Circuit Court for Baltimore City
Case No. 24-C-17-001284

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1209

September Term, 2017

A HEALING LEAF, LLC

v.

NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS COMMISSION, *et. al.*

Wright,
Reed,
Eyler, D.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: August 16, 2019

A Healing Leaf, LLC's (hereinafter, "Appellant") application for a medical cannabis grower license was removed by the Natalie M. LaPrade Medical Cannabis Commission ("Commission") because it did not meet the Commission's requirements for submission. As a result, Appellant's application was not evaluated and thus not selected for pre-approval of a medical cannabis grower's license. Appellant filed suit against the Department of Health and Mental Hygiene ("DHMH"), the Commission, and the individual commissioners, alleging that although its application did not meet one of the requirements, the Commission should have granted it an exception and permitted them to cure the defect. The Commission moved to dismiss, which, after a hearing, the Circuit Court for Baltimore City granted. It is from this dismissal that Appellant files this timely appeal. In doing so, it brings one question for our review, which we have rephrased for clarity:

I. Did the circuit court err in dismissing Appellant's complaint?

For the foregoing reasons, we answer Appellant's question in the negative and therefore affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 28, 2015, the Commission released the Application for Medical Cannabis Grower License ("The Application") and announced that completed applications must be submitted to the DHMH by November 6, 2015. The Application provided, in part, that all applications must include an electronic copy of the application in Microsoft Word format:

SECTION G: APPLICATION SUBMISSION INSTRUCTIONS

Applicants must submit a complete Application package by the deadline outlined in Section F. The Application package will consist of the following:

1. A hard copy of the Applicant's complete Application and all related documents (as outlines in Section H)

2. An electronic copy of the Applicant's Application and all related documents (as outlined in Section H) *in Microsoft Word* formant on a USB Drive.[1]

* * *

The Application is only considered complete if all of these components are submitted.

* * *

SECTION I: IMPORTANT NOTICES/DISCLAIMERS

* * *

- If the electronic version of the Application cannot be read by [the Commission], the Application will be suspended and not reviewed, and the Applicant will be contacted by email. The Applicant has 3 business days from the date when the email is sent to deliver another USB drive containing the electronic version of the Application to the Commission. In the event that the Applicant fails to comply, the Application will be withdrawn and the fee may be forfeited to the Commission.

(emphasis added). Appellant timely submitted its application materials to the Commission. On December 2, 2015, Appellant was notified that the Commission had received its Application materials. Months later, on August 15, 2016, Appellant was notified that its application had been reviewed, but was not selected for pre-approval because it was not

[1] It should be noted that the Application materials mention a requirement for the electronic Application to be in Microsoft Word format on numerous occasions in many different places.

judged amongst the top 20% of applicants reviewed.

Upon learning of its rejection, Appellant requested a debriefing from the Commission to learn why its application had been removed from consideration. At the debriefing, the Commission informed Appellant that it had been unsuccessful because the USB drive submitted contained a Portable Document Format ("PDF") version of the Application instead of a Microsoft Word ("Word") document, as required by the Application.

Aggrieved by the Commission's decision, Appellant filed a complaint against the Commission, DHMH, and the individual commissioners seeking declaratory judgment. Appellant alleged that the Commission's removal of its application from consideration, as well as the Commission's refusal to recognize it as a pre-approved applicant, was "arbitrary, capricious, unreasonable or otherwise unlawful." As a result, the Commission filed a Motion to Dismiss, or in the alternative, a Motion for Summary Judgment, arguing that Appellant's complaint failed to allege that its application did not meet the minimum requirements for evaluation, "and accordingly the complaint failed to state a claim upon which relief could be granted." Moreover, the Commission alleged that even if Appellant's complaint had been sufficient, there was no dispute of material fact that its application failed to meet the minimum requirements for evaluation and was appropriately denied.

On July 12, 2017, a hearing was held in the Circuit Court for Baltimore City, where the court found: (1) Appellant was not in compliance with the Application's submission instructions, and (2) Appellant's complaint failed to allege that any of the named Appellees violated any applicable statute, regulation, or the Application submissions procedures. As

a result, the circuit court granted the Commission's motion to dismiss. It is from this order that Appellant files this timely appeal.

STANDARD OF REVIEW

Under Maryland Rule 2-322 (b)(2), a defendant may seek dismissal of a complaint if the complaint fails "to state a claim upon which relief can be granted." Appellate review of a court's decision to grant a motion to dismiss is whether the trial court was legally correct. *See Britton v. Meier*, 148 Md. App. 419, 425 (2002) ("The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct.").

In this Court's review of the granting of a motion to dismiss, "we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Schisler v. State*, 177 Md. App. 731, 742-43 (2007). In our review of the complaint, we must "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." *Id.*

DISCUSSION

A. Parties' Contentions

Appellant first argues, "the trial court erred as [a] matter of law when it failed to evaluate the motion as one for summary judgment." To support its argument, Appellant states that because the trial court accepted Appellant's Memorandum of Law in support of its opposition to Commission's Motion to Dismiss, the court is mandated to dispose of the Commission's motion "consistent with the standard for summary judgment considering both the complaint and said opposition."

Second, Appellant contends that the trial court's determination that the complaint failed

to state a cause of action is clearly erroneous. Appellant states, "it is clear that [Appellant] alleged the Commissions' [sic] failure to review and rank [Appellant's] application was not excused or justified by the putative deficiency of a USB drive containing a redacted version of the [Application] in portable document format, rather than Word format." To that end, Appellant requests that this Court order the Commission "to include [Appellant] on its waitlist and afford it the same opportunities as other waitlisted candidates and or any further relief deemed necessary and proper."

Finally, Appellant maintains the trial court erred because it did not set "forth the facts or inferences upon which it based its ruling." As a result, it believes that "[a] fair, reasonable and rational response by the Commission to [Appellant's] alleged minor deficiency would have been to treat [Appellant's] thumb drive as if the data on it were illegible and, as provided in the instructions to applicants, afford [Appellant] notice and then afford [it with] three days to correct the problem."

The Commission contends that the Motion to Dismiss was properly granted because Appellant's complaint "failed to allege that the application submitted by [Appellant] met the minimum requirements for evaluation." Moreover, the Commission argues that "although styles a Complaint for Declaratory Judgement and Injunctive Relief, the Complaint did not set forth allegations sufficient to support a claim for injunctive relief." We agree.

B. Analysis

When reviewing a decision to grant a motion to dismiss for failure to state a claim upon which relief can be granted, "we must determine whether the complaint, on its face,

discloses a legally sufficient cause of action." *Schisler v. State*, 177 Md. App. 731, 742-43 (2007) (citations omitted). In doing so, we must "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." *Id.* Dismissal for failure to state a claim is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff. *See Ricketts v. Ricketts*, 393 Md. 479, 492 (2006).

However, "[i]f on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Md. Rule 2-501." *Tim v. YMCA of Central Maryland, Inc.*, 233 Md. App. 326, 332 (2017) (quoting Md. Rule 2-322(c)). Under Md. Rule 2-501, "[a]ny party may file a written motion for summary judgment o[n] all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." *George v. Baltimore County*, 463 Md. 263, 273 (2019) (quoting Md. Rule 2-501(a)). The "court shall grant summary judgment only if 'there is no genuine dispute as to any material fact and . . . the party in whose favor judgment is entered is entitled to judgment as a matter of law." *George*, 463 Md. at 272 (quoting Md. Rule 2-501(f)).

In this case, Appellant's complaint sought injunctive relief, requesting that the Commission review the previously rejected application submitted by Appellant. A complaint seeking injunctive relief must allege and demonstrate the following: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience"

determined by whether greater injury would be inflicted upon the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) when appropriate, that the public interest is best served by granting the injunction. *See Fogel v. H&G Restaurant, Inc.*, 337 Md. 441, 452-53 (1995). The burden of satisfying each of these factors rests with the plaintiff seeking the injunction and "[t]he failure to prove the existence of even one of the four factors will preclude the grant of preliminary relief." *Id.* at 456.

However, Appellant's complaint failed to mention any of these four factors. Instead, Appellant simply argued that Appellees failed to provide Appellant with timely notice and that the Commission's removal of Appellant's application from consideration was "arbitrary, capricious and in violation of its duty to treat all applicants fairly and equally." As Appellant failed to provide any legal support on which to base its claim for injunctive relief, a motion to dismiss for failure to state a claim upon which relief could be granted was proper.

In granting the Commission's motion to dismiss, the trial court concluded that Appellant failed to provide a USB Drive with an electronic copy of its application in Word format. MD. CODE ANN. HEALTH-GEN. § 13-3306(a)(2)(i) provides that the Commission "shall license medical cannabis growers that meet all requirements established by the Commission to operate in the State." The Commission established guidelines that required all applicants to submit a hard copy of their application as well as a USB Drive containing an electronic copy of their application in Word format. This is one of the requirements posed by the Commission without exemption; a requirement that Appellant failed to follow

in submitting its application, leading to its rejection by the Commission.

Contrary to Appellant's belief, the Commission had no duty to inform Appellant that its application failed to adhere to those requirements. The Commission allows applicants to resubmit their applications only when their submission is deemed inaccessible; the failure of an applicant to abide by the Commission's requirements does not make an application inaccessible. The Commission followed all relevant statutes and regulations in their treatment of Appellant's application. As such, Appellant's claim for injunctive relief was properly granted under Rule 2-322, as it failed to satisfy its burden in showing a basis for a preliminary injunction and because success on the merits was highly unlikely.

Additionally, Appellant's claim for relief also fails under Rule 2-501 analysis. In this case, the trial court ordered that there was no dispute that Appellant had failed to adhere to the Commission's requirements for the submission of applications. Appellant admits that its application did not include a USB drive with an electronic copy of its application in Word format. Because Appellant concedes that it did not follow the Commission's instructions for submitting its application, there is no genuine dispute of material fact for the trial court to decide. As such, the trial court would have been justified in granting the Commission's motion for summary judgment had it denied the Commission's motion to dismiss.

Under either Rule 2-322 or Rule 2-501, Appellant's claim for injunctive relief cannot pass muster. Appellant's complaint provides zero support for an injunction. Further, Appellant's application was rightfully rejected because Appellant failed to adhere to the Commissions' requirements for review. The judgment of the Circuit Court for Baltimore City is affirmed.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.