discovery questions on an abuse of discretion standard. *See Sibley*, 227 Md. App. at 658. "A proper exercise of discretion

involves consideration of the particular circumstances of each case." *101 Geneva LLC v. Wynn*, 435 Md. 233, 241 (2013) (quoting *Gunning v. State*, 347 Md. 332, 352 (1997)).

"An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court[ ] … or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court[ ] … or when the ruling is violative of fact and logic.'" *Sibley*, 227 Md. App. at 658 (first alteration omitted, remaining alterations in *Sibley*) (quoting *Bacon v. Arey*, 203 Md. App. 606, 667 (2012)).

We have explained judicial discretion:

> when there is no hard and fast rule governing the situation … the trial judge must exercise his or her judicial discretion. The decision he or she makes, in turn, is reviewed for the soundness and reasonableness with which the discretion was exercised. In making that evaluation, the reviewing court must defer to the trial court. The necessity for doing so is inherent in the very nature of judicial discretion. The exercise of judicial discretion ordinarily involves making a series of judgment calls, not simply the ultimate one, but also those on which the ultimate one depends.

*Bacon*, 203 Md. App. at 672 (quoting *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596–97 (2010)). However, it is also equally clear that "[a]lthough the abuse of discretion standard is highly deferential, a trial judge's discretion is not boundless." *Butler v. S & S P'ship*, 435 Md. 635, 650 (2013).

**1. Order Denying Extension**

CLS's motion requesting a second extension of discovery and modification of the scheduling order was denied without a hearing, which was not requested. The order denying the motion indicated, in relevant portion, that "UPON CONSIDERATION of

[CLS's] Motion to Extend Discovery and Modify Scheduling Order, and the Opposition thereto, the same having been read and considered[ ] …." CLS contends that the court failed to exercise its discretion or abused its discretion because the court did not articulate a reason why the motions were denied.

We have often observed that "because Maryland law does not require a written statement of reasons for the court's decision," *Abrishamian v. Barbely*, 188 Md. App. 334, 351 (2009), a court's "'*failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion*, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.'" *Smith v. Johns Hopkins Cmty. Physicians, Inc*., 209 Md. App. 406, 426 (2013) (emphasis in *Smith*) (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003)). "'*[W]e presume judges to know the law and apply it, even in the absence of a verbal indication of having considered it*. *[A] judge* is presumed to know the law, and thus *is not required to set out in intimate detail each and every step in his or her thought process*.'" *Smith*, 209 Md. App. at 426 (emphasis in *Smith*) (internal citations omitted in *Smith*) (quoting *Cobrand*, 149 Md. App. at 445).

A review of the state of the record at the time CLS moved to extend discovery for a second time does not support a finding that the court erred in summarily denying the motion. At the time of the filing of CLS's motion to extend discovery, the record consisted of, in relevant parts: the original complaint; Grosfeld's Answer and counter complaint; her subsequent line dismissing the counter-complaint; CLS's certificate regarding discovery,

certifying service on May 26, 2015 of the first interrogatories, first request for production of documents and first request for admissions of fact; CLS's certificate regarding discovery and notice of intention to take depositions; the June 25, 2015 joint motion to extend discovery; the court's order granting the joint motion to extend discovery; CLS's certificate of discovery regarding its answers to Grosfeld's interrogatories and responses to requests for production of documents; CLS's certificate regarding discovery as to notice of intention to depose Jeannine Lynch; CLS's August 18 motion for entry of default against Tariff Solutions; Tariff Solution's subsequent belated answer to the complaint and opposition to the entry of default; and CLS's motion to extend discovery and to modify scheduling order.

Recalling the wording of the court's order, *supra*, it is clear that the court considered CLS's motion requesting extension as well as Grosfeld's opposition thereto. In its motion, CLS failed to address the untimeliness of Grosfeld's production of the three flash drives, the fact that such documents had previously been requested by CLS in its request for production of documents, or Grosfeld's misleading response thereto, denying possession of such documents. We reasonably infer from its order, that the court also considered Grosfeld's opposition, which addressed the delay in CLS's initial requests for discovery and the expense of discovery to that date. Because CLS failed to show "good cause" why such an extension should be afforded, we cannot say the court abused its discretion in denying the motion.

**2. Motion for Reconsideration**

On October 6, 2015, CLS filed a Motion for Reconsideration and Request for Hearing, in response to the court's denial of its Motion to Extend Discovery and Modify Scheduling Order. Following a hearing, on October 8, 2015, the court denied that motion.

In its opening brief to this Court, CLS presents a general challenge to the court's denial of both the original motion to enlarge discovery and the motion to reconsider, joining those assertions in its single "Question Presented." It offers no independent argument to support its assertion that the trial court abused its discretion, or failed to exercise its discretion, in denying the motion for reconsideration. On that basis alone, we may decline to consider the argument. We are not compelled to search out, or to assume, reasons that support CLS's broad assertion of abuse of discretion. *Konover Prop. Tr., Inc. v. WHE Associates, Inc*., 142 Md. App. 476, 494 (2002) (explaining that the Court "will not rummage in a dark cellar for coal that isn't there[,] [as] [i]t is not this Court's responsibility to attempt to fashion coherent legal theories to support appellant's sweeping claims." (citing *Elecs. Store v. Cellco P'shp*, 127 Md. App. 385, 405 (1999))).

Moreover, CLS does attempt to provide specificity in its reply brief. That, which we have sometimes described as appellate afterthought, comes too late and too little. *See CSX Transp., Inc. v. Haischer*, 151 Md. App. 147, 161 (2003) (finding an argument offered for the first time on appeal might be considered an "appellate afterthought" when appellant had failed to object at trial or to raise the issue in post-trial motions), *rev'd on alt. grounds, sub nom. Haischer v. CSX Transp., Inc*., 381 Md. 119 (2004). We do not review matters raised initially in a reply brief. *See Rivieri v. Baltimore Police Dep't*, 204 Md. App. 663,

674 (2012) (explaining that "[r]eply briefs are typically limited to responding to arguments made in appellee's brief, not injecting new issues[,]" and, as such, "[a]ppellate courts typically do not consider arguments first made in the reply brief." (citing *Gazunis v. Foster*, 400 Md. 541, 554 (2007))).

That said, considering the proceedings at the pre-trial hearing, we would find no abuse of discretion. Counsel advised the court of the filing of the motion for reconsideration, the hard copy of which had apparently not yet reached the court file, having been filed just two days previously. Nonetheless, the court engaged counsel for both parties in argument of their respective positions, consuming some five pages of transcript, before ruling. Having heard the parties before ruling, the court exercised its discretion and did not abuse its discretion in its denial of the motion.

**JUDGEMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**