

Circuit Court for Montgomery County
Case No. C-15-CV-21-000346

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1113

September Term, 2023

BARRY BLUEFELD

v.

ANNUITY ASSOCIATES, INC., et al.

Friedman,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: January 27, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Barry Bluefeld, who is representing himself, appeals from orders entered by the Circuit Court for Montgomery County dismissing his shareholder derivative claims brought on behalf of Annuity Associates, Inc. (“Annuity”), an appellee, because he was not represented by counsel; denying his motion to amend his complaint to reinstate those claims; and granting summary judgment in favor of Annuity and three of its directors, Barry Cohen, Joel Meisel, and David Cohen (collectively “the Directors”), appellees, on Mr. Bluefeld’s direct claims.

Annuity and the Directors, (“Appellees”), moved to dismiss the appeal from the order dismissing Mr. Bluefeld’s shareholder derivative claims because he is not represented by counsel in this Court. This Court denied the motion to dismiss with leave for Annuity and the Directors to raise the same arguments in their brief.

For the following reasons, we hold that Mr. Bluefeld may not appeal from the dismissal of his derivative claims without counsel, that the circuit court properly denied his motion to amend the complaint which sought to revive the dismissed claims, and that the circuit court did not err by granting summary judgment in favor of Annuity and the Directors on his direct claims. We thus affirm the judgment of the circuit court.

BACKGROUND¹

We briefly set out the factual and procedural history of this case. Annuity is a Maryland corporation formed on or about April 27, 1984 for the primary purpose of owning and managing Benson Business Center, a warehouse building in Baltimore County. Annuity issues two classes of stock: Class A Voting Common Stock and Class B Non-Voting Common Stock. In 1984, Mr. Bluefeld contributed \$50,000 to acquire 18,182 shares of Class B stock. At the same time, ten other individuals contributed \$25,000 or \$50,000 in exchange for Class B stock. In 2019 and 2020, the other ten Class B shareholders were bought out, leaving Mr. Bluefeld as the sole remaining non-voting minority shareholder, with a 5% interest in Annuity.

Since Annuity's incorporation, Barry Cohen has served as a director and secretary/treasurer and Joel Meisel has served as a director and president. Mr. Meisel and

¹ Mr. Bluefeld's brief is not in compliance with the Maryland Rules. It contains no statement of the case, Md. Rule 8-504(a)(2), no questions presented, Md. Rule 8-504(a)(3), and fails to include any citations to the record extract in the lengthy recitation of facts. Md. Rule 8-504(a)(4). It is not our role to search the voluminous record to find evidence to support Mr. Bluefeld's factual assertions or arguments. We decline to do so.

We draw some of the facts from a related federal case filed by Mr. Bluefeld in the United States District Court for the District of Maryland. *Bluefeld v. Cohen*, No. PX 15-2857, 2017 WL1546406 (D. Md.), *aff'd by*, 697 F. Appx. 788 (4th Cir. 2017) (*per curiam*). The federal claims in that case were dismissed because the district court determined that they were derivative, not direct, and that Mr. Bluefeld could not pursue them on behalf of Annuity because he was not represented by counsel. *Id.* at *3-4 The district court declined to exercise supplemental jurisdiction over the remaining state law claims after dismissing the federal claims. *Id.* at *5.

Barry Cohen are the majority shareholders. David Cohen, who is Barry Cohen’s son, is a director, Annuity’s general counsel, and owns a small Class A interest.

On September 24, 2020, Mr. Meisel and Barry Cohen obtained a personal loan from Truist Bank for just under \$3 million, secured by an indemnity deed of trust provided by Annuity (“the Truist Loan”), that pledged the Benson Business Center and Annuity’s streams of income as collateral. The loan proceeds were deposited in Annuity’s bank account and distributed to shareholders on a pro rata basis. That same month, Mr. Bluefeld received a distribution check from Annuity for \$150,000, which amounts to his 5% share of the nearly \$3 million loan proceeds.

Less than a year later, on November 30, 2021, Mr. Bluefeld, through counsel, individually and derivatively on behalf of Annuity, filed a ten-count complaint in the Circuit Court for Montgomery County, asserting the following claims:

- Count I: Oppression of Minority Stockholders (direct and derivative)
- Count II: Breach of Fiduciary Duties (direct)
- Count III: Accounting and Statutory Inspection (direct)
- Count IV: Breach of Fiduciary Duties (derivative)
- Count V: Fraud - Concealment (derivative)
- Count VI: Fraud – Misrepresentation (derivative)
- Count VII: Constructive Fraud (derivative)
- Count VIII: Conversion (derivative)
- Count IX: Unjust Enrichment (derivative)
- Count X: Declaratory Judgment – Indemnity (derivative)

To summarize, Mr. Bluefeld alleged that Mr. Meisel and Barry Cohen used the proceeds of the Truist Loan to allow them to buy out minority shareholder interests and increase their control of the company. He further alleged that the Truist Loan caused him a “peculiar injury independent of Annuity” because he was forced to pay taxes on the

unexpected distribution and would be deprived of future distributions given that Annuity's funds would be redirected to repay the loan. He further alleged that the Trust Loan saddled Annuity with debt and that the Directors had used Annuity as their "personal piggy-bank" by paying fees and expenses to other entities controlled by them and hiding those payments in profit and loss statements disclosed to the minority shareholder.

The parties engaged in extensive discovery. At a hearing on March 17, 2023, the circuit court dismissed the derivative claims, Counts IV through X, because Mr. Bluefeld was no longer represented by counsel.

Thereafter, Mr. Bluefeld moved to amend his complaint to add language to the prayer for relief in Count IV (Breach of Fiduciary Duty) to clarify that he was bringing that count as both a direct claim and a derivative claim. He also restated the remaining five dismissed derivative claims in the same form as in the original complaint.

On May 15, 2023, Annuity and the Directors moved for summary judgment on the remaining three direct counts, which Mr. Bluefeld opposed. The court held a hearing on June 26, 2023 at which Mr. Bluefeld appeared pro se. The court denied Mr. Bluefeld's motion to amend the complaint; denied his request to extend deadlines to permit him to retain new counsel; and took the motion for summary judgment under advisement.

On July 7, 2023, the circuit court issued an opinion and order granting summary judgment in favor of Annuity and the Directors on Counts I through III; dismissing the

derivative counts (Counts IV through X); denying the motion to amend the complaint; and denying the motion for extension of time to retain counsel.

This timely appeal followed. We will include additional facts in our discussion of the issues.

I.

DISMISSAL OF DERIVATIVE COUNTS

“Corporations are legal entities separate and apart from their owners.” *Eastland Food Corp. v. Mekhaya*, 486 Md. 1, 21 (2023) (citing *United Elec. Supply Co. v. Greencastle Gardens Section III Ltd. P’ship*, 36 Md. App. 70, 79 (1977)). A corporation is owned, but not managed, by its stockholders. *Id.* at 22 (citing *Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 695 (2007)).

A minority shareholder, like Mr. Bluefeld, who is “aggrieved by the actions of the majority,” may bring a derivative action, which is “an extraordinary equitable device to enable shareholders to enforce a corporate right that the corporation failed to assert on its own behalf.” *Botempo v. Lare*, 217 Md. App. 81, 113 (2014) (quoting *Mona*, 176 Md. App. at 698) (additional citations omitted). A derivative action “is [a] suit *by the corporation*, asserted by the shareholder on its behalf, against those liable to it.” *Werbowsky v. Collomb*, 362 Md. 581, 599 (2001) (quoting 13 WILLIAM MEADE FLETCHER ET AL., *Cyclopedia of the Law of Private Corporations* § 5941.10 (1995 Rev. Vol)) (emphasis added).

By Rule, any person other than an “individual” must be represented by an attorney in both the circuit court and the appellate courts of Maryland. *See* Md. Rule 2-131(a) (“a person other than an individual may enter an appearance only by an attorney”); Md. Rule 8-402(a) (“a person other than an individual may enter an appearance only by an attorney”). A corporation is considered a “person” for the purposes of these Rules. Md. Rule 1-202(u).

Though Mr. Bluefeld filed suit in the circuit court through counsel, his attorneys all ultimately withdrew.² He did not retain new counsel in the circuit court and is not represented by counsel in this Court. Because Mr. Bluefeld only may challenge the dismissal of his derivative counts, Counts IV through X, which are brought on behalf of Annuity, through counsel, we grant Appellees’ motion to dismiss the appeal to the extent that it challenges the dismissal of those counts. *See Turkey Point Prop. Owners’ Ass’n*,

² Ten months after Mr. Bluefeld filed suit, two new attorneys entered their appearances and original counsel thereafter moved to withdraw. Less than four months later, on January 4, 2023, new counsel moved to withdraw based upon irreconcilable differences.

On January 20, 2023, the court held a hearing at which it advised Mr. Bluefeld that he needed to retain new counsel or face dismissal of his derivative claims. The court scheduled a show cause hearing for February 24, 2023, and, on January 30, 2023, entered a show cause order directing Mr. Bluefeld to retain new counsel before that hearing. One day prior to that hearing, new counsel, Sari Kurland, entered her appearance.

At the hearing the next day, the court agreed to give Ms. Kurland until March 17, 2023 to respond to an outstanding motion to compel discovery and set a hearing for April 4, 2024. On that date, Ms. Kurland moved to withdraw as counsel for Mr. Bluefeld, citing irreconcilable differences. Mr. Bluefeld requested additional time to retain new counsel. The court determined to grant Ms. Kurland’s motion to withdraw and dismissed the seven derivative counts in the complaint.

Inc. v. Anderson, 106 Md. App. 710, 714 (1995) (holding that the circuit court erred by accepting a petition for judicial review filed by a layperson on behalf of a homeowners' association, a Maryland corporation, and remanding the matter to the circuit court for the petition to be dismissed).

Relatedly, the circuit court did not err by denying Mr. Bluefeld's motion to amend his complaint or, alternatively, in dismissing the reasserted counts. The amendment of Count IV was improper because it could not be asserted as a direct claim. The injuries alleged in that count all inured to Annuity, not to Mr. Bluefeld personally. *See Eastland*, 486 Md. at 38-39 (explaining that a "direct action is appropriate only where the board has breached a duty owed directly to the shareholder and the shareholder has suffered an injury that is separate and distinct from any injury suffered either directly by the corporation or indirectly by the stockholder because of the injury to the corporation"). Mr. Bluefeld was not entitled to maintain a derivative action because he was not represented by counsel in the circuit court and the court did not err by denying the motion to amend the complaint to reassert those claims.

II.

GRANT OF SUMMARY JUDGMENT

A. Standard of Review

“Whether summary judgment was granted properly is a question of law.” *Lightolier, A Div. of Genlyte Thomas Grp., LLC v. Hoon*, 387 Md. 539, 551 (2005). “The standard of review is *de novo* and we are concerned with whether the trial court was legally correct.” *Id.* (quotation marks and citation omitted). “We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 479 (2007) (quotation marks and citations omitted).

“For the purposes of summary judgment, a material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023); *Carter v. Aramark Sports and Ent. Servs., Inc.*, 153 Md. App. 210, 224 (2003). While the moving party bears the burden of establishing the absence of a material fact, the non-moving party must produce admissible evidence to establish a genuine dispute of material fact. *Carter*, 153 Md. App. at 224-25. The party opposing summary judgment cannot simply rely on “conclusory statements, conjecture, or speculation[.]” *Id.* at 225 (quotation marks and citations omitted). Rather, the opposing party must “identify with particularity each material fact” that is in dispute and “identify and attach the relevant portion of the specific document, discovery response, transcript of

testimony (by page and line), or other statement under oath that demonstrates the dispute.” Md. Rule 2-501(b).

B. Background

In their motion for summary judgment, the Directors contended that Mr. Bluefeld lacked standing to assert claims on behalf of former minority shareholders based on the adequacy of the stock buyout and numerous time-barred allegations of self-dealing. The remaining factual allegations related to the Truist Loan, the “manner and timing of distributions to shareholders,” and Annuity’s accounting methods and records.

With respect to the Truist Loan, the Directors argued that a Maryland corporation may make contracts, incur liability, and borrow money (citing Maryland Code (1975 Repl. Vol, 2022 Supp.) Corporations & Associations Article (“CA”), § 2-103(5)). They attached Annuity’s answers to interrogatories in which it explained that it sought to take out a mortgage on the Benson Business Center and make distributions to shareholder and structured the Truist Loan as a personal loan to Mr. Meisel and Barry Cohen, guaranteed by Annuity and secured by an indemnity deed of trust, to avoid the payment of \$90,000 in recordation taxes. This was a “lawful and customary” practice in “the commercial real estate industry.” The Directors attached Annuity’s bank statement showing that the proceeds of the Truist Loan were deposited into its bank account on September 24, 2020. The proceeds were then used to make pro rata distributions to shareholders. Under the business judgment rule, the Directors argued that they were entitled to a presumption that

they acted in good faith in making the decision to incur the mortgage liability and in structuring the loan in that manner.

The Directors maintained that Mr. Bluefeld’s claims relating to distributions were without merit because distributions are made within the discretion of a corporation’s directors. *See* CA § 2-309 (b) (“if authorized by its board of directors, a corporation *may* make distributions to its stockholders” (emphasis added)). They attached to their motion a distribution schedule showing that Mr. Bluefeld had received just under \$350,000 in distributions since 2010 and that Annuity had made over \$7 million in shareholder distributions during that period.

They also asserted that Mr. Bluefeld had not identified any actions they took that were not in the best interest of Annuity and its shareholders. His allegations of self-dealing were unsupported by any evidence.

Likewise, the Directors asserted that Mr. Bluefeld had not supported his allegations of oppressive conduct. They argued that: (1) his allegations of improprieties in the Truist Loan were without merit for the same reasons set out above; (2) his allegations of inaccurate accounting were vague, and he had not pointed to any specific errors or falsehoods when asked to do so during discovery; (3) he lacked standing to challenge the adequacy of the buyouts of other minority stockholders; and, (4) he admitted that Annuity disclosed the risks of investing in the company prior to his becoming a shareholder.

Mr. Bluefeld also had not supported his claim for a violation of CA §§ 2-512 – 2-513, governing accounting and statutory inspection rights.³ Annuity had made its books of account available to Mr. Bluefeld on many occasions and, during litigation, Annuity had provided additional detailed information that he would not otherwise have been entitled to receive, including tax returns and detailed financial statements.

Mr. Bluefeld opposed summary judgment but did not point to any admissible evidence generating disputes of material fact.

After hearing argument, the circuit court issued its opinion and order granting summary judgment in favor of Annuity and the Directors. It reasoned that Annuity had adduced admissible evidence demonstrating that the Directors acted in good faith and in the interest of Annuity’s shareholders when they obtained the Truist Loan, entitling them to the statutory business judgment rule presumption. Because Mr. Bluefeld failed to adduce any evidence to rebut that presumption or present evidence that he suffered damages occasioned by the loan, the court ruled that the Directors were entitled to summary judgment on Count II for breach of fiduciary duty.

Likewise, Mr. Bluefeld did not adduce any admissible evidence to support his claim for oppression of minority stockholders. His allegations of self-dealing were

³ Section 2-512(a) for the Corporations and Associations Article authorizes any stockholder to inspect and copy a corporation’s bylaws, minutes of stockholder meetings, “[a]nnual statements of affairs,” and voting trust agreements. Section 2-513, in turn, authorizes a shareholder owning at least 5% of a corporation’s common stock to inspect and copy the corporation’s “books of accounts and stock ledger” or to receive the same by electronic transmission.

conclusory or based upon conduct affecting the other former minority stockholders. With respect to his claim for a statutory accounting, Mr. Bluefeld failed to identify with particularity records improperly withheld from him, even when given the opportunity to do so at the hearing.

C. Analysis

“Under the traditional business judgment rule, courts apply a presumption of disinterestedness, independence, and reasonable decision-making to all business decisions made by a corporate board of directors.” *Oliviera v. Sugarman*, 451 Md. 208, 221 (2017). As codified by statute, a director of a corporation is presumed to act in good faith, in a “manner the director reasonably believes to be in the best interests of the corporation,” and with the “care that an ordinarily prudent person in a like position would use under similar circumstances.” CA § 2-405.1(c) & (g). However, “the presumption does not end the inquiry, but merely places the burden upon the person attacking the directors’ decision to prove a lack of good faith or the absence of an informed basis for the challenged decision.” *Eastland Food Corp. v. Mekhaya*, 486 Md. 1, 43 (2023) (Booth, J., concurring). Thus, to defeat a motion for summary judgment in which a corporate board relies on the business judgment rule as a defense to its actions, a shareholder must produce admissible evidence that, when viewed in the light most favorable to the shareholder, tends to prove that the directors did not act in good faith, or in a manner that they reasonably believed to be in the best interests of the corporation, or

with the care that an ordinarily prudent person in a like position would use under similar circumstances.

Under Count I, oppression of minority stockholders, Mr. Bluefeld alleged that the Directors engaged in illegal, fraudulent and oppressive conduct. He also averred that they failed to act in good faith in their business decisions, failed to accurately maintain Annuity's books and records, and procured the Truist Loan to the detriment of the minority stockholders. The Supreme Court of Maryland has explained that “[c]onduct is oppressive if it defeats objectively reasonable expectations that were ‘central’ to the stockholder’s decision to join the corporation.” *Id.* at 28 (citation omitted).

It is well established that “the party opposing summary judgment must present admissible evidence demonstrating the existence of a material dispute.” *Hartford Accident and Indem. Co. v. Scarlett Harbor Assocs. Ltd. P’Ship*, 109 Md. App. 217, 264 (1996) (citations omitted). Mr. Bluefeld failed to adduce admissible evidence to support the allegation that his reasonable expectations were thwarted. On the other hand, the Directors adduced admissible evidence demonstrating their good faith and reasonably prudent justifications for each of their challenged actions, and that Mr. Bluefeld was aware when he became a shareholder that Annuity might take out a mortgage on the Benson Business Center.

Under Count II, breach of fiduciary duty, Mr. Bluefeld asserted that the Directors breached duties owed to him by denying him his statutory right to inspect records and by entering into the Truist Loan. He likewise failed to support these allegations with

admissible evidence at the summary judgment stage, instead relying upon conclusory statements and the allegations of his complaint. *See Carter*, 153 Md. App. at 224 (explaining that the party opposing summary judgment cannot simply rely on “conclusory statements, conjecture, or speculation”).

Under Count III, Mr. Bluefeld reiterated his allegation that he was denied his statutory inspection rights. At the summary judgment hearing, Mr. Bluefeld was unable to identify any documents or records that he was entitled to inspect under CA §§ 2-512 or 2-513 that he had not received. Accordingly, the court did not err by granting summary judgment.

In sum, we hold that Mr. Bluefeld may not appeal from the dismissal of his derivative claims without counsel, and that the circuit court did not err in denying his motion to amend the complaint or by granting the motion for summary judgment.

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