

Circuit Court for Montgomery County
Case No. 0482713V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1142

September Term, 2022

I. DAVID BACHARACH, ET AL.

v.

STAR K CERTIFICATION, ET AL.

Nazarian,
Zic,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: September 19, 2022

* 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.

This appeal arises from an order of the Circuit Court for Montgomery County that dismissed the tortious interference claims of appellants Rabbi I. David Bacharach (“Rabbi Bacharach”) and Mite, LLC (“Mite”) against the appellees Vaad Harabonim of Washington (“the Vaad”) and Star K Certification, Inc. (“Star K”). The circuit court dismissed the claims with prejudice for lack of subject matter jurisdiction.

The clerk entered judgment on the electronic docket on June 28, 2021, and appellants filed a Motion to Amend or Alter on July 8, 2021. The circuit court denied this motion in an order filed on September 2, 2021. Appellants timely filed their notice of appeal on September 30, 2021. On appeal, Rabbi Bacharach and Mite raise three issues, which have been condensed into the following question:¹ Did the circuit court err by dismissing the complaint on all four counts?

For the reasons explained below, we answer in the negative and affirm the circuit court’s decision.

¹Rabbi Bacharach and Mite phrase the questions presented as follows:

1. Did the [c]ircuit [c]ourt err when it dismissed this case for lack of subject matter jurisdiction, even where no issues were raised that would invoke the Ecclesiastic Abstention Doctrine?
2. Did the [c]ircuit [c]ourt err when it indicated that [s]ummary [j]udgment would have been appropriate where there was sufficient evidence to support plaintiffs’ claims?
3. Should Mite, LLC be permitted to wind down its affairs by liquidating its assets, including potential causes of action?

BACKGROUND

Rabbi Bacharach is a “Mashgiach,” someone who oversees the preparation of kosher food. Rabbi Bacharach served as a Mashgiach for the Hebrew Home of Greater Washington (“Hebrew Home”) for twenty years and for the Vaad for over twenty-five years. Rabbi Bacharach owned Mite, a business that catered kosher events at places such as the White House. The Vaad and Star K are organizations that provide Kashrut (Jewish dietary law) certification and supervision. In 2015, the Vaad hired Star K to oversee its certification of rabbis and entities as adhering to the laws of Kashrut.

In June 2011, Mite received the Vaad’s kosher certification. In September 2017, the Vaad withdrew its certification of Mite and forbade Rabbi Bacharach from serving as the Vaad’s Mashgiach. Mite then obtained certification from the Union of Orthodox Jewish Congregations of America (“Orthodox Union”).

The complaint contains four counts of tortious interference. Count I alleged that the Vaad and Star K knowingly or recklessly conveyed false information regarding Mite’s kosher certification to the White House, with whom Mite had a catering contract. Count II alleged that after the Vaad withdrew its certification of Mite, the Vaad falsely informed Mite’s business contacts, with knowledge of its falsity or with reckless disregard for the truth, that Mite was no longer certified as a kosher caterer. Count III alleged that the Vaad and Star K intentionally and falsely informed the Hebrew Home that Rabbi Bacharach was unable or unwilling to oversee a kosher kitchen. Count IV alleged that the Vaad and/or Star K deliberately induced a prominent rabbi to breach his catering contract with Mite by misinforming him that Mite could not be trusted to keep a

kosher kitchen. The complaint also alleged tortious interference with business relations by Rabbi Levi Shemtov, but the circuit court dismissed the claim against Rabbi Shemtov, which is not before us on appeal.

The circuit court ruled on two motions: (1) Motion to Dismiss Plaintiffs Rabbi David Bacharach and Mite, LLC’s Complaint for Lack of Subject Matter Jurisdiction, or in the Alternative, for Summary Judgment, and (2) Motion to Dismiss Counts I, II, and IV of the Complaint Because Plaintiff Mite, LLC Does Not Have Capacity to Sue. The circuit court granted the first motion, dismissing the complaint with prejudice and holding that it lacked subject matter jurisdiction.² The circuit court then deemed the second motion moot because the action was dismissed for lack of subject matter jurisdiction. Rabbi Bacharach and Mite now appeal.

DISCUSSION

We review de novo the circuit court’s conclusions of law to determine whether the circuit court was “legally correct” when it granted the motion to dismiss. *Unger v. Berger*, 214 Md. App. 426, 432 (2013); *Ibru v. Ibru*, 293 Md. App. 17, 32-33 (2018). We may affirm a dismissal on any grounds supported by the record, “whether or not relied upon by the trial court.” *Parks v. AlphaPharma, Inc.*, 421 Md. 59, 65 n. 4 (2011) (quoting *Berman v. Karvounis*, 308 Md. 259, 263 (1987)). We affirm the circuit court’s decision to dismiss all four claims with prejudice. We affirm the circuit court’s dismissal of

² It also stated that, even if the court did have jurisdiction, it would grant summary judgment to the Vaad and Star K on all four counts because Rabbi Bacharach and Mite had not proffered “facts that would be admissible in evidence to show a genuine dispute of material facts.”

Counts I, II, and IV because Mite lacked capacity to maintain this lawsuit after its right to do business was forfeited. We also affirm the circuit court’s dismissal of Count III under the ecclesiastical abstention doctrine.

I. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

As the circuit court noted, courts may not resolve religious questions unless a court can apply neutral principles of law “without excessive entanglement into ecclesiastical laws, rules or customs.” The circuit court correctly stated that the ecclesiastical abstention doctrine bars courts from deciding religious questions that involve the resolution of ecclesiastical matters. *See McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 966 F.3d 346, 348 (5th Cir. 2020) (defining ecclesiastical abstention doctrine as deriving from the Establishment Clause, which “precludes judicial review of claims that require resolution of ‘strictly and purely ecclesiastical’ questions”); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020) (quoting *Kedroff v. St. Nicolas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (stating that the First Amendment “protect[s] the right of churches and other religious institutions to decide matters of ‘faith and doctrine’ without government intrusion”). The Free Exercise and Establishment Clauses prohibit courts from deciding such controversies. *Id.* Maryland courts must take care to avoid wading into a “theological thicket.” *Md. and Va. Eldership of Churches of God v. Church of God at*

Sharpsburg, 249 Md. 650, 660 (1968) (designating judicial interference in spiritual affairs as impermissibly “enter[ing] a theological thicket”).

Rabbi Bacharach and Mite agree that if they were asking a court to decide who or what is kosher, the ecclesiastical abstention doctrine would bar a court from deciding the case. They also agree that such a determination must be made on Count III, which alleged that the Vaad made statements to Hebrew Home indicating that Rabbi Bacharach was unable or unwilling to maintain a kosher kitchen. Rabbi Bacharach argues that the question, however, is simply whether the Vaad or Star K published false statements that damaged Rabbi Bacharach. We disagree.

Count III claims tortious interference with contract. The elements of this claim are as follows: “(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; 5) resulting damages to the plaintiff.” *Fraidin v. Weitzman*, 93 Md. App. 168, 189 (1992). Rabbi Bacharach alleged that the Vaad and Star K interfered with the contract between Rabbi Bacharach and the Hebrew Home by “intentionally and incorrectly inform[ing] the Hebrew Home that plaintiff Bacharach was unable or unwilling to properly oversee a kosher a [sic] kitchen.” The determination of whether Rabbi Bacharach could “properly oversee a kosher kitchen,” would require a court to inquire into the reasonableness of the the Vaad’s, Star K’s, and Orthodox Union’s policies, practices, and standards with regard to overseeing a kosher kitchen. No court has the authority to engage in such an inquiry under the First and Fourteenth

Amendments. *Mt. Olive Afr. Methodist Episcopal Church of Fruitland, Inc. v. Bd. of Incorporators of Afr. Methodist Episcopal Church Inc.*, 348 Md. 299, 309 (1997).

For the above reasons, we affirm the circuit court’s grant of the Vaad and Star K’s motion to dismiss Count III for lack of subject matter jurisdiction on the basis of the ecclesiastical abstention doctrine.

B. Motion for Summary Judgment

The circuit court did not issue a ruling on the motion for summary judgment but rather disposed of all claims on the motion to dismiss for lack of subject matter jurisdiction.

II. MOTION TO DISMISS COUNTS I, II, AND IV FOR LACK OF CAPACITY TO SUE

Maryland’s Department of Assessments and Taxation forfeited Mite, LLC on October 16, 2020. Mite argues that an LLC may file or maintain a lawsuit after forfeiture as part of the process of winding up. The Vaad and Star K disagree and argue that there is no precedent in Maryland to support Mite’s contention. The Vaad and Star K further argue that to permit a “forfeited LLC to prosecute lawsuits as part of its ‘winding up’ would nullify the ‘ordinary’ rule, because any forfeited LLC is likely to go into the process of winding up its affairs, and any litigation it pursues is therefore likely to be part of its winding up process.”

This Court has repeatedly held that defunct businesses may “defend an action in court” but may not “file or maintain” lawsuits. *Price v. Upper Chesapeake Health Ventures*, 192 Md. App. 695, 708 (2010). *See, e.g., Bayly Crossing, LLC v. Consumer*

Prot. Div., 188 Md. App. 299, 318-19 (2009) (dismissing appeal for lack of standing when business was forfeited at time notice of appeal was filed), *aff'd in part, rev'd in part*, 417 Md. 128 (2010). Mite, however, relies on two cases to argue that it can maintain this lawsuit regardless of its forfeiture status. Mite first cites a footnote in *Playmark Inc. v. Perret*, in which we stated that “participating in a lawsuit can be part of winding up.” 253 Md. App. 593, 612 n.11 (2022). To support its position based on *Perrett*, Mite cites Maryland Code, Corporations and Associations §§ 4A-904 and 9A-803. Only § 9A-803, however, which concerns partnerships, states that a “person winding up a partnership’s business may . . . prosecute and defend actions and proceedings.” Section 4A-904, which concerns LLCs like Mite, says nothing about pursuing lawsuits while winding up. Regardless, *Perret* is inapposite: Although the business in that case may have been “functionally defunct,” it was still formally operating, unlike Mite. 253 Md. App. at 612.

Mite next cites *7222 Ambassador Rd., LLC v. Nat’l Ctr. on Insts. & Alts., Inc.*, in which the Maryland Court of Appeals held that a forfeited LLC could “defend litigation initiated by others” under the savings provision of the Maryland Limited Liability Company Act, so as not to “deprive someone else of a judicial remedy against the LLC simply by succumbing to forfeiture.” 470 Md. 66, 77 (2020). Mite contends that the Court of Appeals suggested that an LLC can continue litigation after forfeiture because the court stated in a footnote, “No argument has been made that this action relates to the ‘winding up’ of Ambassador Road LLC.” *Id.* at 72 n.3 (citing Md. Code Ann., Corps. & Ass’ns § 4A-904). However, the “action” at issue in this footnote was the forfeited

business’s sale of interests, not the business’s participation in litigation. 7222

Ambassador Rd., LLC, 470 Md. at 72 n.3 (holding forfeited LLC could not file a petition for writ of certiorari and finding the Maryland LLC Act’s savings clause protects those with whom the LLC does business, not the LLC itself). Mite conceded in oral argument that a forfeited LLC may not maintain a lawsuit in Maryland unless “winding up” can be distinguished. We find no support in these cases or elsewhere in Maryland law to find that a forfeited LLC may maintain a lawsuit, even within the winding up process.

Although Mite filed its complaint on July 2, 2020, before its forfeiture on October 16, 2020, it cannot now maintain this lawsuit. Thus, the circuit court correctly dismissed Counts I, II, and IV.

CONCLUSION

In sum, this Court finds that dismissal was proper for Count III based on lack of subject matter jurisdiction under the ecclesiastical abstention doctrine, and dismissal was proper for Counts I, II, and IV based on lack of capacity to maintain this lawsuit due to forfeiture.

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