

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0644

September Term, 2014

GABRIEL A. BONEY

v.

WINSHIRE HOMEOWNERS
ASSOCIATION, INC., ET AL.

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: August 12, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Gabriel Boney, appellant, an unrepresented litigant, filed a complaint in the Circuit Court for Prince George’s County against Winshire Homeowners Association, Inc. (the “Association”) and several members of the Board of Directors of the Association, appellees.¹ Mr. Boney alleged breach of contract, breach of fiduciary duties, and fraud by the Association related to the performance of its duties under the Amended Declaration and Covenants, Conditions and Restrictions for the Association (the “Declaration”), which governs the Association’s authority and responsibilities as the homeowners association of the Winshire community. At the close of discovery, the Association moved for summary judgment. After a hearing, the circuit court granted the Association’s motion.

On appeal, Mr. Boney asserts three issues for our review,² which we have consolidated and rephrased, as follows:

1. Did the circuit court err in granting the Association’s motion for summary judgment?
2. Did the circuit court abuse its discretion in refusing to grant Mr. Boney’s motion for leave to amend his complaint?

¹ The members of the Board named in the complaint were Araminta D. Morton, Algrin A. Flowers, Crystal Cooke, and Karen M. Jackson.

² Mr. Boney set forth his questions presented, verbatim, as follows:

1. Did the trial court commit reversible error in granting the Appellees Motion for Summary judgment Dismissing the entire case because a Previous action seeking an injunction was dismissed?
2. Did the trial court commit reversible error in granting the Appellees Motion for Summary judgment dismissing the entire case base on The misrepresentation that the Appellant Boney stated he had no Damages?
3. Should the Circuit Court have granted the Appellant’s motion to Amend The complaint at the Pretrial hearing in this matter?

For the reasons that follow, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On December 28, 2012, Mr. Boney, *pro se*, filed his complaint in the Circuit Court for Prince George’s County. He alleged that, in December 2009, he informed the Association that he was unhappy with its work in managing the neighborhood. In particular, he believed that the Association failed to adhere to the Declaration by raising homeowners’ dues without allowing the homeowners to vote on the increase, failing to conduct an independent audit of its financial statements, failing to provide Mr. Boney with a copy of such audit, failing to file a federal income tax return, and failing to maintain the common areas of the neighborhood.

With respect to the failure to maintain the common areas, Mr. Boney alleged that the Association failed to mulch trees, did not remove sticks that had fallen to the ground, did not cut the grass near the entrance sign to the neighborhood, did not pick up trash left on the roads of the neighborhood, did not maintain the community pond, and took no action against homeowners who failed to adequately maintain their lawns. The Association also permitted homeowners to keep “junk cars” on their property and ship those “junk cars” out of the country, which involved bringing in “large container trucks” that sometimes remained on the street for days.

Mr. Boney also alleged that the Association failed to collect dues from many homeowners in the community. As a result, the homeowners whose dues were not collected were unable to participate in proceedings before the Association, and the Association was able to keep only a select few homeowners on its Board of Directors.

In Count I (“Breach of Contract – Injunction Relief”), Mr. Boney alleged that the Association breached the Declaration “in raising the Homeowners Association dues without following the Declaration . . . In failing to allow the Homeowners to vote on the increase.” He sought monetary damages in the amount of the increased assessment (\$52) that he paid, plus interest, and an order that the Association lower the assessment to the amount prior to the increase.

In Count II (“Breach of Contract – Injunction Relief”), Mr. Boney alleged that the Association breached the Declaration by failing to “have their books Audited in accordance with The Declaration,” stating that the Declaration required the Association to have an audit conducted by an independent public accountant in accordance with generally accepted auditing standards. He sought an order from the court instructing the Association to “have their Books Audited For all the years” Mr. Boney had lived in the Winshire community, and for all years thereafter.

In Count III (“Breach of Contract”), Mr. Boney alleged that the Association breached the Declaration by failing to maintain the commons areas of the community. Specifically, he contended that the Association did not maintain the signage areas, did not have the grass cut until April 15, failed to maintain a storm water pond, and allowed trash to accumulate along the roads and in the pond area. He stated that he had been “damaged in an amount to be determined at trial.”

In Count IV (“Breach of Fiduciary Duty – Monetary Relief”), Mr. Boney alleged that the Association breached its duty to “exercise undivided loyalty” and “act in good faith and [t]rust” by raising the assessment, failing to have its books audited, failing to file

income taxes, failing to maintain the common areas of the community, failing to timely collect dues, and ignoring his numerous complaints. He sought damages in the amount of \$25,000 from this alleged breach of duty.

Finally, in Count V (“Fraud Misrepresentation – Monetary Relief”), Mr. Boney alleged that, in 2008, the Association informed Mr. Boney that a management company named Comanco was going to collect dues for the Association. In the intervening time, however, Comanco has colluded with a ground maintenance company and a law firm to make money from the Winshire community, and in return the Association receives a “more favorable [t]ax deduction from [t]heir personal taxes,” as the Internal Revenue Service does not know the Association employs a management company because the Association failed to file a federal income tax return. As a result of this “fraud misrepresentation,” Mr. Boney was “denied the use and enjoyment of [h]is home and emotional stress.” He sought damages of \$50,000.

The Association filed an answer, and the parties conducted discovery. At the close of discovery, Mr. Boney moved for leave to amend his complaint on the following grounds: (1) to set forth a better statement of facts; and (2) to add an allegation that the Association retaliated against him for filing suit by citing him for a covenant violation for removing a neighborhood watch sign from a light pole and using its attorney to blackmail him to dismiss the complaint. The circuit court denied Mr. Boney’s motion to amend his complaint.

On February 24, 2014, the Association filed a motion for summary judgment.³ It first addressed Mr. Boney’s assertions that the Association breached the terms of the Declaration. It noted that the portion of the Declaration that the parties agreed governed the Association’s authority in raising dues provided that “the assessments [approved by the Association] shall become effective unless disapproved at the [annual] meeting by a vote of at least a majority of both classes of the total Association membership.” This language, the Association argued, did not require increases in assessments to be approved by the homeowners; rather, it permitted the assessments to become effective unless expressly disapproved by the homeowners. Accordingly, the Association argued that it did not breach the Declaration by increasing the assessment without holding a vote by the homeowners.

Regarding Mr. Boney’s contention that the Association failed to conduct an audit in accordance with the Declaration, the Association argued that it had provided Mr. Boney, in discovery, with copies of the audits it had had conducted on its records. To the extent that Mr. Boney argued that the Association had only conducted a “financial statement” audit instead of a “books and records audit,” the Association asserted that Mr. Boney had “no background in accounting or auditing,” and there was no evidence that the audits the Association had undergone “were not performed in accord with accounting standards.”

³ The Association began its motion by noting that this litigation was the second time in three years that Mr. Boney had sued the Association regarding the performance of its duties. In the previous suit, Mr. Boney had sought an injunction, but he was unsuccessful in obtaining it.

With respect to Mr. Boney’s assertion that the Association failed to maintain the common areas of the community, the Association stated that the Declaration gave it discretion to determine how best to maintain the common areas, and in the exercise of that discretion, it hired a landscaping service to maintain the common areas between April 15 and November 15 each year. Mr. Boney’s dislike of the appearance of the pond at the Winshire community did not demonstrate a breach of the Association’s obligations under the Declaration, and in any event, the Association was in the process of attempting to improve the appearance of the pond.

Turning to Mr. Boney’s argument that the Association breached its fiduciary duty, the Association argued that, under the business judgment rule codified at Md. Code (2007 Repl. Vol.) § 2-405.1 of the Corporations and Associations Article (“CA”), it was presumed to have acted in good faith in performing its duties. Because Mr. Boney did not allege or provide any evidence indicating that the Association acted in bad faith, it argued that his claim on this count must fail. Moreover, the Association contended that, contrary to Mr. Boney’s assertions, it had filed appropriate income tax returns and had taken reasonable measures to collect unpaid dues from homeowners.

Finally, as to Mr. Boney’s claim for fraud, the Association argued that Mr. Boney had admitted at his deposition that he had no damages as a result of the alleged misrepresentation. Moreover, Mr. Boney had no proof sufficient to establish any of the other elements of his claim for fraud.

Mr. Boney filed an opposition to the Association’s motion, reiterating his contention that the Declaration required the homeowners to approve an increase in assessments and

arguing that, at the meeting at which the 2009 increased assessment was purportedly approved, there was not a quorum of homeowners. He contended that the Association was not entitled to summary judgment with respect to this claim, and instead, he was entitled to summary judgment on it.

With respect to his second claim for breach of contract, Mr. Boney argued that there are many types of audits, and the Association’s audit of its financial statements did not amount to an audit of its books and statements as required by the Declaration. He asserted that there was a genuine dispute of material fact as to whether the audit was in accordance with the Declaration, and in support attached a publication from the year 2000 entitled “How to Do an Internal Audit of Component Association Finances.”

Regarding his claim that the Association failed to maintain the common areas of the Winshire community, Mr. Boney reiterated the contentions from his complaint. He argued that the Association’s admission that they hired a company to maintain the common areas between April 15 and November 15 demonstrated a breach of the Declaration, as the Declaration set forth no timeframe for when the Association was required to maintain the common areas.⁴ He also argued that the Association never mulched around the community entrance sign or the trees along Brown Road.

Turning to his claim for breach of fiduciary duty, Mr. Boney argued that the Association breached its duty to act with loyalty, good faith, and trust in failing to collect

⁴ In this section of his argument, Mr. Boney also asserted several new factual allegations regarding the Association’s hosting of a block party and money it received from the Washington Suburban Sanitary Commission. He included no argument as to how these allegations supported his position.

unpaid homeowners dues for three years. He reiterated his contention that the Association failed to file federal income taxes, and he noted that he “had a long problem with Junk cars, and Shipping operation in the Neighborhood,” which the Association did not deal with to Mr. Boney’s satisfaction. Mr. Boney also argued that the Association breached its duty of good faith in having their attorney send him letters “threatening” him, and he attached the letters from the Association’s counsel requesting that he dismiss the lawsuit.

Finally, regarding his claim for fraud, Mr. Boney contended that the Association was functioning more like a “for profit Managed Community,” and the Association had attempted to conceal this from the community. He asserted that the Association defrauded the community by not allowing the homeowners to vote on the increased assessment, failing to pursue unpaid assessments, and in running a for profit company.

The Association filed a response, asserting that, because Mr. Boney indicated that his contention regarding the Association’s increase in assessments related to the 2009 increase, Mr. Boney had filed his claim outside of the statute of limitations.⁵ It also argued that the “How to Do an Internal Audit of Component Association Finances” publication provided by Mr. Boney was not relevant to the Board’s obligations in this case because the Declaration required the Board to have an independent, not internal, audit. With respect to Mr. Boney’s contentions that the Association failed to maintain the common areas, the Association argued that nothing in the Declaration required it to hire landscapers year-round, and its decision to hire landscapers between April 15 and November 15 did not

⁵ The meeting that Mr. Boney argued needed to include a vote by the homeowners occurred on December 9, 2009. Mr. Boney filed this lawsuit on December 28, 2012.

amount to a breach of any contractual duty. The Association also reiterated its contentions that there was no evidence that it acted in bad faith in any way and it never made false statements to Mr. Boney.

On May 23, 2014, the circuit court held a hearing on the Association’s motion for summary judgment. The Association argued that Mr. Boney had presented “no evidence of any breach of contract . . . no evidence of breach of fiduciary duty and . . . no evidence of fraud.” It asserted that Mr. Boney had not adduced any evidence in support of his contentions that the Association failed to pay federal income tax or to have its books audited, and that his claim that the Association failed to maintain the common areas of the community was merely “difference of opinion about how things should be run,” not a breach of contract. The Association contended that it had not breached the Declaration in raising the assessment without a vote because the Declaration did not require a vote to be held, and that hiring a management company to assist in maintaining the community did not constitute fraud. Furthermore, it argued that Mr. Boney has admitted at his deposition that he had no monetary damages.

Mr. Boney argued that “[t]his homeowners association is clearly a fraudulent operation,” and he had submitted photographs demonstrating that the Association failed to maintain the community. He contended that he had refuted each of the Associations arguments in his motion, and the case was not appropriate for summary judgment. Mr. Boney clarified that, with respect to his argument that the Association failed to have an audit conducted, his position was that the Association had only their financial statements audited, but the Declaration required they have their “books” audited. Finally, he reiterated

his contention that the Declaration contained no time limits on the Association's obligation to maintain the common areas and that the Association breached the Declaration by only hiring a landscaping company from April 15 through November 15.

The circuit court took the matter under advisement. On May 29, 2014, the court issued an order granting the Association summary judgment as to all counts, stating as follows:

It is first noted that this is an action of law. A previous equity action seeking an injunction involving the same parties was denied. Furthermore this is not an action seeking declaratory relief. In the present case the Plaintiff has suffered no damage by his own admission.

This appeal followed.

DISCUSSION

I.

Summary Judgment

Mr. Boney contends that the circuit court erred in granting the Association's motion for summary judgment. It is not clear, however, on what ground Mr. Boney contends that the court erred. As appellees note, "the only **error** of the [circuit court] that [Mr.] Boney points to in his appeal is [the court's] finding that [Mr.] Boney admitted he had no damages."

Mr. Boney's argument in this regard is very limited. He simply states: "This was a breach of Contract case (3 counts), the appellant should not Need monetary damages, to enforce the contract." It is difficult to conclude that this limited statement satisfies the requirement of Md. Rule 8-504(a)(6) that a brief shall contain "[a]rgument in support of

the party’s position on each issue.” Even if it does, Mr. Boney has cited no authority in support of his argument that the court erred. It “is not our function to seek out the law in support of a party’s appellate contentions.” *Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010). *Accord Ubom v. SunTrust Bank*, 198 Md. App. 278, 285 (2011). Accordingly, we will not consider this claim. *See Higginbotham v. Pub. Serv. Comm’n of Md.*, 171 Md. App. 254, 268 (2006) (declining to consider argument that was not supported by citation to legal authority).

II.

Motion for Leave to Amend the Complaint

Mr. Boney next argues that the circuit erred in refusing to grant him leave to amend his complaint. Again, however, Mr. Boney has set forth no particularized argument in support of his position, *see* Md. Rule 8-504(a)(6), nor has he set forth any citations to authority. Moreover, Mr. Boney has not provided us with a record of the circuit court’s decision to deny his motion. It is the appellant’s burden to rebut the presumption that the circuit court acted appropriately. *See Fields v. State*, 172 Md. App. 496, 513 (citing *Denicolis v. State*, 378 Md. 646, 657 (2003)), *cert. denied*, 399 Md. 593 (2007). Because he has failed to do that, he is not entitled to relief.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**