Circuit Court for Howard County
Case No.: 13-C-15-102568 OT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00823

September Term, 2016

HA LE

v.

EMMANUEL OSUJI, M.D., et al.

Meredith,
Kehoe,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 16, 2018

After Severn Anesthesia Services, P.A. ("SAS," one of the appellees), terminated its employment contract with anesthesiologist Ha Le, M.D., ("appellant" or "Dr. Le"), Dr. Le filed suit in the Circuit Court for Howard County against SAS and two of his former colleagues, Drs. Emmanuel Osuji ("Dr. Osuji") and Kamau Jackson ("Dr. Jackson"), who are both appellees. Prior to trial, the court granted summary judgment in favor of SAS on two of the counts of the amended complaint. Then, during the jury trial, pursuant to motions for judgment made at the close of Dr. Le's case in chief, the court granted judgment for Drs. Osuji and Jackson on the remaining counts. This appeal followed.

QUESTIONS PRESENTED

Dr. Le presents two questions for our review:

1. Did the Circuit Court err by granting summary judgment [in favor of SAS] as to Counts V and VI?

2. Did the Circuit Court err by granting judgment [in favor of Drs. Osuji and Jackson] as to Counts I through IV?

For the reasons that follow, we answer "no" to both questions, and affirm.

FACTS AND PROCEDURAL HISTORY

SAS is a professional association of anesthesiologists. During the time of the events that are the subject of this case, SAS held a contract with Baltimore Washington Medical Center ("BWMC") to serve as the hospital's exclusive provider of anesthesiology services. At the time relevant to these events, nineteen physicians who were board-certified in anesthesiology held ownership interests in SAS. It is governed by bylaws, and employs both shareholder and non-shareholder anesthesiologists.

Dr. Le became affiliated with SAS in 1998, and was elected by his co-shareholders to serve as the president of SAS from 2008 to 2012. In 2009, Dr. Le and SAS entered into a "Restated Employment Contract," which provided, *inter alia*, that Dr. Le's employment could be terminated without cause: a) upon 90 days' written notice prior to the effective date of termination, and b) only after 75% of the Board of Directors, not counting the employee, voted in favor of termination.[1]

At the time of the events that gave rise to this case, Dr. Osuji was a past president of SAS, and the current Chairman of BWMC's Department of Anesthesia. Dr. Jackson was Secretary of SAS's Board of Directors.

The contract ("Hospital Contract") between SAS and BWMC was SAS's major source of income. Although the initial term of the contract provided that it would not expire until June 30, 2017, the hospital had the right to terminate the contract immediately for a variety of causes, one of which was an SAS physician's "inability to work with and relate to others, including, but not limited to, Hospital patients and staff, in a respectful, cooperative, and professional manner." Hospital Contract, § 12.5.10.

[1] Section 4.4 of the employment contract states:

> This Agreement shall not be terminated without cause by the Employer without the prior consent of seventy-five percent (75%) of the Board of Directors of the Employer; provided; however, that the vote of the Employee shall be excluded.

It was undisputed that the Hospital Contract was viewed as essential to SAS's survival by the doctors who owned SAS. Dr. Jackson testified during his deposition that "maintaining the [H]ospital [C]ontract is absolutely [the] highest priority."

Dr. Le had difficulty in the area of interpersonal relationships. In April 2013, Dr. Osuji met with Dr. Uma Prabhakar (President of SAS), Dr. Samir Dalal (Chairman of Quality Performance Improvement), and Dr. Le "to discuss the disruptive behavior displayed by Dr. Ha Le and his response to it." A memorandum dated April 18, 2013, noted that, on April 10, 2013, Dr. Le had become upset at "having not been relieved on time," and Dr. Le had "angrily called the person who had been the anesthesia officer of the day, . . . and allegedly shouted at him . . . ." "On the same day in question [April 10, 2013], he then was loud with the person who did come to relieve him (Dr. Forsythe) to the point where they stated to him that he was not their father and he needed to lower his tone, all of which was overheard by both nurses and surgeons in the room." When Dr. Osuji and Dr. Jackson had met with Dr. Le on April 12 to discuss the incident, Dr. Le "did not show insight into why his behavior was wrong." But he "acknowledged that he does get angry" at times. "Dr. Osuji then thanked him for understanding that disruptive behavior cannot be tolerated . . . and got [a] commitment from him that his angry outbursts would cease now . . . ."

In approximately February 2014, Dr. Jackson was summoned, unexpectedly, to a meeting with Dr. Marshall Benjamin, the hospital's Chief of Surgery. According to Dr. Jackson, at that meeting, Dr. Benjamin noted that he had always gone to bat for SAS with

hospital administrators, but Dr. Benjamin indicated that his confidence in the group was waning due to a number of reasons. Although Dr. Le was one of the SAS physicians Dr. Benjamin mentioned, "the conversation wasn't focused" on him, but on SAS in general. As Dr. Jackson testified in his deposition --- excerpts of which were read to the jury at trial --- "[t]he overwhelming theme was, 'You guys as a group need to make sure confidence is restored with the surgeons because I can't . . . continue go to bat for [SAS].'" This was of great concern to Dr. Jackson because it was well known among the SAS doctors that the hospital administration regularly received requests from other anesthesiology groups that wanted to replace SAS as the hospital's anesthesiology provider. But Dr. Jackson did not leave the meeting feeling that the Hospital Contract (which had just recently been signed on February 24, 2014) was in imminent danger. Rather, he was concerned that SAS's "positive relationship" with the hospital was in jeopardy, and he knew that SAS could not afford to lose Dr. Benjamin's support. Accordingly, Dr. Jackson informed Dr. Osuji of his conversation with Dr. Benjamin.

Dr. Osuji had his own "group of conversations" with Dr. Benjamin during the same time frame, which were to similar effect. In his deposition, Dr. Osuji testified that Dr. Benjamin conveyed that he was

> . . . not as satisfied with the direction that the group was going.
>
> He was also unhappy because he had heard that some of our people were leaving and he felt that some of the people that were leaving were good people and that if all the good, quality people were leaving, then we will be left with people who are not quite as clinically competent.

> [Dr. Benjamin] even mentioned that in his role as Chief of Surgery, he has meetings with the Chief Medical Officer . . . [who] has mentioned that he gets requests for proposals for the anesthesia contract frequently . . . and that it's only because he's happy with us overall that he intends to lend his support and tells them not to bother looking at that. **But make no mistake, at no point in time did he say to me, okay, that we had to get rid of Dr. Le.**

(Emphasis added.)

These conversations in the spring of 2014 "caused [Dr. Osuji] concern," and Dr. Osuji met with Dr. Jackson and Dr. Christopher Buckley (who was then SAS's Treasurer) to discuss changes that needed to be made. They decided to call a special "partners' meeting" for April 25, 2014, and Dr. Jackson sent out notices to that effect.[2]

The April 25 partners' meeting began with Dr. Osuji speaking in general terms about his conversations with Dr. Benjamin, without mentioning any specific doctors' names. However, at some point, Dr. Le interrupted and identified himself as the person about whom Dr. Osuji was speaking. The meeting deteriorated into "a free-for-all to some degree, where people were conveying their prior negative interactions with Dr. Le," as Dr. Jackson testified in his deposition. Dr. Le "became very aggressive in his language and his body language," and "was singling people out . . . he went down the line of people sitting at a table . . . and was, like, you tell me, you tell me right now one time where I've disrespected you."

[2] Although the business entity was actually a professional corporation, the shareholders of SAS sometimes referred to their fellow shareholders as "partners," and where they used that label in a non-legal sense, so shall we. It appears that the shareholders also acted as the board of directors of SAS.

Minutes of the April 25, 2014 meeting, prepared by Dr. Jackson as SAS Secretary, included the following statements:

> the reason for an early morning meeting includes . . . there has been concerns, which were brought to the attention of the Chair of Anesthesia about SAS
>
> ~SAS contract security could be in jeopardy, if we do not improve as a group
>
> ~our clinical excellence can and has often been undercut by behavioral issues within our group
>
> * * *
>
> ~it is unfair for the hard work of some of us to be so easily undermined by the perceived aggressive behavior of others, which has caught the attention of our surgical colleagues, and nursing staff
>
> * * *
>
> ~there have been complaints that some individuals do not seem to be able to appropriately provide anesthetic medical management for thoracic and/or major vascular procedures . . .
>
> * * *
>
> ~clinically, our group is doing well, but there are individuals who[se] names continue to be mentioned both within and outside of our department, as being overly aggressive, confrontational, angry (money hungry) and that behavior divides the group and can not be tolerated anymore . . .
>
> * * *
>
> ~the conversation began to include Dr. Le, as a provider who had several behavioral and clinical complaints while on the OB rotation. It was reported by the OB staff that he was yelling at them and was additionally confrontational with the OB physicians, ... Clinically, there was a formal complaint that included a statement addressing the "lack of his epidurals working (treating labor pain) the majority of the time".
>
> ~the discussion then returned to Dr. Le's aggressive outbursts and confrontations with other SAS members. It was mentioned that some of the

partners who were leaving SAS felt that his behavior towards them had been unprofessional and potentially a consideration in their desire to leave the group.

~Dr. Le then demanded (and went around the table) that each person give him an example of how he'd been unprofessional/confrontational with them

~ . . . one physician spoke up and made a comment about him being so aggressive to steal cases from other physicians in the group. He was described as someone who would "tear your eyes out to steal a case."

~Dr. Le described his behavior as being passionate. Another physician reminded him that we are all passionate and his behavior is simply aggressive, unprofessional and rude. . . .

* * *

~The comment was made that yes, Dr. Le has anger issues, and many of the nurses refuse to work with him. Many members of the group seemed to acknowledge this.

~a comment was made about him having several loud public verbal altercations with the AOD involving anesthesia scheduling; this was viewed as "extremely unprofessional behavior" by the group

~another provider brought up another situation where Dr. Le yelled at a particular anesthesia tech (making her cry), and used profanity during the encounter. That anesthesia tech then wrote a formal complaint about the episode.

~the motion was made to discuss Dr. Le's continued relationship with the group (he was present in the conference room). That motion was then seconded by another partner.

~the motion was to vote on termination of Dr. Le from SAS "without cause"; the group seemed to think that a "without cause" termination would more easily allow him to seek employment elsewhere. There was discussion on that matter.

~Dr. Le was then asked, "would you like to leave the room?" Dr. Le replied "sure", and exited the conference room

> ~after he'd left the room, more comments were made about negative experiences and interactions with Dr. Le. There was a serious group concern that Dr. Le would continue this aggressive behavior and it would negatively impact the new hire physicians brought into the group. The group felt like he was unwilling to change, nor take responsibility for his anger/confrontational approach to disagreements. There was also concern that Dr. Le would try to undermine the group[']s relationship with various surgeons and administrators, by confronting them.
>
> ~Another partner described a conversation with other hospital administrators which included a growing lack of confidence in SAS to internally deal with the behavior issues of its practitioners. There was a real concern that we may be slowly losing the support of the Chair of Surgery and hospital CMO, due to behavioral and some clinical issues that seem to have a reoccurring theme.
>
> ~regarding the motion to terminate Dr. Le's employment relationship "without cause" with SAS, the partners all voted by anonymous ballot. The ballots were collected and counted in front of the group.
>
> ~the results went as follows: 15 in favor of termination and 2 opposing termination of Dr. Le.
>
> ~Dr. Le then returned to the room and was informed of the outcome of the group[']s vote.

Later, two physicians approached Dr. Buckley and expressed reservations about the vote. One physician had been away on vacation and did not get a chance to vote. The other told Dr. Buckley that he had felt "rushed" into voting. Accordingly, the Executive Committee --- whose members were Drs. Osuji, Jackson, Buckley, and Prabhakar (SAS's then-president) --- made a decision, at a meeting on May 2, 2014, to "freeze" the termination vote. The minutes of the May 2 Executive Committee meeting were admitted in evidence at trial as Exhibit 12, and they note, in part, that the decision to freeze the April 25 vote was made "in accordance with the bylaws" and with the aim of "maintain[ing] harmony within the business and decreas[ing] internal SAS disruption."

Dr. Le testified at trial that, as a result of the "freeze," he was "back in the group. I was in full partnership." But, at the time the Executive Committee adopted the "freeze," Dr. Le expressed continuing dissatisfaction that any vote had been taken on April 25, and he asserted that he wanted another vote to be taken by the shareholders to, in his words, "nullify the April 25th meeting vote." He testified that he was under the impression that he had been reinstated, but he continued to feel that the April 25 vote had been based on false information, "so I want the record to be clean. That record has to be nullified." He testified: "Personally, [a second vote] has no effect on my partnership, but it has effect on the information that was presented at that meeting."

In contrast to Dr. Le's recollection, Dr. Osuji testified during his deposition that he told Dr. Le that, with the valid termination vote having been frozen, the only vote that could be taken by the shareholders would be a vote whether to *reinstate* him, and Dr. Le agreed to abide by the results of a vote on reinstatement. Dr. Osuji also testified that he advised Dr. Le not to push for a second vote, explaining: "I [said] to him again, you really don't want another vote because you really don't know how people feel and he [said] no, I want a vote." Accordingly, a reinstatement vote was put on the agenda of the next quarterly shareholders meeting, scheduled to occur on June 29, 2014.

Between the date of the "freeze" (May 2) and June 29, there were two additional incidents involving Dr. Le that came to the attention of Dr. Osuji. On May 13, Dr. Hal Crane, the Chair of the Department of Orthopedic Surgery at BWMC, sent an e-mail to Dr. Osuji in which Dr. Crane complained that Dr. Le had made a "highly inappropriate and

disrespectful" comment to Dr. Crane's Physician's Assistant about her resemblance to an adult-movie actress. Dr. Crane's e-mail noted that this comment was made in the presence of an alert patient. Dr. Le characterized this incident as "joking with her," and said that he "didn't even think much about" it.

Separately, an operating room nurse reported to Dr. Osuji that she had witnessed Dr. Le pick up a laryngoscope blade that had been dropped on the floor of the operating room and then use the instrument in a patient's mouth. Dr. Osuji asked Dr. Le about this report, and Dr. Le admitted that it happened, but he explained that he did not have another blade handy. Dr. Osuji testified that he was "stunned" by this explanation: "I couldn't even form any words to figure out why would you take something that hit the floor and put it in a patient's mouth." Dr. Le admitted that this occurred, but claimed he wiped the blade with antimicrobial wipes, could not find any other blades nearby, and could not leave the patient.

The quarterly "partners" meeting was held on June 29, 2014, as scheduled. The minutes reflect that several items of business were discussed, and the final item of business was "Re-instatement vote of Dr. Le." The minutes, prepared by Dr. Jackson as SAS Secretary, reflect:

> After discussion of all issues (Dr. Le asked to leave room), partners were asked to vote on the issue of re-instatement into SAS (per SAS agreement, voting was anonymous, in writing, and on official SAS department letterhead). Partners who voted by proxy (in accordance with SAS bylaws) had their vote included in the final count. Dr. Oletsky counted and read the vote results to the group. Dr. Prabhakar confirmed the final vote count.
>
> Partners['] votes went as follows:

YES to re-instatement of Dr. Le (overturn prior termination vote) – 3
NO to re-instatement of Dr. Le (maintain prior termination vote) – 12
2 partners did not vote/determine a proxy
Additional discussion was held in presence of Dr. Le

By letter dated July 21, 2014, Dr. Le was notified that his employment with SAS was terminated effective October 19, 2014. The letter noted that he was "obligated," pursuant to the SAS Stockholder Agreement of September 14, 1993, "to sell and SAS is obligated to purchase your capital stock in SAS," at a price which Dr. Le asserted in his complaint was "for a nominal value far below its market value[.]"

Dr. Le's last day at SAS was October 15, 2014. He began employment with another anesthesiology group on Monday, October 18, 2014.

On February 26, 2015, Dr. Le filed a one-count defamation complaint against Dr. Osuji, and demanded a jury trial. Dr. Osuji filed a timely answer, and later a motion for summary judgment. On February 8, 2016, Dr. Le filed a six-count amended complaint against Dr. Osuji, Dr. Jackson, and SAS.

The Amended Complaint

The Amended Complaint alleged, in ¶32, two statements, referred to as the "April 2014 Statements," that were the basis of the claims that Drs. Osuji and Jackson had defamed Dr. Le, committed the tort of injurious falsehood, and tortiously interfered with Dr. Le's employment contract with SAS. Dr. Le alleged that Drs. Osuji and Jackson knowingly and maliciously made the following statements that were false:

> (i) BWMC had received complaints from other practice groups within BWMC that Dr. Le was unable to provide competent anesthetic medical management services; and
>
> (ii) BWMC would not renew SAS'[s] contract with BWMC, or that i[t] was in jeopardy of termination, if Dr. Le was not terminated from SAS immediately.

Dr. Le alleged that Drs. Osuji and Jackson "verbally communicated" these April 2014 Statements to the other SAS shareholders at the April 25, 2014 meeting. Count I of the amended complaint asserted that Dr. Osuji had defamed Dr. Le, and acted with knowing falsity and intent to harm Dr. Le's reputation.

Count II asserted a claim of Injurious Falsehood against both Dr. Osuji and Dr. Jackson, based on the April 2014 Statements and another pair of statements made at the June 29 shareholders' meeting, referred to as the "June 2014 Statements." The June 2014 Statements related to the above-referenced incidents regarding the comment made to Dr. Crane's assistant and Dr. Le's use of a laryngoscope blade that had fallen on the operating room floor. Dr. Le alleged in Count II that Drs. Osuji and Jackson "acted with malice and intent to harm" him by publishing these statements to the other SAS partners, and furthermore, that the publication of these statements induced the partners to vote to terminate his employment "without cause."

Count III asserted a claim against both Dr. Osuji and Dr. Jackson for tortious interference with contractual relations. This count alleged that Drs. Osuji and Jackson "accomplished this interference through . . . the publication of the April 2014 Statements and the June 2014 Statements" which "were willful misrepresentations of fact that were

designed to create, and did create," a sense of "fear and panic" among the other SAS partners who formed the "false belief" that the BWMC contract was in imminent danger and that the only way to ameliorate the threat was to vote in favor of Dr. Le's termination.

Count IV contended that Dr. Osuji and Dr. Jackson engaged in a conspiracy to malign Dr. Le's reputation and cause him harm.

Counts V and VI asserted claims against SAS. Count V alleged that the employment contract between SAS and Dr. Le required a vote of at least 75% of the directors to terminate Dr. Le's Employment Contract without cause, and that "SAS has determined without basis that at least 75% of the directors of SAS voted in favor of terminating Dr. Le to validly terminate the Employment Contract 'without cause,'" thereby breaching the contract.

Count VI asked for a declaratory judgment that Dr. Le's employment had not been properly terminated in accordance with § 4.4 of the employment contract, and that SAS was therefore not entitled "to purchase Dr. Le's ownership interest in SAS for the nominal amount referenced in the Stockholders Agreement."

Motion for Summary Judgment

The appellees moved for summary judgment on all counts. Although the court denied the motion as to the tort claims asserted against Drs. Osuji and Jackson in Counts I through IV, the court granted summary judgment in favor of SAS on Counts V and VI.

Motion for Judgment at close of Dr. Le's case

A jury trial on Counts I through IV began on June 6, 2016. Dr. Le rested his case on June 8, and appellees argued their motion for judgment pursuant to Maryland Rule 2-519. The court granted judgment in favor of Dr. Osuji and Dr. Jackson on Counts I through IV. This appeal followed.

STANDARD OF REVIEW

With respect to the court's grant of summary judgment on Counts V and VI of the amended complaint, the standard of review was described by the Court of Appeals in *Appiah v. Hall*, 416 Md. 533, 546–47 (2010):

> When considering an appeal from an order granting summary judgment, our review begins with the determination whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law. *O'Connor v. Balt. County*, 382 Md. 102, 110, 854 A.2d 1191, 1196 (2004). "A trial court may grant summary judgment when there is no genuine dispute of material fact and a party is entitled to judgment as a matter of law." *120 W. Fayette St., LLLP v. Mayor & City Council of Balt. City*, 413 Md. 309, 329, 992 A.2d 459, 471 (2010) (internal quotation marks and citation omitted). We review for legal correctness a trial court's application of this standard. *Id.*, 992 A.2d at 471.
>
> When reviewing the record to determine whether a genuine dispute of material fact exists, "[w]e construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *O'Connor*, 382 Md. at 111, 854 A.2d at 1196. To avoid summary judgment, however, the non-moving party must present more than general allegations; the non-moving party must provide detailed and precise facts that are admissible in evidence. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737–38, 625 A.2d 1005, 1011 (1993). Merely proving the existence of a factual dispute is not necessarily fatal to a summary judgment motion. *O'Connor*, 382 Md. at 111, 854 A.2d at 1196. "'[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.'" *Id.*, 854 A.2d at 1196 (quoting

> *Lippert v. Jung*, 366 Md. 221, 227, 783 A.2d 206, 209 (2001)). So long as the record reveals no genuine dispute of any material fact "necessary to resolve the controversy as a matter of law, and it is shown that the movant is entitled to judgment, the entry of summary judgment is proper." *Id.*, 854 A.2d at 1197 (internal quotation marks and citation omitted).

The trial court granted appellees' motion for judgment at the close of Dr. Le's case pursuant to Rule 2-519(a), which provides that "[a] party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party." Rule 2-519(b) provides that, when such a motion is made by a defendant at the close of a plaintiff's case in a jury trial, "the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made." In *Smithfield Packing Co. v. Evely*, 169 Md. App. 578, 591–92 (2006), we described the standard of appellate review:

> In reviewing a grant or a denial of a motion for judgment, we apply the same analysis as the trial court. *See University of Baltimore v. Iz*, 123 Md. App. 135, 149, 716 A.2d 1107 (1998); *Spengler* [*v. Sears, Roebuck & Co.*], 163 Md. App. [220] at 235 [(2005)]. "We consider all the evidence, including the inferences reasonabl[y] and logically drawn therefrom, in a light most favorable to the non-moving party." *Iz*, 123 Md. App. at 149, 716 A.2d 1107 (citing *Nationwide Mut. Fire Ins. Co. v. Tufts*, 118 Md. App. 180, 189, 702 A.2d 422 (1997)); *see also Spengler*, 163 Md. App. at 235, 878 A.2d 628 ("we 'assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in light most favorable to the party against whom the motion is made.'" (citations omitted); . . . .
>
> Thus, "'[i]f there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact in issue, then a trial court would be invading the province of the jury by declaring a directed verdict.'" *Houston*, 346 Md. at 521, 697 A.2d 851 (citing *Impala Platinum v. Impala Sales*, 283 Md. 296, 389 A.2d 887 (1978)); *see also Iz*, 123 Md. App. at 149, 716 A.2d 1107 (where the evidence is "legally sufficient to generate a jury question, we may affirm the trial court's denial of the motion."). The opposite is also true, *i.e.*, **where the evidence is not**

> **sufficient to generate a jury question, or stated differently when the evidence "permits but one conclusion, the question is one of law and the motion must be granted."** *Iz,* 123 Md. App. at 149, 716 A.2d 1107 citing *James v. General Motors Corp.*, 74 Md. App. 479, 484, 538 A.2d 782 (1988); *see Spengler,* 163 Md. App. at 235, 878 A.2d 628.

(Emphasis added.)

DISCUSSION

I. Summary judgment on Counts V & VI

In Count V, Dr. Le asserted that SAS breached its employment contract with him by terminating his employment; he alleged that SAS had "determined without basis that at least 75% of the directors of SAS voted in favor of terminating him," as required by § 4.4 of the Employment Contract between SAS and Dr. Le. Count VI similarly asked for a judgment declaring that Dr. Le was not properly terminated in accordance with § 4.4, and that SAS was therefore not entitled to purchase his outstanding shares in the professional association.

In granting the appellees' motion for summary judgment on Counts V and VI, the trial court made the following ruling:

> [THE COURT]: Now, we have the breach of contract allegations, it's alleged, and just so the facts are clear, they did, in fact, have this vote on April 25, 2014. It was well over seventy-five percent based on the information that was presented to them to terminate [Dr. Le's employment] relationship without cause. There were conversations, and comments made after that, [and] as a result the Defendants agreed to freeze the suspension, or the []termination.
>
> And the Court recognizes that there were the depositions of the various doctors that indicated it was their belief that Doctor Le was still part of the group. And the allegation is that the termination vote was nullified by that freeze. And even when you look at the notes of the hearing [sic], I think

the Defendants listed that as Exhibit . . . No. 19. There was an Exhibit No. 19 that had the meeting --- the meeting notes. I think that is important because the question is whether or not the freeze was actually a nullification.

It is clear based on everything that has been presented in the depositions, that when they appeared on June twenty-ninth, this was a reinstatement vote, not a vote to terminate again. Because [Dr. Le] continues to allege that he was --- he did not receive seventy-five [75%] percent, I believe it was seventy point five [70.5%] percent to terminate him.

That clearly, based on the evidence that has been presented, both [that Dr. Le] presented and the notes from that . . . meeting, as well as the Defense, different exhibit numbers, that this was a reinstatement vote. And in fact, I believe some of the notes talk about the attorneys said the only way is to reinstate and whether or not they were going to follow that advi[c]e or not they voted to reinstate and he did not.

It is clearly undisputed that in April 2014 he was terminated without cause, and in June 2014 it was a reinstatement vote and he was not reinstated. It is undisputed that he was terminated[;] therefore based on that, the Court finds that there are no material facts to be in dispute and as it relates to the breach, the Court is going to grant summary judgment as to that, because as a matter of law he was terminated and he was not reinstated in June, on June 29, 2014.

Because [the] Court finds, based on everything that's been presented that June 29, 2014, I've said it once already, twice already, it was a reinstatement vote, not a termination vote. And the stay or --- that is referred to in the minutes show that it was not a nullification that they did [in May].

So therefore, a stay, or a freeze does not mean nullification. Even though some of the members may have considered him part of the group, he still did not leave until October. So based on this, the Court finds that there [are] no material facts in dispute. And as it relates to the breach of contract, the Court is going to grant summary judgment.

As it relates to the declaratory judgment, this Court clearly finds based on the stock purchase agreement that there was a provision that clearly says termination for any reason . . . .

* * *

> . . . [O]nce you leave employment for whatever reason, he is required to sell the stock back for whatever it was, ten dollars a share. It doesn't say for cause, without cause, et cetera. [Dr. Le] argues that if it was an illegal termination number one, there may be some action. And then also --- so the Court does --- oh, and the question of whether or not he was terminated.
>
> The agreement, the stock purchase agreement doesn't [sic] say if he was [terminated] for whatever reason, like I said with or without cause. It is clear he left his employment even at the --- even at best October, which is when he actually physically left, and I know he did start the new employment right away.
>
> **So as it relates to the declaratory judgment the Court is going to find that [Dr. Le] . . . was, in fact, terminated. He is required pursuant to the purchase agreement to sell back that stock at ten dollars a share because his employment was, in fact, terminated. So I guess I would grant summary judgment as to the declaratory judgment based on that.**

(Emphasis added.)

On appeal, Dr. Le argues that summary judgment was improper because there was a genuine dispute of material fact regarding the effect of the "freeze" of the April 25 termination vote. He argues that there was evidence from which a jury could have inferred that the "effect of the freeze was to nullify the April 25 vote," and that even if that was not the conclusion the jury could draw, at a minimum the jury could have concluded that the "freeze stayed the April 25 vote so that the issue of whether or not Dr. Le would be terminated could be reconsidered and resolved by way of a re-vote." In that case, a "re-vote" on the question of whether to terminate Dr. Le on June 29 would have required the votes of 75% of the directors (*i.e.*, the shareholders), as had the initial termination vote, and the record reflects that only 70.5% of the shareholders voted against reinstatement.

We agree with the circuit court that there was no genuine dispute of a material fact. In order to make factual findings that could support Dr. Le's theory, a jury would have had to disregard the evidence and could only have reached Dr. Le's viewpoint by means of conjecture rather than reasonable inferences from the evidence before the motion court.

Meeting minutes support the court's ruling in this regard. They reflect:

> On Thursday, May 2, 2014, a discussion was held with the Executive Officers of SAS (Drs. Osuji, Prabhakar, Buckley, and Jackson), along with Dr. Le. This meeting was at the request of Dr. Le, and due to concerns that physicians were backing away from statements that were made and presented at the prior termination meeting. At that time, a decision was made to freeze the decision (vote) of the SAS Partners, in accordance with the bylaws. This was done to maintain harmony within the business and decrease internal SAS disruption.
>
> Later, on Friday, June 13, 2014 another discussion was held to re-address the termination decision of SAS Partners. Dr. Le requested that this meeting be held to do something about this termination vote that was still out there. Those present for this meeting included SAS Executive Officers and Dr. Le. An e-mail communication from SAS corporate attorney, Nick Giampetro (sent to Drs. Osuji and Prabhakar) was read and discussed with all members along with emails regarding recent behavioral issues. Nick Giampetro reported that there must be a re-instatement vote held, in order to overturn the prior termination vote. Dr. Le also suggested that rather than having a "freeze" of the SAS partners['] previous vote of termination, he preferred a re-vote (re-instatement vote). He was aware of the requirements necessary for his re-instatement to occur (as dictated by both SAS corporate attorney and SAS bylaws).

Notes of a June 13, 2014 "Follow-Up Meeting with Dr. Le" regarding "SAS Termination Vote and Behavioral Issues" provide:

> Dr. Osuji called a meeting to order regarding the **stay of termination of Dr. Le**. He reviewed the events over the past year including the placement of Dr. Le on a focused physician performance evaluation review and continued disruptive behavior which led to a termination vote by the group. He reviewed the rationale for this executive committee to stay the termination

> of Dr. Le which included the fact that some members wished to change their vote as a result of information obtained from Dr. Le. Dr. Le previously stated that we needed to do something about the termination vote. As part of his research, Dr. Osuji called the corporate attorney, who replied in email which was read by Dr. Jackson, stating that "even though some members wanted to change their vote, it was a valid vote, and the only way to deal with that vote would be to call another valid meeting and have a vote for reinstatement or overturning of prior vote." It was mentioned that Dr. Benjamin spoke at our business meeting on June 5th. In that meeting, he mentioned that Dr. Linder [the Chief Medical Officer and most important personage at BWMC] gets requests for proposals to take over the anesthesia contract weekly from other organizations, and it was only because Dr. Benjamin is our biggest supporter that he tells Dr. Linder not to bother because he is happy with our group. This statement by Dr. Benjamin reestablished the credibility of the statements during the termination meeting, which would make it less likely that the people who had thought about changing their votes, would.
>
> It was suggested that as an executive committee, we do not have to follow the advice of an attorney; however, Dr. Prabhakar felt that it was essential that we did. As a result and **with the consent/agreement of Dr. Le**, Dr. Prabhakar and Dr. Jackson will, in lieu of a meeting, develop a **vote proxy for reinstatement of Dr. Le**, which will be distributed to each of the board members of Severn Anesthesia Services, P.A. This should occur prior to the end of June and **Dr. Le has agreed to abide by the outcome.**

(Emphasis added.)

A later paragraph was added by addendum "9/2/14," and it provided further details regarding the June 13 discussions about the reinstatement vote:

> Dr. Le suggested that on the vote proxy for re-instatement of Dr. Le that Drs. Prabhakar, Osuji, Jackson, and Buckley should all sign first, that way when it is passed around to other members, they will go ahead and sign in favor of re-instatement. Dr. Prabhakar did not concur with this suggestion stating that we should not influence anyone's vote and so we should not sign first. In lieu of a proxy, Dr. Le suggested that we just bring it to the members and have it re-voted. Dr. Prabhakar suggested that another vote be taken at the upcoming partners meeting. Three times in this meeting, Dr. Osuji recommended that we not have a re-vote because he felt that a favorable outcome would still be in doubt. **Dr. Le agreed to abide by the outcome of the re-vote.**

(Emphasis added.)

The shareholders' meeting on June 29, 2014, at which Dr. Le failed to garner the required votes for reinstatement, was a quarterly shareholders' meeting at which other business was discussed. The portion of the minutes relating to Dr. Le provide:

> **Re-instatement vote** of Dr. Le: (all partners spoke)
>
> --began with some physicians conveying concerns over the initial voting (**termination vote** of Dr. Le)
>
> --discussion involved clarification of the actual SAS bylaws and language used during initial voting
>
> **--additional discussion was held concerning recent behavioral issues and request for a "re-instatement vote" per Dr. Le**
>
> --After discussion of all issues (Dr. Le asked to leave room), partners were asked to **vote on the issue of re-instatement into SAS** (per SAS agreement, voting was anonymous, in writing, and on official SAS department letterhead). Partners who voted by proxy (in accordance with SAS bylaws) had their vote included in the final count. Dr. Oletsky counted and read the vote results to the group. Dr. Prabhakar confirmed the final vote count.
>
> --Partners votes went as follows:
>
> **YES to re-instatement** of Dr. Le (**overturn prior termination vote**) – 3
> **NO to re-instatement** of Dr. Le (**maintain prior termination vote**) – 12
>
> 2 partners did not vote/determine a proxy
> -additional discussion was held in presence of Dr. Le

(Emphasis added.)

Dr. Le also argues that, even assuming that the April 25 vote was merely "frozen," the reinstatement vote taken on June 29 failed because it had the support of fewer than 75% of the partners, noting that § 4.4 of the restated employment contract between Dr. Le and

SAS mandated that a partner could only be terminated without cause with the consent of no fewer than 75% of the directors. Dr. Le asserts that only 70.5% of the directors voted against his reinstatement at the June 29 vote. But there is nothing in his employment contract or the bylaws requiring a 75% vote against reinstatement in order to sustain a previous vote to terminate an employee without cause. And, of the votes *cast*, 80% voted against reinstatement.

The SAS bylaws require only a simple majority vote "to take or authorize action upon any matter which may properly come before the meeting, unless more than a majority of the votes cast is required by the statute or by the charter." Bylaws, Art. II, § 8. Because the Executive Officers decided to "freeze" the termination vote "in accordance with" their general power under "the bylaws" to "exercise such powers and perform such duties as shall be determined from time to time by the board," and because there is no countervailing statutory or charter provision requiring a 75% vote of all shareholders/directors on issues related to reinstatement (or even addressing that topic), the motion court correctly concluded that Dr. Le was properly terminated. And it ineluctably follows that, if Dr. Le's employment was terminated, SAS had the right to purchase his shares at the agreed price.

Summary judgment was properly granted on Count V and Count VI.

II. Motion for judgment on Counts I – IV

A. Defamation Per Se

The elements of the tort of defamation per se are: 1) that the defendant made a defamatory statement about plaintiff to a third person; 2) that the statement was false; 3)

that the defendant was legally at fault in making the statement; and 4) that plaintiff suffered damages as a result. *Rosenberg v. Helinski*, 328 Md. 664, 675 (1992) (citing *Hearst Corp. v. Hughes*, 297 Md. 112, 120–25 (1983); *Jacron Sales Co. v. Sindorf*, 276 Md. 580 (1976)). A defamatory statement is one that tends to expose the target to ridicule or scorn. *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012). The plaintiff in a defamation action has the burden of proving that the statement was false. *Id.* Whether a statement is defamatory is a question of law for the court. *Id.*

Once a plaintiff has persuaded a court to find, as a matter of law, that a defamatory statement has been made, the burden shifts back to the defendant to prove that the defendant should be shielded from liability because the statement was covered by a privilege. *Gohari v. Darvish*, 363 Md. 42, 65 (2001). A privilege can, however, be forfeited by abuse. So, although the existence of a privilege is a question of law for the court, the question of whether the defendant has abused a privilege is generally a jury question. *Id.* Nevertheless, a court may decide the abuse question as a matter of law "if the plaintiff fails to allege or prove facts that would support a finding of abuse." *Shirley v. Heckman*, 214 Md. App. 34, 43–44 (2013).

Here, the court granted a motion for judgment in appellees' favor on Dr. Le's defamation claim, finding:

> [A]s I said earlier when looking at defamation, there must be a defamatory communication that was communicated tending to expose the plaintiff to public scorn, hatred, contempt, or ridicule to a third person who reasonably recognized the statement as being defamatory. That the statement was false, that the Defendant was at fault in communi[cat]ing the statement, and the Plaintiff suffered harm.

Question also arose in this court's mind was what I asked is, what was the statement? Counsel has responded, well, because the court's concern was there was no specific recollection verbatim of what the statement was, it's the Plaintiff's contention that it's really the gist of the statement, and the statement concerns the competence of the Plaintiff. However, **the testimony concerned the clinical issues and problems, and so there was nothing concerning his competence as an anesthesiologist in performing the thoracic and vascular surgeries**. Even Dr. Benjamin said he never said that, and I think the witnesses confirmed that that was not the case. It was **really the clinical issues that they may have had. And actually, a lot of it actually was to behavior.**

And obviously there's the second part of the statement [which the amended complaint alleged] was that unless the Plaintiff was terminated, their contract was in jeopardy. **All of the witnesses, even the Plaintiff, testified that that statement was never made.** It was clear that the inference was that their contract was in jeopardy. And it's also clear that there were complaints, and that, I think Dr. Buckley pretty much said it, that they had to pick up their game because there were others, groups, third parties, contacting the hospital; and [Dr. Benjamin] was their advocate that they needed to pick up their game. So clearly the first question is, what is the defamatory statements that were made or the gist of the statements? And that they must be false.

However, **what the Plaintiff has asserted and has alleged, number one, based on the witness testimony either did not, was not said, or is not false**. The other aspect of this, is whether or not it was published to a third party. I don't have a problem with publication. Publication in this court's opinion, can just be the reciting of whatever it is. So this court's opinion it's, that's a publication. The question is, was it also [published] to a third party?

Here in this situation we have members, shareholders, partners having a conversation within that context in that group concerning that partnership. The court finds they are not third parties. They are all members of the same group having a discussion. And **to summarize this situation what I would say in a nutshell is, you have partners attending a shareholder meeting having discussions about problems and issues within that partnership**. Some of which were relayed to them by an outside party concerning that, now results in [a] civil suit concerning defamation, injurious falsehood, conspiracy; and interference with a contractual relation. That's this case in a nutshell, because the partnership based on comments and conversations, as

> well as the situation that led to it, meaning three members of the Executive Committee met and said these are concerns we need to bring to the attention which may end [in] a vote to terminate one of our people. And it may not have terminated, but to bring to their attention for the entire collective to decide. And now we have a civil suit as a result of that with allegations of malice, ill-will, reckless indifference [unintelligible], etc.
>
> **But** everything that was presented, this court finds that **none of the statements that are alleged in the complaint are defamatory. They did not occur based on the testimony even [of] the Plaintiff, nor was it published to a third party.** In [the] light most favorable to the Plaintiff in this matter, considering all of the facts that have been presented to this jury and to this court, the court is going to grant the Motion as it relates to the defamation count. Motion for Judgment in favor of the Defendant as to Defamation.

(Emphasis added.)

Dr. Le contends that the trial court erred in a variety of ways. He argues that the court overlooked the "ample evidence" he had produced supporting his claim that Dr. Osuji made, and published, defamatory statements at the April 25 meeting, citing specifically his own testimony and the testimony of Dr. Nguyen. In response, appellees contend that the trial court correctly ruled that Dr. Le produced no evidence that the allegedly defamatory statements specifically set forth in the amended complaint were ever made.

As noted above, the amended complaint alleged in Paragraphs 32 and 33:

> 32. . . . [A]t the April 25 Special Meeting, Dr. Osuji and Dr. Jackson verbally communicated to the approximately 17 SAS partners/directors in attendance at that meeting that BWMC administrators had informed them (*i.e.*, Dr. Osuji and/or Dr. Jackson) that:
>
> (i) BWMC had received complaints from other practice groups within BWMC that Dr. Le was unable to provide competent anesthetic medical management services; and

> (ii) BWMC would not renew SAS' contract with BWMC, or that is [sic] was in jeopardy of termination, if Dr. Le was not terminated from SAS immediately.
>
> 33. These statements (*i.e.*, the statements referenced in paragraph 32) will in this Amended Complaint sometimes be referred to collectively as the "April 2014 Statements."

The "April 2014 Statements" were the allegedly defamatory statements that were the basis for Count I of the amended complaint, labeled "Defamation per se."

Dr. Le argues that he adduced evidence that Dr. Osuji told the shareholders at the April 25 meeting that Dr. Benjamin had told Dr. Osuji "that various BWMC surgeons had complained to him (e.g., to Dr. Benjamin) about Dr. Le's medical competency." Dr. Le contends that there was evidence supporting the allegation that Dr. Osuji had told the shareholders that Dr. Benjamin had received complaints that Dr. Le "couldn't handle big cases" and may not have the "ability to adequately do the big vascular and thoracic cases." And, Dr. Le further argues, Dr. Benjamin denied making such statement to Dr. Osuji.

Dr. Le also takes issue with the trial court's ruling that, even assuming the April 2014 Statements were made, they were not published to a third party. Dr. Le argues that the common interest privilege does not apply to false statements, and that, furthermore, a qualified privilege can be forfeited if the plaintiff can show malice on the part of the speaker or that the publication was not made for a protected purpose. Dr. Le contends that he adduced evidence of both actual malice and an improper purpose (namely, spite) for Dr. Osuji to have made false statements to the SAS shareholders.

Even if we assume arguendo that there was some evidence from which the jury could have found that the April 2014 Statements were made, the court was clearly correct in its observation that the statements were made only to other shareholders of SAS who had a common interest with Drs. Osuji and Jackson. Consequently, the court did not err in entering judgment in favor of Dr. Osuji and Dr. Jackson on the claim of defamation.

We discussed the common interest privilege in *Shirley v. Heckman*, 214 Md. App. 34, 43 (2013):

> The common interest privilege shields a speaker against liability for defamation arising from statements "publish[ed] to someone who shares a common interest or, relatedly, publish[ed] in defense of oneself or in the interest of others." Dan B. Dobbs, The Law of Torts, § 413, at 1158 (2000). The privilege recognizes the broader public value in "promot[ing] free exchange of relevant information among those engaged in a common enterprise or activity and to permit them to make appropriate internal communications and share consultations without fear of suit." *Gohari v. Darvish*, 363 Md. 42, 58, 767 A.2d 321 (2001) (quoting Dobbs, § 414, at 1160–61). A common interest may be "found among members of identifiable groups in which members share similar goals or values or cooperate in a single endeavor," *id.* (quoting Dobbs, § 414, at 1160–61), and when "the circumstances are such as to lead any one of several persons having a common interest in a particular subject matter correctly or reasonably to believe that facts exist which another sharing such common interest is entitled to know," *id.* at 57, 767 A.2d 321 (quoting *Hanrahan v. Kelly*, 269 Md. 21, 28, 305 A.2d 151 (1973)).

We had occasion to discuss the common interest privilege applicable to co-employees in *Lindemuth v. McCreer*, 233 Md. App. 343, 358-59 (2017), where we said:

> . . . [T]he policy underlying the common law was that a person should not be held liable for defamation where that person, "in good faith, . . . publishes a statement in furtherance of his own legitimate interests, or those shared in common with the recipient or third parties." *Marchesi v. Franchino*, 283 Md. 131, 135–36, 387 A.2d 1129 (1978). Quoting from [DAN B. DOBBS,] THE LAW OF TORTS, *supra*, § 414 at 1160–61, the Court of Appeals has explained,

> Common interests are usually found among members of identifiable groups in which members share similar goals or values or cooperate in a single endeavor . . . . **The idea is to promote free exchange of relevant information among those engaged in a common enterprise or activity and to permit them to make appropriate internal communications and share consultations without fear of suit** . . . .

Gohari, *supra*, 363 Md. at 58, 767 A.2d 321 (emphasis added).

Dr. Le does not deny that the common interest privilege is generally applicable to statements made by co-owners of a business about the operations of the company. But he contends that there was sufficient evidence to create an issue for the jury to decide the question of whether Dr. Osuji and Dr. Jackson abused the privilege by making the April 2014 Statements at the April 25 meeting.

In *Seley-Radtke v. Hosmane*, 450 Md. 468 (2016), the Court of Appeals analyzed the application of the common interest privilege in the context of a claim of purely private defamation, and observed that, "[i]f the defendant asserts a common law conditional privilege, the plaintiff bears the additional burden of overcoming that privilege to prevail on the defamation claim." *Id*. at 472-73.

The parties in *Seley-Radtke* disagreed on the burden of proof applicable to the issue of whether the plaintiff had established an abuse of the common interest privilege. The plaintiff asked the court to instruct the jury, in accordance with Maryland Civil Pattern Jury Instruction 12:12, that, "[i]n order to recover, the plaintiff must prove by a preponderance of the evidence that the defendant made the statement with actual knowledge that the statement was false, coupled with the intent to deceive another person by means of the

statement." MPJI–Cv 12:12 (4th ed., 2013 Supp.). 450 Md. at 479. But the trial court in that case instructed the jury that the burden of proof on this issue required the plaintiff to prove by clear and convincing evidence that the defendant had actual knowledge the statement was false and had intent to deceive another person. *Id*. On appeal from the judgment for the defendant, we held that the trial court erred in instructing the jury that the burden of proof on this issue required proof by clear and convincing evidence, *Hosmane v. Seley-Radtke*, 227 Md. App. 11, 28 (2016), and the Court of Appeals affirmed our ruling, 450 Md. at 502, stating, "we hold that the standard of proof required to overcome a common law conditional privilege in a purely private defamation action is preponderance of the evidence."

In *Seley-Radtke*, *id*. at 504, the Court of Appeals observed: "[A] plaintiff seeking to defeat a common law conditional privilege must prove that the defendant had 'actual knowledge that his [or her] statement [was] false, coupled with his [or her] intent to deceive another by means of that statement[,]' *i.e*., that the defendant acted with malice. *Piscatelli*, 424 Md. at 307–08, 35 A.3d at 1148 (some alterations in original) (citation omitted)." Accordingly, the Court of Appeals approved MPJI-Cv 12:12 (4th ed., 2013 Supp.), and noted that that instruction "do[es] not use the word 'malice,' but rather provide[s] its definition: '[i]n order to recover, the plaintiff must prove by a preponderance of the evidence that the defendant made the statement with actual knowledge that the statement was false, coupled with the intent to deceive another person by means of the statement.'" *Id*. at 507.

Although the trial judge did not track the wording of MPJI-Cv 12:12 in his explanation of why he was granting the motion for judgment on the defamation count, we infer that he found no evidence that would have been sufficient for a jury to find that either Dr. Osuji or Dr. Jackson had abused the common interest privilege that applied to the comments they made at their meeting with fellow shareholders. The trial judge emphasized that, "in this situation we have members, shareholders, partners having a conversation within that context in that group concerning that partnership." "[I]n a nutshell . . . you have partners attending a shareholder meeting having discussions about problems and issues within that partnership." "[T]hree members of the Executive Committee met and said these are concerns we need to bring to the attention" of the other shareholders. There was extensive testimony establishing that the concerns were neither unreasonable nor baseless. The trial judge was not persuaded that Dr. Le had presented evidence that would support a jury finding of an abuse of the common interest privilege, and we are not persuaded that the trial judge was in error.

B. Injurious Falsehood

In the amended complaint, Dr. Le labeled Statements 1 and 2 in Paragraph 32 as "the April 2014 Statements," and the statements regarding the incidents with Dr. Crane's assistant and the laryngoscope blade as "the June 2014 Statements." The amended complaint asserted that Drs. Osuji and Jackson committed the tort of injurious falsehood when they, "with malice and intent to harm Dr. Le's professional and clinical reputation,

character and standing with SAS," published the April 2014 and June 2014 Statements to the SAS partners. The court granted the motion for judgment on this count, ruling:

> Last is Injurious Falsehood, which is very similar to the defamation count. The elements are, and I'm going to actually just go to the elements right from the [Maryland Civil Pattern] Jury Instructions ["MPJI-Cv"] 7.3.[3] A false statement of fact about someone else's property, and that the statement may reasonably be expected to affect the value of that property, he or she is responsible for the financial loss that results. The Plaintiff must prove that the Defendant was motivated by ill-will towards the Plaintiff or made the statements with knowledge of its falsity or reckless disregard for the truth.[4] There's also [the] fact that a person has the right to state an opinion about someone's property, even though such opinion contains exaggerations and unfavorable comparisons. That's a defense which is under [MPJI-Cv] 7.4.[5]

[3] MPJI-Cv 7:3 provides that the "elements of liability" for injurious falsehood are:

> When a person makes a false statement of fact about someone else's property and that statement may reasonably be expected to affect the value of that property, he or she is responsible for the financial loss that results. The plaintiff must prove that the defendant was motivated by ill-will towards the plaintiff or made the statement with knowledge of its falsity or reckless disregard for the truth.

[4] In a previous portion of the trial court's oral opinion, the court had stated that there was no evidence sufficient to support a finding of malice: "The court does not feel any type of ill-will, malice, hatred, or even revenge has been established. Anything would be conjecture or speculation, which is not allowed to be presented to the jury." "There is still, again, no malice, no recklessness, etc. that had been established . . . ."

[5] MPJI-Cv 7:4 sets forth the jury instructions on the defense, to an injurious falsehood claim, of "Opinion":

> A person has a right to state an opinion about a competitor's property even though such opinion contains exaggerations and unfavorable comparisons.

> And then also there is a privilege under [MPJI-Cv] 7.5.[6] Also the standard is much higher for injurious falsehood. One thing that was brought up by the defense is that the Plaintiff immediately, or within a few days, obtained new employment. There's been nothing, other than his personal feelings concerning his embarrassment or humiliation towards his family, that no one else is treating, in the public, is treating him any differently. No one knows, other than he say[s] he can't get a reference or hasn't gotten a reference from SAS. When considering that higher standard, the court does not believe that that has been established either. Therefore, the court's going to enter judgment in favor of the Defendants on that count as well.
>
> And also just for the record purposes, the court is going to – because I agree with 99.9 percent of the Defendants' arguments that they have made concerning this motion – so for the record purposes and for whatever it's worth, the court is going to incorporate the arguments made by [counsel for the defendants] in his motion as part of the court's rationale that was not explained any further in this matter, because I completely agree with that rationale and argument that have been placed on the record.

Dr. Le argues that he produced sufficient evidence that: 1) he suffered pecuniary loss, "in the form of the disparity between the compensation he earned while employed by

[6] MPJI-Cv 7:5 articulates the defense, to an injurious falsehood claim, of "Privilege":

> A person has a right to make statements alleging facts regarding another person's property or business if:
>
> (1) he or she has a reasonable belief that the statements relate to information which affects or places in danger his or her economic interests in the property or business; and
>
> (2) third persons who hear those statements have a rightful stake in knowing the facts contained in the statements in order to protect their legitimate interests in the property or business.

SAS" and at his replacement jobs; 2) Dr. Jackson did participate "in publication of the Statements"; and 3) the Statements were not privileged.

Drs. Osuji and Jackson respond that Dr. Le failed to produce evidence that Dr. Osuji made any false statements at the April 25 meeting, as they had argued in support of the motion for judgment on the defamation claim, and Dr. Le failed to prove that Dr. Jackson made any statements at that meeting beyond calling the meeting to order in his capacity as Secretary. In the alternative, assuming arguendo that the Statements were made, and that they were false, the appellees contend that Dr. Le failed to produce evidence they were made with malice, a requirement for recovery on a claim of injurious falsehood, and Dr. Le failed to prove that he sustained special damages, another requirement for recovery for injurious falsehood.

In *Springer v. Erie Ins. Exch*., 439 Md. 142, 167 n.5 (2014), the Court of Appeals described the tort of injurious falsehood as follows:

> Injurious falsehood, otherwise known as disparagement, is a "false and injurious statement that discredits or detracts from the reputation of another's character, property, product, or business." Black's Law Dictionary 538 (9th ed. 2009). *See Rite Aid Corp. v. Lake Shore Investors*, 298 Md. 611, 617, 471 A.2d 735, 738 (1984) ("It is firmly established that . . . injurious falsehood (sometimes known as disparagement or slander of title) . . . [is an] actionable tort[].").

In *Beane v. McMullen*, 265 Md. 585, 607–09 (1972), the Court of Appeals quoted with approval this passage from Dean Prosser's treatise:

> In PROSSER, LAW OF TORTS, at 919-920 (4th ed. 1971), it is stated:
>
> 'Injurious falsehood, or disparagement, then, may consist of the publication of matter derogatory to the plaintiff's title to his property, or its

> quality, or to his business in general, or even to some element of his personal affairs, of a kind calculated to prevent others from dealing with him, or otherwise to interfere with his relations with others to his disadvantage. The cause of action founded upon it resembles that for defamation, but differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases. The falsehood must be communicated to a third person, since the tort consists of interference with the relation with such persons. But the plaintiff must plead and prove not only the publication and its disparaging innuendo, as in defamation, but something more. There is no presumption, as in the case of personal slander, that the disparaging statement is false, and the plaintiff must establish its falsity as a part of his cause of action. Although it has been contended that there is no essential reason against liability where even the truth is published for the purpose of doing harm, the policy of the courts has been to encourage the publication of the truth, regardless of motive.
>
> 'In addition, the plaintiff must prove in all cases that the publication has played a material and substantial part in inducing others not to deal with him, and that as a result he has suffered special damage. The analogy is thus to the kind of personal slander which does not charge a crime or loathsome disease, or defame him in his business, profession, or office, and so is not actionable unless damage is proved.'

As set forth in MPJI-Cv 7:5, quoted in a footnote above, a person has a privilege to make statements alleging facts regarding another person's business if the speaker has a reasonable belief that the information concerns the speaker's interest in the business, and the recipients of the statements also have an interest in that business. That privilege applied to the statements Drs. Osuji and Jackson made within the confines of private meetings of the shareholders of SAS.

For all the reasons that Dr. Le's defamation claim failed, so did his claim for injurious falsehood. Publication of the April 2014 Statements and the June 2014 Statements to the co-shareholders of SAS was protected by the conditional common interest privilege, as noted above. As discussed above, the trial court did not err in

concluding that there was insufficient evidence to support a finding of abuse of the common interest privilege, and therefore, the court did not err in granting judgment on the claim of injurious falsehood.

C. Tortious Interference with Contractual Relations

In Count III of the amended complaint, Dr. Le alleged that Drs. Osuji and Jackson committed tortious interference with contractual relations by making the April 2014 and June 2014 Statements which, Dr. Le alleged, "were willful misrepresentations of fact that were designed to create, and did create, an atmosphere of fear and panic by instilling in the SAS partners a false belief that the [Hospital] Contract, and thus the SAS partners' livelihood, was in imminent jeopardy and that the only way to remove that jeopardy was to vote in favor of SAS terminating Dr. Le's employment with SAS without cause."

In granting the motion for judgment on this claim, the court stated:

> The next [claim] is Tortious Interference with a contract. Elements are: Existence of a contract between the Plaintiff and a third party, the Defendants' knowledge of the contract, the Defendants' intentional interference with a contract, a breach of that contract by a third party; and damages. Clearly, there was no third party. The parties are all members of the same organization who are basically one, so there was no breach by [a] third party. Additionally, the court found there was no breach because 75 percent of the members voted to terminate [without cause]. And even if you want to consider that June vote as a termination vote as the Plaintiff asserts, even though the court found otherwise, it was still 12 to three which is 80 percent [of the votes cast], so there was no breach of any contract by a third party.
>
> There is still, again, no malice, no recklessness, etc. that had been established even based on [Dr.] Buckley's testimony. No revenge, no nothing. This was something that they wanted to bring to the attention that was unnerving to some of the members, seeing that Dr. Benjamin wasn't happy, and that was pretty much confirmed. So as it relates to the Tortious

> Interference with the contract, court's going to enter judgment in favor of the Defendants.

Dr. Le contends that this ruling was in error because actions taken outside the scope of the employment and actions undertaken with malice are both exceptions to the general rule that a party cannot interfere with its own contract, and excuse the lack of a third party here. He argues that publication of the April 2014 Statements and the June 2014 Statements to the other SAS shareholders was outside the scope of Drs. Osuji and Jackson's employment because they "knowingly published false statements about Dr. Le *to* --- rather than *for* --- their employer." Dr. Le contends that he put on ample evidence that Drs. Osuji and Jackson "caused the Statements to be published at the April 25 meeting purely out of spite for Dr. Le's opposition to various initiatives championed by Dr. Osuji," and that he demonstrated malice by Drs. Osuji and Jackson because he established a prima facie case of defamation and injurious falsehood against each of them, citing *Carter v. Aramark Sports & Entm't Servs., Inc*., 153 Md. App. 210, 241 (2003).[7]

[7] We note that, in *Carter*, this Court affirmed the grant of summary judgment on claims of defamation and tortious interference with economic relations on the basis of the qualified common interest privilege. In *Carter*, 153 Md. App. at 241-42, we noted that the Court of Appeals had said in *Gohari v. Darvish*, 363 Md. 42, 56 (2001), that a defendant "would not face liability for an otherwise defamatory statement 'where, in good faith, [the defendant] publishes a statement in furtherance of his own legitimate interests, or those shared in common with the recipient or third parties, or where his declaration would be of interest to the public in general.'" Under such circumstances, the statement is privileged. We observed in *Carter* that the question of whether or not a privilege has been abused "is generally a question of fact for the jury." 153 Md. App. at 243. But we also recognized that there is an exception: "Nonetheless, where there is no evidence of abuse, and certainly nothing in the record to raise a genuine issue of material fact with respect to this issue, the question may be determined on summary judgment and thus be subject to *de novo* review on appeal." *Id*. We held this exception was applicable in *Carter*.

Appellees counter that there is no third party involved in this case, and no reason to depart from the settled law that parties cannot interfere with their own contract. Further, appellees contend there was no evidence that the statements at issue were motivated by malice or ill-will or spite, or made outside the scope of Drs. Osuji and Jackson's employment with SAS. Therefore, assuming the statements were made and they were false, they would be privileged.

To prevail on a claim for tortious interference with contractual relations, a plaintiff must prove five elements: (1) existence of a contract between plaintiff and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional interference with that contract; (4) breach of that contract by the third party; and (5) resulting damages to the plaintiff. *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 466 (1991) (citations omitted.) This Court said in *Bagwell v. Peninsula Regional Medical Center*, 106 Md. App. 470, 503 (1995), that neither a party nor the agent of a party can interfere with their own contract:

> As a matter of law, a party to a contract cannot tortiously "interfere" with his or her own contract; the party can, at most, breach it. *Natural Design, Inc. v. The Rouse Co.*, 302 Md. 47, 71, 485 A.2d 663 (1984); *Wilmington Trust Co. v. Clark*, 289 Md. 313, 329–30, 424 A.2d 744 (1981); *Bleich v. Florence Crittenton Serv. of Baltimore*, 98 Md. App. 123, 146, 632 A.2d 463 (1993). **Neither can an agent of the party to a contract, acting within the scope of the agency, "interfere" with the contract.** *Natural Design*, 302 Md. at 71, 485 A.2d 663; *see also Continental Casualty Co. v. Mirabile*, 52 Md. App. 387, 402, 449 A.2d 1176 (1982).

(Emphasis added.)

Here, Dr. Le's employer (SAS) did not breach his employment contract. The shareholders of SAS voted to exercise the contractual right to terminate Dr. Le's

employment without cause. Moreover, Dr. Le did not present evidence that would permit the jury to conclude that Drs. Osuji and Jackson acted tortiously in communicating concerns to their co-shareholders. Under the circumstances, the trial court did not err in granting judgment in favor of appellees on this claim.

D. Conspiracy

The fourth claim against Drs. Osuji and Jackson alleged that they had conspired to publish the April 2014 Statements and the June 2014 Statements, and thereby caused Dr. Le emotional distress and financial damages. In granting the motion for judgment on the conspiracy claim, the trial court found:

> . . . [A]s to the civil conspiracy, and all these facts seem to overlap concerning these four allegations, the allegation is that Dr. Osuji and Dr. Jackson did in fact conspire against the Plaintiff in this matter. . . .
>
> But here we have members who are acting within their authority within this organization because a conspiracy --- especially consider Green v. Washington Suburban Sanitation Commission, 259 Md., I believe at 221 --- a civil conspiracy is defined as a combination of two or more persons by agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in and of itself illegal with the further requirement that the act or means employed must result in damages to the Plaintiff. Also we have the [Intracorporate Conspiracy Doctrine that is subject to] two exceptions, especially when you're considering the law in this matter. There's the assertion or allegation that there was ill-will, malice. However, seeing that these same individuals a week after this vote occurred, voted to nullify what was done. The court does not feel any type of ill-will, malice, hatred, or even revenge has been established. Anything would be conjecture or speculation, which is not allowed to be presented to the jury.
>
> The court does also find that what these Defendants did, were within the scope of their respective positions in this organization. So to have a conversation or even an agreement to bring to the floor issues concerning the organization, including specific issues, that does not rise to an unlawful act.

> It's definitely not illegal. So therefore as it relates to the Civil Conspiracy, the court is going to grant judgment in favor of Defendants in this matter.

In *Baltimore-Washington Tel. Co. v. Hot Leads Co., LLC*, 584 F. Supp. 2d 736, 744 (D. Md. 2008), the United States District Court for the District of Maryland dismissed a claim seeking damages for civil conspiracy, and explained:

> In Maryland, "[t]o recover damages for civil conspiracy, it must be shown that there was an agreement *by at least two persons* to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, and that the act or means used resulted in damage to the plaintiff." Maryland Pattern Jury Instructions Civil § 7:6 (emphasis added); *see Columbia Real Estate Title Ins. Co. v. Caruso*, 39 Md. App. 282, 384 A.2d 468, 472–73 (Md.Ct.Spec.App.1978).
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> * * *
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> **However, the "intracorporate conspiracy doctrine" holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy. In essence, this means that a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves.** *See, e.g., Marmott v. Maryland Lumber Company*, 807 F.2d 1180, 1184 (4th Cir.1986); *Buschi v. Kirven*, 775 F.2d 1240, 1251 (4th Cir.1985); *Denney v. City of Albany*, 247 F.3d 1172 (11th Cir.2001). There are two exceptions to this general rule. The first is where the officer or agent has an "independent legal stake in achieving the corporation's legal objective" and the other is where the acts of the officers were unauthorized by the corporate defendant. *See United States v. EER Systems Corp.*, 950 F.Supp. 130, 132 (D.Md. 1996) (Williams, J.).

Here, Dr. Le argues that the intra-corporate conspiracy doctrine does not apply because both exceptions were satisfied: Drs. Osuji and Jackson each had a personal stake in inducing SAS to terminate Dr. Le's employment, and neither was acting within the scope of their employment when they undertook the activities Dr. Le alleged in the amended

complaint were in furtherance of the conspiracy. There was insufficient evidence for a jury to find that either of those exceptions apply.

And in any event, we agree with the trial court's conclusion that the evidence did not show that Dr. Osuji and Dr. Jackson agreed either to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal. Therefore, we perceive no error in granting the motion for judgment as to the claim of civil conspiracy.

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