

Circuit Court for Montgomery County  
Case No. 430300

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 649

September Term, 2017

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MASSOUD HEIDARY

v.

CITY OF GAITHERSBURG

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Woodward, C.J.,  
Kehoe,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 11, 2018

\*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.

Massoud Heidary, appellant, filed, in the Circuit Court for Montgomery County, a complaint against the City of Gaithersburg (the “City”) alleging conversion, wrongful eviction, forcible detainer, and tortious interference with a contract. The City thereafter filed a motion to dismiss, and, following a hearing, the court granted the motion and dismissed Heidary’s complaint with prejudice. In this appeal, Heidary asks whether the court erred in dismissing his complaint. Finding no error, we affirm.

### **BACKGROUND**

In 2012, Heidary owned a piece of real property located in Gaithersburg, Maryland (the “Property”), where he conducted at least one business, a restaurant, for which he had obtained a “Use and Occupancy Permit” from the City. That same year, Heidary failed to pay property taxes on the Property, and it was subsequently sold via tax sale to Paradise Point, LLC. Paradise Point ultimately filed a petition to foreclose Heidary’s right of redemption, which the circuit court granted by way of order dated August 29, 2014.

Meanwhile, on May 15, 2014, the City informed Heidary that, in order for his Use and Occupancy permit to remain valid, he needed to submit a “plat” to the City’s Planning Commission. The letter also stated that, if the plat was not recorded by April 23, 2015, the City could “revoke the current Use & Occupancy permit, per Article XIII, Sec. 20-82” of the City’s Code of Ordinance. A year later, on July 8, 2015, the City sent another letter to Heidary. In that letter, the City stated that Heidary’s Use and Occupancy permit had been revoked “for failure to record the plat in accordance with the original requirement imposed as a condition of the change of use from residential to commercial.”

By that time, Heidary had noted an appeal of the circuit court’s order foreclosing his right of redemption on the Property. Due to his pending appeal, but notwithstanding the fact that the Use and Occupancy permit had been revoked, Heidary continued to operate the restaurant. This Court ultimately affirmed the circuit court’s foreclosure order in an unreported opinion, the mandate for which was issued on January 28, 2016. *Massoud Heidary v. Paradise Point, LLC*, No. 2522 September Term, 2014 (filed December 23, 2015).

On March 1, 2016, Heidary visited the Property and discovered that it was “boarded up.” On March 23, 2016, Paradise Point conveyed ownership of the Property to the City. On March 30, 2016, the City informed Heidary of the conveyance. The City also informed Heidary that he had 30 days to claim any and all personal property that he had left at the Property.

On April 13, 2016, Heidary filed a complaint against the City. After the City filed a motion to dismiss, the circuit court granted the motion, but also granted Heidary leave to amend. Heidary thereafter filed an amended complaint, and again the City moved to dismiss. The court granted the motion, but again granted Heidary leave to amend. Heidary then filed a final amended complaint, which is the subject of the instant action.

In that complaint, Heidary alleged that, because he had “possession” of the Property prior to Paradise Point’s conveyance of the Property to the City, and because Paradise Point never told him to vacate prior to the conveyance, Paradise Point had “effectively consented” to allowing Heidary to remain on the Property “pursuant to a month to month lease.” Heidary further averred that, when the City took ownership of the property, it

“became the transferee pursuant to Md. Real Prop. Art. § 8-101.” Heidary maintained, therefore, that the City committed the torts of conversion, wrongful eviction, and forcible detainer when it “unreasonably used self help to convert [Heidary’s] property” and “failed to follow the correct statutory and equitable eviction procedures.” Heidary also maintained that the City’s actions wrongfully interfered with certain business contracts he had in place at the time.

Following the filing of Heidary’s final amended complaint, the City filed a motion to dismiss, claiming, among other things, that the City was immune from suit. At the hearing on the City’s motion, Heidary argued that the City had wrongfully revoked his Use and Occupancy permit. When the circuit court asked Heidary whether that issue was the “underlying thing” for his case, Heidary responded, “exactly, Your Honor.” Later, Heidary reiterated that position:

MR. HEIDARY:                   That paper the gentlemen say they given me I would like to him show and pull and give me because I never have it....He said they take my order or occupancy permit out because I don’t try the (unintelligible) this is from the Court (unintelligible) and everything I send to the gentleman, who they have –

THE COURT:                   No, no, but, the issue here is when I started out this I asked you whether or not you agreed with him and what he contended your position was that the City’s actions in revoking your use and occupancy permits were unlawful and you said yes at that – underlying this. The problem is if that’s your position then you should have filed an appeal with the Board of Appeals. You shouldn’t just file a lawsuit –

MR. HEIDARY: No, Your Honor, if that happen you're right but they never – I lost my occupancy permit. If they have a paper that is the gentleman (unintelligible).

THE COURT: No. What I'm telling you is you agreed that that was the underlying basis for your lawsuit.

MR. HEIDARY: Yes.

THE COURT: Your position that the City's actions in revoking the U&O was unlawful.

MR. HEIDARY: Exactly.

THE COURT: And I'm saying that you should have filed an appeal before the Board of Appeals.

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MR. HEIDARY: No, no...[m]y occupancy permit never changed. The reason is if you look at it today, issued.

THE COURT: You told me that is was because they revoked it.

MR. HEIDARY: No, they never revoked it.

THE COURT: Well that's not what you started out saying.

MR. HEIDARY: No, I'm sorry...I never lost my occupancy permit.

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THE COURT: Okay...I'm looking at what you filed on May 30th at Docket Entry No. 11[.]...It's called Statement of the Case. On page, the cover page of statement of the case then you got one page and then the second page after that at the top, you refer to the fact that your plat was recorded on August the 4th, therefore, you say revoking the U&O permits from the City of Gaithersburg is not legal or acceptable by the plaintiff. But, once

again, you’re talking about – they revoked your permit –

MR HEIDARY: They say they revoked it. I state they can’t and that’s illegal [sic] if they do. They say they revoked it and they don’t have anything to show that. I have everything to show anything that supposed to what you do. Because if you look at this –

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THE COURT: No, stop. I’m going by what you stated. I’m going by what you just submitted to the Court discussing the revocation of your U&O permit and as I indicated if you had an issue with what they did you should have filed with the Board of Appeals –

MR. HEIDARY: Why I didn’t have that.

THE COURT: – the City of Gaithersburg, you cannot file a complaint against the City of Gaithersburg. It has governmental immunity so therefore the motion to dismiss is granted.

### **DISCUSSION**

In this appeal, Heidary argues that the circuit court erred in dismissing his complaint. Heidary maintains that the City “took on the legal status of a landlord” when it became the owner of the Property on March 23, 2016. Heidary maintains that the City’s “status as a landlord made its subsequent dealings with Heidary proprietary rather than governmental” and that, as a result, the City “is not entitled to claim common law governmental immunity.”

Heidary is mistaken. When ruling on a motion to dismiss, a court is generally constrained by the four corners of the complaint and any supporting exhibits. *D’Aoust v.*

*Diamond*, 424 Md. 549, 572 (2012). When, however, a court considers matters outside of the pleadings, as was the case here, the court must treat the motion to dismiss as a motion for summary judgment pursuant to Maryland Rule 2-501. *Id.* at 573. Under that rule, a court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” *Id.* “In reviewing the grant of summary judgment, the appellate court asks whether it was legally correct, without deference to the trial court.” *Muse-Ariyoh v. Board of Education of Prince George’s County*, 235 Md. App. 221, 235 (2017), *cert. denied*, 2018 WL 1635047 (filed March 23, 2018). Moreover, “[w]e evaluate the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-pleaded facts against the moving party[.]” *Id.* (citations and quotations omitted).

With regard to whether a fact is material and, if so, whether that fact entitles a party to judgment as a matter of law, the Court of Appeals has stated that

[a] dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment. In other words, a material fact is a fact necessary to resolve the controversy as a matter of law[.] If it is determined that no genuine dispute of material fact exists, we review the trial court’s ruling on the law, considering the same material from the record and deciding the same legal issues as the circuit court. In conducting our review of a grant of a motion for summary judgment, we consider only the grounds upon which the trial court relied in granting summary judgment.

*D’Aoust*, 424 Md. at 575 (internal citations and quotations omitted) (emphasis in original).

Based on the record before this Court, it is clear that the circuit court granted the City’s motion based on Heidary’s undisputed assertion that the underlying basis for his

complaint was that the City either never revoked or wrongfully revoked his Use and Occupancy Permit. Thus, the question here is whether Heidary’s assertion was a fact necessary to resolve the controversy as a matter of law and, if so, whether the circuit court’s granting of summary judgment based on that fact was legally correct.

We answer both questions in the affirmative. “Maryland law is well settled that a county (or municipality) generally enjoys immunity against common law tort liability arising out of acts that are governmental, as opposed to acts that are private or proprietary.” *Clark v. Prince George’s County*, 211 Md. App. 548, 557 (2013). “Where the act in question is sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument incurring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest, it is governmental in its nature.” *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 359 (2017) (quoting *Blueford*, 173 Md. at 276). “In other words, the test is ‘whether the act performed is for the common good of all or for the special benefit or profit of the corporate entity.’” *Id.* (citations omitted).

As previously discussed, it is undisputed that all of Heidary’s claims against the City arose out of the City’s actions regarding his Use and Occupancy permit. Moreover, Heidary has presented no evidence or intelligible claim to suggest that those actions were anything other than governmental. In fact, in the City’s letter to Heidary dated July 8, 2015, which Heidary has directly cited in his brief, the City stated quite clearly that it was revoking the permit pursuant to the City Code. In short, the City’s revocation of Heidary’s permit, even if wrongful, was “governmental,” and the City was entitled to immunity for



any common law tort claims arising out of that act. Accordingly, the circuit court did not err in dismissing Heidary's complaint.

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