

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1065

September Term, 2012

ON REMAND

PETER A. MUNTJAN

v.

FRANK D. SCARFIELD, SR. ET AL.

Meredith,
Graeff,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.
Concurring and Dissenting Opinion
by Rodowsky, Lawrence F., J.

Filed: December 30, 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.

We consider this case on remand from the Court of Appeals. The case arises from a lawsuit filed by Peter A. Muntjan, appellant, against Frank D. Scarfield, Deborah Scarfield Torre, and Bettina M. Mabry, appellees, stemming from Mr. Muntjan’s eviction from a studio space that he leased. After the eviction, Mr. Muntjan filed a complaint against appellees, in the Circuit Court for Baltimore City, alleging Trover and Conversion and Invasion of Privacy. Mr. Muntjan did not request a jury trial within 15 days of service of the complaint, and there was no dispute that, pursuant to Maryland Rule 2-325, his failure to do so constituted a waiver of a jury trial.

Mr. Muntjan subsequently filed an amended complaint to, *inter alia*, add a cause of action for Abuse of Process and to request a jury trial. The circuit court ultimately denied his request for a jury trial and dismissed his claims for Invasion of Privacy and Abuse of Process. After a three-day bench trial, the circuit court entered judgment in favor of the appellees on the remaining claim for Trover and Conversion.

Mr. Muntjan appealed, raising eight issues for this Court’s review.¹ In an unreported opinion, all members of the panel agreed that the Abuse of Process claim failed to state a

¹ The eight issues presented by Mr. Muntjan were as follows:

1. Do two affirmative jury demands, one at the conclusion of an Amended Complaint with a new cause of action, preserve the right to a trial by jury?
2. Is obtaining a consumer credit report for [the] purpose of obtaining information for [a] pending lawsuit a permissible purpose?
3. Is a lawsuit by [a] private individual seeking monetary damages for invasion of privacy resulting from the unauthorized (continued . . .)

cause of action upon which relief could be granted, and the circuit court properly dismissed that claim. The panel split, however, on the question whether the circuit court erred in denying Mr. Muntjan’s request for a jury trial. Two members of the panel concluded that, because a party can demand a jury trial on a pleading that raises a new issue, and Count III in the Amended Complaint, Abuse of Process, raised a new issue, it was sufficient to revive the waived right to a jury trial. *See Muntjan v. Scarfield*, No. 1065, Sept. Term, 2012 (filed Aug. 5, 2014). The majority of the panel declined to rule, as did the dissent, that because Count III failed to state a claim upon which relief could be granted, it did not generate the

(. . . continued) obtaining of a consumer credit report controlled by limitations found in Commercial Law § 14-1214 or C & J Articles §§ 5-101 & 5-203?

4. May Discovery be refused on grounds that the information sought is already known to or otherwise obtainable by the party seeking discovery?
5. Is Discovery a due process right when it would lead to [the] identity of employees who were eyewitnesses to the subject occurrences and knowledgeable of facts as to true identities of culpable parties?
6. Should [the] trial court have allowed witnesses to testify as to first hand knowledge of defendants’ motives, intent, routine practice, and absence of mistake or accident, or at least testify as to defendants’ dishonesty?
7. Should [the] trial court have allowed lay witness testimony to offer opinion[s] as to [the] reasonableness of [the] value of items converted by defendants?
8. Did the trial court err by denying appellant his right to a trial by jury, dismissing 17 out of 19 witnesses under subpoena, denying appellant his right to discovery, dismissing two out of three counts on Amended Complaint, denying appellant his right to present evidence and testimony, and denying any and all relief?

right to a jury trial, noting that this argument was not relied on by the circuit court or argued on appeal.

Given the ruling that appellant was entitled to a jury trial, and the determination by a majority of the panel that the circuit court erred in dismissing Mr. Muntjan’s claim for Invasion of Privacy, a majority of the panel affirmed, in part, and reversed, in part, the decision of the circuit court. We remanded for a jury trial on Mr. Muntjan’s claims for Trover and Conversion and Invasion of Privacy. Given this resolution, we did not reach the other issues Mr. Muntjan raised in his appeal.

Appellees sought review in the Court of Appeals, raising only the issue whether Mr. Muntjan had a right to a jury trial on the claims for Trover and Conversion and Invasion of Privacy. The Court of Appeals agreed with the dissent, holding that the filing of an amended complaint, which presents a new claim and jury demand, does not revive a previously waived right to a jury trial where the new claim is dismissed for failure to state a claim upon which relief can be granted. *Scarfield v. Muntjan*, 444 Md. 264, 271-76 (2015). It reversed and remanded to this Court to “resolve the discovery issues” raised in Mr. Muntjan’s original appeal and “thereafter to remand the matter to the Circuit Court for Baltimore City for a bench trial as to” Counts I and II, Trover and Conversion and Invasion of Privacy. *Id.* at 276-77.

On remand, therefore, we will address the following issue in this opinion:

Did the circuit court err in denying Mr. Muntjan’s motions to compel discovery or impose sanctions?

For the reasons set forth below, we shall affirm the decision of the circuit court in denying Mr. Muntjan's discovery motions. As we discuss in more detail, *infra*, we will remand this case to the circuit court for a bench trial on Mr. Muntjan's claim for Invasion of Privacy.

FACTUAL AND PROCEDURAL BACKGROUND

We adopt the facts set forth in our previous unreported opinion. We additionally set forth the facts relevant to the discovery issue presented. On July 25, 2011, Mr. Muntjan filed a Motion for Immediate Sanctions Including an Order Compelling Discovery on Defendants Scarfield, Torre, and Mabry. He asserted that he had not received responses to the discovery requests that he sent to the appellees, and appellees "should be sanctioned."

On August 10, 2011, appellees filed their response to Mr. Muntjan's motion for sanctions and to compel discovery. They argued that Mr. Muntjan's motion should be denied because discovery was not yet due, and Mr. Muntjan did not attempt to resolve the discovery dispute in good faith. They further asserted that Mr. Muntjan's motion was without substantial justification and was filed in bad faith, and therefore, pursuant to Maryland Rule 1-341, the court should award them attorneys' fees for their response to Mr. Muntjan's motion.

On October 17, 2011, Mr. Muntjan filed a motion for Renewal of Plaintiff's Motion for Immediate Sanctions Including Default or an Order Compelling Discovery for a Total Failure of Discovery. He argued that the appellees had failed to comply with his discovery requests, and he was prejudiced as a result.

On December 12, 2011, Mr. Muntjan filed a supplement to his renewal for sanctions. He asserted that appellants had filed responses to discovery, but the “so-called responses” were non-responsive. On February 2, 2012, the court ruled on Mr. Muntjan’s Motion for Immediate Sanctions, as well as his supplemental motion for sanctions. It stated that, after considering Mr. Muntjan’s arguments and his “failure to meaningfully comply with the requirement to make good faith attempts to resolve discovery issues, pursuant to Md. Rule 2-431,” the motions were denied.

On March 8, 2012, Mr. Muntjan sent a letter to the circuit court judge, which he requested to be accepted as a “formal Rule 2-535 Motion to Reconsider” the denial of his motion for sanctions. He asserted: “It should become clear that the defendants have deliberately engaged in an unrelenting pattern and practice of sabotaging plaintiff’s due process rights, and hindered any effective presentation of the case against them.” On March 21, 2012, the court denied Mr. Muntjan’s Motion for Reconsideration.

On April 13, 2012, Mr. Muntjan filed a Motion for Immediate Sanctions Including Defendant for Defendants Torre and Mabry. Mr. Muntjan argued that Ms. Torre and Ms. Mabry did not answer the interrogatories for eight months after discovery was requested, and when they did provide their answers to the interrogatories, “they refused to answer on grounds that the Interrogatories were objectionable.”

On April 24, 2012, Mr. Muntjan filed a Motion to Compel Production of Discovery from [Mr.] Scarfield, or in the Alternative, Motion for Immediate Sanctions Including Default. He asserted that interrogatories and a request for production of documents were properly served on Mr. Scarfield on July 13, 2011, and he “received absolutely no

discovery responses from Defendant until on or about November 4, 2011.” Mr. Muntjan contended that Mr. Scarfield’s responses to his interrogatories “were woefully inadequate,” and “[o]f the 17 separate Request for Production of Documents, thirteen (13) were refused outright on grounds of ‘unduly burdensome’ ‘not relevant’ or ‘not reasonably calculated.’”

On April 26, 2012, Mr. Muntjan filed a Motion for Immediate Sanctions Including Default for Failure to Timely Respond to Interrogatories, or in the Alternative, Motion to Compel Answers to Interrogatories from Defendant Frank Scarfield. He again asserted that Mr. Scarfield’s answers to his interrogatories were inadequate.

Prior to the start of trial, at the court’s request due to the numerous discovery motions contained in the record, Mr. Muntjan identified the motions that needed rulings by the court. These motions were as follows: (1) his April 13, 2012, motion for immediate sanctions, including default, against Ms. Torre and Ms. Mabry “for failure to timely provide discovery more than eight months after discovery was requested”; (2) his April 24, 2012, motion for immediate sanctions, including default, against Mr. Scarfield, based on his failure to produce documents requested in discovery; and (3) his April 26, 2012, motion to compel discovery, or in the alternative for immediate sanctions, with respect to Mr. Scarfield for failure to respond to interrogatories. In addition, Mr. Muntjan made an oral motion for sanctions based on Mr. Scarfield’s “failure to properly respond to [Mr. Muntjan’s] request for admissions.”

The court took a recess to review the motions. It then returned to address the motions. With respect to Mr. Muntjan’s motion based on Mr. Scarfield’s answers to

interrogatories, the court found that there was no basis for sanctions. The court went through each of the 23 interrogatories, as follows:

Number one, as for his identity, there are a few elements that are not there but there [is] certainly sufficient information to identify Mr. Scarfield.

Interrogatories 2 through 9 all suffer from the problem of being extremely broad in terms of asking for all businesses, all accountants, all tenants, all tenant complaints, all properties, all claims, all employees, all managers of, of the business, none of them focused on this particular incident. All of those were properly objected to as being over broad.

Number 10 is the first interrogatory after the first that focuses with any degree of specificity on this event. And 10, 11, 12, and 13 are all reasonably focused or at least sufficiently focused on this event and I find that the answers to all four of those were sufficient to inform the Plaintiff of the nature of the position of the Defendant Scarfield in this ca[s]e.

Interrogator[ies] 14 and 15 again are very broad, including the identification of all employees and I find that the interrogatories were over broad and the answers in those cases were sufficient.

Interrogatories 16, 17 and 18 related specifically to the credit inquiry issue although I understand that it was not dismissed at the time that the interrogatories were served, at the time of the answers that claim had been dismissed in this action.

[Interrogatory] Number 19 relating to experts was answered sufficiently. Number 20 related to persons with discoverable knowledge was answered sufficiently. [Interrogatory number] 21 related to documents. We'll have, I have some questions in connection with the request for production of documents that are more appropriately addressed there.

MR. MUNTJAN: Excuse me. Did you say 21?

THE COURT: [Number] 21 was addressed to documents. [Numbers] 22 and 23 were again comprehensive requests concerning crimes and other wrongdoing and prior depositions which were over broad in the context of this case and were, therefore, properly answered.

The court denied the motion for sanctions against Mr. Scarfield based on his answers to interrogatories.

With respect to Mr. Muntjan's motion for sanctions against Ms. Torre and Ms. Mabry, the court noted that the motion did not contain "any interrogatory by interrogatory examination," but instead, Mr. Muntjan complained that "those two Defendants only answered interrogatories that were directed to Mr. Scarfield rather than the one[s] that were directed specifically to them." Mr. Muntjan asserted that he also took issue with Ms. Torre and Ms. Mabry's lack of response to his questions about drug use and criminal history. The court then determined that, with respect to those two defendants, "the only interrogatories about which Mr. Muntjan is now specifically complaining are Number 17, 18, and 20." The court found that, "with one exception those were over broad and, therefore, the Defendants were justified in not answering them." The court found that, because interrogatory 17 addressed drug use within 24 hours of the incident, Mr. Muntjan was entitled to ask Ms. Torre and Ms. Mabry about their drug use during his examination of them at trial.

Regarding Mr. Muntjan's motion for sanctions against Mr. Scarfield based on his failure to produce documents in discovery, Mr. Muntjan contended that he received "exactly one document," which was the consent order. Counsel for Mr. Scarfield stated that the other documents they had were: (1) the file for the District Court, which Mr. Muntjan gave to him; (2) the lease, which Mr. Muntjan had; (3) the deed to Brewery Station, which they produced in April, along with the Articles of Incorporation, even though those documents previously had been produced in prior litigation with Mr. Muntjan;

and (4) copies of photographs they had in a folder. Mr. Muntjan responded that Mr. Scarfield was required to produce documents whether he had them or not.

The court then went through each of the requests, as follows:

Numbers 1 through 6 are very general, all tenant files, all occupancy permits, all articles of incorporation, all tax return[s], all personal tax returns, and all personnel files which are much too broad for the issues in this case and, therefore, the Defendant was justified in objecting to those.

Requests 7, 8 and 9 relate specifically to this occurrence. I've already asked Mr. Wittstadt about the extent of production.

Mr. Muntjan is correct. That is the obligation of the Defendant to produce any item even if the Plaintiff already has it in his possession if it is also in the Defendant's possession. That, of course, can identify things that are inconsistent. It can also confirm the authenticity of particular items.

However, I haven't heard of anything in this case that would prejudice the Plaintiff based on the nonproduction of the version of a particular document that exists in the Defendant's possession that hasn't been produced.

With respect to request[s] Number[s] 10, 11, 12, and 13, all of those relate either very broadly to all credit inquiries, all evictions, or to other events involving other tenants. And the allegations here are [] very specific [to the] occurrence concerning Mr. Muntjan and what happened in connection with that eviction. Those request[s] are irrelevant. And, therefore, the Defendants were justified in objecting to them.

Number 14 is focused on this occurrence and has some of the same issues about the scope of the production but I do not find any prejudice to Mr. Muntjan from the limited production by the Defendants.

Number[s] 15, 16 and 17 are similarly broad and/or irrelevant in going into again apparently attacking the validity of Brewery Station, Inc. or of the trade use of Holabird Management or something of that sort. I find that those are irrelevant to this case.

On that basis, I do not find any reason to compel the further production of documents or to sanction Mr. Scarfield for his production of documents in this case. Plaintiff's motion on that ground will be denied.

Finally, the court addressed Mr. Muntjan’s oral motion regarding his request for admissions. The court asked Mr. Muntjan to identify the admissions he believed that Mr. Scarfield had withheld. Mr. Muntjan then declined to proceed on the motion, and the court denied it.

STANDARD OF REVIEW

A circuit court is entrusted with discretion in addressing disputes regarding the failure to comply with the rule relating to discovery. *Rodriguez v. Clarke*, 400 Md. 39, 57 (2007); *Klupt v. Krongard*, 126 Md. App. 179, 194, *cert. denied*, 355 Md. 612 (1999). This Court has explained the scope of appellate review on discovery issues as follows: “Our review of the trial court’s resolution of a discovery dispute is quite narrow; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery. . . . Accordingly, we may not reverse unless we find an abuse of discretion.” *Sindler v. Litman*, 166 Md. App. 90, 123 (2005). *Accord Bacon v. Arey*, 203 Md. App. 606, 671, *cert. denied*, 427 Md. 607 (2012). An abuse of discretion will be found only ““where no reasonable person would take the view adopted by the [trial] court,”” or ““when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court”” or it is ““violative of fact and logic.”” *Id.* (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005)).

DISCUSSION

Mr. Muntjan argues that the circuit court “erred by denying all of [his] Motions to produce Discovery.” He asserts that appellees’ responses to his discovery requests were

delayed and largely unresponsive. He contends that the court erred in denying his discovery motions and “providing absolutely no remedy of any kind to the near total lack of discovery from Appellees.”

Appellees contend that “the circuit court did not err in denying appellant’s motions to produce discovery.” They assert that the court properly exercised its discretion in denying each of Mr. Muntjan’s motions for sanctions or to compel further discovery.

Maryland Rule 2-402(a) provides: “A party may obtain discovery regarding any matter that is . . . relevant to the subject matter involved in the action.” Pursuant to Rule 2-402(b), the court may limit discovery if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

As indicated, the circuit court has broad discretion in enforcing the rule and determining whether sanctions are warranted. *Klein v. Weiss*, 284 Md. 36, 56 (1978).

Here, as set forth, *supra*, the circuit court carefully considered all of Mr. Muntjan’s discovery challenges. We perceive no abuse of discretion by the circuit court in its rulings

in this regard.² Accordingly, we uphold the circuit court rulings denying Mr. Muntjan’s numerous discovery motions.³

PROCEEDINGS ON REMAND

In our initial opinion, we reversed, in part, the judgment of the circuit court and remanded for a new trial on Counts I and II, Trover and Conversion and Invasion of Privacy. The Court of Appeals, in its decision, tracked that language in remanding to this Court to address the discovery issue and then remand to the circuit court for retrial on Counts I and II. The basis for this Court’s remand on Count I, however, was the conclusion of the majority of the panel that Mr. Muntjan was entitled to a jury trial. Because the Court

² The court did not specifically address Interrogatories 16, 17, and 18 because they related to Count II, Invasion of Privacy, which had been dismissed. There was no abuse of discretion by the circuit court at the time this decision was made. Although we remand for retrial on this claim, Mr. Muntjan has not explained any prejudice he has suffered due to the responses to these interrogatories, and therefore, there is no basis for us to reverse the trial court on this issue. The circuit court, in its discretion, can determine on remand whether to revisit this issue.

³ After the Court of Appeals issued its opinion, Mr. Muntjan filed a “Motion for this Court to Amend and Correct its Prior Order in the Interest of Clarification and the Need for Substantial Justice.” In this motion, he asked this Court to “amend and correct” our unanimous opinion that the circuit court properly dismissed the Abuse of Process claim. To the extent that Mr. Muntjan disagreed with this Court’s decision in that regard, he could have filed a Petition for Writ of Certiorari with the Court of Appeals, but he failed to do so. We decline to amend our previous decision regarding the propriety of the dismissal of the abuse of process claim. Mr. Muntjan also challenges in his motion the circuit court’s decision that he failed to show damages. We have reviewed the record in this regard, and the circuit court carefully discussed each item of evidence set forth by Mr. Muntjan, and it set forth with specificity why the evidence was lacking. We perceive no abuse of discretion in this regard. Moreover, the court found insufficient evidence that appellees acted with the intent to interfere with his ownership of property, a finding that was not challenged. Thus, even if the court’s finding regarding value of the items was erroneous, Mr. Muntjan failed to show the intent required to show conversion, and he was not entitled to any award for conversion.

of Appeals held that he was not entitled to a jury trial, there is no ground for a remand on Count I. Accordingly, we remand for a retrial on Count II, Invasion of Privacy.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY DENYING
APPELLANT'S DISCOVERY MOTIONS
AFFIRMED. CASE REMANDED TO
THAT COURT FOR FURTHER
PROCEEDINGS IN ACCORDANCE WITH
THE COURT OF APPEALS' OPINION
AND THIS OPINION. COSTS TO BE PAID
80% BY APPELLANT AND 20% BY
APPELLEES.**

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Rodowsky, J. (specially assigned), concurring and dissenting.

I join in the Court's opinion on the discovery issues. Respectfully, I adhere to my analysis of the record and legal conclusions on the invasion of privacy claim as expressed in my concurring and dissenting opinion filed August 5, 2014, on which there has been no definitive appellate ruling.