Circuit Court for Baltimore City
Case No. 24-C-20-004128

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1220

September Term, 2021

TIMOTHY SCHNUPP

v.

ANNAPOLIS ENGINEERING SERVICES, INC., ET AL.

Berger,
Reed,
Beachley,

JJ.

Opinion by Berger, J.

Filed: June 14, 2022

This appeal arises from the dismissal of Appellant Timothy Schnupp's counterclaim for advancement of attorney's fees sought from Appellees -- Mr. Schnupp's former employer -- Annapolis Engineering Services, Inc. f/k/a Atlantic Technical Systems, Inc. and Atlantic Test Labs, Inc. (hereinafter referred to as "Atlantic"). In his counterclaim, Mr. Schnupp sought to obtain an advancement of attorney's fees from Atlantic for the expenses that he has incurred in defending himself against Atlantic's lawsuit for breach of his employment contract and various other agreements. Mr. Schnupp alleged that he was a *de facto* officer of Atlantic, and therefore, was owed advancement and/or indemnification of attorney's fees pursuant to Atlantic's Articles of Incorporation. The Circuit Court for Baltimore City granted Atlantic's motion to dismiss Mr. Schnupp's counterclaim and denied his motions for summary judgment and/or preliminary injunction.

Mr. Schnupp presents three questions for our review,[1] which we have rephrased and consolidated, for clarity, as follows:

[1] Mr. Schnupp's original questions presented are as follows:

> 1. Is a *de facto* corporate officer entitled to advancement where the corporation's articles of incorporation mandate indemnification for a former officer "to the fullest extent permitted by an in accordance with" Md. Code, Corps. & Ass'ns § 2-418?
>
> 2. Has Appellant Timothy Schnupp demonstrated that he was a *de facto* officer of Atlantic or, at a minimum, has he pled sufficient facts evidencing his status as a *de facto* officer of Atlantic to withstand dismissal for failure to state a claim?

I. Whether the circuit court erred by dismissing Mr. Schnupp's counterclaim.

II. Whether the circuit court erred by denying Mr. Schnupp's request for a preliminary injunction and/or motion for summary judgment.

For the reasons explained herein, we shall hold that the circuit court did not err by dismissing Mr. Schnupp's counterclaim for advancement of attorney's fees or his request for preliminary injunction. Further, in light of our determination regarding the motion to dismiss, we need not address the circuit court's denial of Mr. Schnupp's motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

Atlantic is a Maryland based corporation and testing laboratory that analyzes cannabis and hemp products grown by licensed cannabis growers in Maryland. Atlantic's president and sole officer is Brian Flynn. Mr. Schnupp was employed as Atlantic's laboratory director from approximately September 2017 to March 2019. Atlantic's Employment Agreement with Mr. Schnupp outlined his duties as an "Employee" to "promote and market [Atlantic's] services and to solicit and engage clients . . ." The

3. Is Appellant Timothy Schnupp entitled to summary judgment and/or a preliminary injunction compelling advancement from Atlantic since Schnupp was sued for actions and omissions that allegedly occurred in the last two and a half (2½) months of his employment with Atlantic and otherwise arose from Schnupp's alleged access to Atlantic's claimed trade secrets as a de facto officer of Atlantic, and Schnupp has submitted the written affirmation and undertaking required by Md. Code, Corps. & Ass'ns § 2-418(f)(1)?

employment agreement further provided that Mr. Schnupp would not "act in any fashion that will imply that [he] has apparent authority to bind or enter into agreements on behalf of [Atlantic]." Because the emergent cannabis industry in Maryland is highly competitive, the employment agreement contained standard confidentiality, non-compete, and non-solicitation provisions.

In his role as laboratory director, Mr. Schnupp exercised the sole supervision, training, and direction of the subordinate laboratory technicians and employees. Mr. Schnupp was responsible for managing the day-to-day operations of the testing lab, including authorizing the purchase of necessary equipment to test and analyze cannabis and hemp products. Mr. Schnupp was also responsible for developing Atlantic's client base and obtaining certifications and accreditations to properly run the testing laboratory.

In October 2017, Mr. Schnupp signed a Restricted Stock Incentive Agreement (the "2017 Stock Agreement") as an "Employee" of Atlantic. The 2017 Stock Agreement incentivized Mr. Schnupp with an equity interest in Atlantic which was based on his performance as laboratory director. The 2017 Stock Agreement contained a provision wherein Mr. Schnupp agreed that Mr. Flynn would have the "full, exclusive and complete authority and control in the management of [Atlantic] . . . ," and "that all of the powers of [Atlantic] shall be exercised by, or under the authority of [Mr. Flynn], and the business and affairs of [Atlantic] shall be managed under the sole direction of [Mr. Flynn][.]" In May 2018, Mr. Schnupp signed another Restrictive Stock Incentive Agreement (the "2018 Stock Agreement") again as an "Employee" of Atlantic.

In March 2019, Mr. Schnupp submitted his two weeks' notice of resignation to Atlantic. After his resignation, Mr. Schnupp entered into a Stock Redemption Agreement (the "2019 Stock Agreement), whereby Atlantic agreed to repurchase Mr. Schnupp's equity interest. Pursuant to the 2019 Stock Agreement, Mr. Schnupp acknowledged that he "has been employed by [Atlantic] in a managerial position." Mr. Schnupp also signed an Assignment of Stock Agreement which "appoint[ed] the Secretary of [Atlantic] to transfer the said stock on the books of [Atlantic] . . ."

Shortly after Mr. Schnupp resigned from Atlantic, he was hired by one of Atlantic's industry competitors. On September 30, 2020, Atlantic brought suit against Mr. Schnupp on multiple causes of action: (1) breach of his employment agreement; (2) breach of the various Stock Agreements; (3) fraudulent misrepresentation and/or negligent misrepresentation of his adherence to the employment agreement; (4) breach of his fiduciary duties as a shareholder of Atlantic; (5) unjust enrichment; (6) trade secret misappropriation; (7) tortious interference with Atlantic's client relationships; and (8) conspiracy. Further, he sought injunctive relief.

On June 8, 2021, Mr. Schnupp filed a counterclaim against Atlantic, seeking advancement and/or indemnification of his legal fees pursuant to the following provision of Atlantic's Articles of Incorporation: "The Corporation shall indemnify a present or former director or officer of the Corporation in connection with a proceeding to the fullest extent permitted by and in accordance with the Indemnification Section."

In his counterclaim, Mr. Schnupp argued that he was a *de facto* officer of Atlantic and, therefore, was entitled to advancement of attorney's fees pursuant to the indemnification provision of Atlantic's Articles of Incorporation. In support of his alleged status as a *de facto* officer, Mr. Schnupp asserted that he interfaced extensively with Atlantic's clients in negotiating cannabis testing agreements and explaining the results of Atlantic's testing procedures. Mr. Schnupp also alleged that he represented Atlantic in "regulatory and legislative meetings" and "industry meeting and events." Mr. Schnupp claimed that he reviewed Atlantic's finances "to develop growth strategies, justify staff compensation increases, measure [Atlantic's] growth, and control [Atlantic's] expenses[.]" Lastly, Mr. Schnupp purported that Mr. Flynn confirmed on an application for professional liability insurance that Atlantic had two employees who were classified as "Principals, Partners, Officers, Directors." Mr. Schnupp implies from this allegation that he was the only employee whom Mr. Flynn could have been referring to as "Officer" or "Director."

Atlantic filed a motion to dismiss Mr. Schnupp's counterclaim for advancement of attorney's fees. Mr. Schnupp filed an opposition to Atlantic's motion, and filed a motion for summary judgment and/or preliminary injunction. The parties appeared remotely for a hearing in the Circuit Court for Baltimore City. The circuit court judge found that Mr. Schnupp was not entitled to advancement or indemnification of attorney's fees because he was not a *de facto* officer of Atlantic, and further, that his alleged misconduct was not done in any capacity as an officer or *de facto* officer of Atlantic. The circuit court granted

Atlantic's motion to dismiss and denied Mr. Schnupp's motion for summary judgment and/or preliminary injunction. Mr. Schnupp filed this timely appeal.

DISCUSSION

I. The circuit court did not err in granting Atlantic's motion to dismiss.

We review the circuit court's grant of Atlantic's motion to dismiss *de novo* and determine whether the circuit court was "legally correct." *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018); *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010). We conduct our review without deference to the circuit court's findings. *Lamson*, *supra*, 460 Md. at 360. "We will affirm the circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised." *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 76 (2015) (internal citations and quotation marks omitted), *cert. denied*, *Sutton v. FedFirst Fin.*, 446 Md. 293 (2016).

Mr. Schnupp bases his counterclaim on the premise that he was a *de facto* officer of Atlantic, and therefore, that he was owed advancement of attorney's fees pursuant to Atlantic's Articles of Incorporation and to the fullest extent permitted by statute.[2] Although Mr. Schnupp was not given the official title of an officer of Atlantic, he asserts

[2] The Maryland Corporations and Associations Article provides under Section 2-418 that "[a] corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify directors under this section[.]" Md. Code (1975, 2014 Repl. Vol., 2021 Suppl.), § 2-418 (j)(2) of the Corporations and Associations Article ("CA"). Section 2-418 further authorizes indemnification and advancement by the corporation of reasonable expenses incurred by an officer "in advance of the final disposition of the proceeding[.]" CA § 2-418 (f)(1).

that his role as Atlantic's Laboratory Director -- and additional duties for Atlantic -- effectively made him a *de facto* officer.

The *de facto* officer doctrine -- in the context of private corporations and associations -- is not well established in Maryland. Further, the doctrine has never been used for the sole purpose of permitting a *de facto* officer to obtain an advancement and/or indemnification of legal fees. Because of the dearth of case law on this topic, we take this opportunity to review the *de facto* officer doctrine.

A. The *de facto* officer doctrine.

The *de facto* officer doctrine has been "universally" and "frequently" recognized. *See Buckler v. Bowen*, 198 Md. 357, 369 (1951), and the cases cited therein. The doctrine originated as a function of public policy with the primary purpose of binding an individual's actions when acting pursuant to an unofficial or defective appointment to public office. *See Koontz v. Burgess, etc., of Hancock*, 64 Md. 134 (1885). The most widely cited touchstone of the doctrine is found in *Norton v. Shelby Cnty*. where the United States Supreme Court held: "An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons . . ." *Norton v. Shelby Cnty.*, 118 U.S. 425 (1886) (quoting *State v. Carroll*, 38 Conn. 449, 449 (Conn. 1871) (setting forth four conditions for finding that an individual was a *de facto* officer of a public office)).

Norton and its progeny have informed the standard and application of the *de facto* officer doctrine in Maryland for over one hundred years. *See Izer v. State*, 77 Md. 110

(1893); *see also State v. Fahey*, 108 Md. 553 (1908); *Kimble v. Bender*, 173 Md. 608 (1938); *Buckler, supra*, 198 Md. 357 (1951); *Reed v. President & Comm'rs of Town of Ne.*, 226 Md. 229, 243 (1961); *Grooms v. LaVale Zoning Bd.*, 27 Md. App. 266, 272 (1975); *Baker v. State*, 377 Md. 567, 581 (2003) (citing *Izer*, *supra*, 77 Md. 110)). Indeed, in the context of public office and public corporations, the *de facto* officer doctrine is "well established in this State" and continues to be premised on the "practical public necessities and the considerations of fairness as regards the rights of third parties . . ." *Valle v. Pressman*. 229 Md. 591, 604 (1962).

The *de facto* officer doctrine has been extended beyond the context of public corporations and into the realm of private corporations and associations. *See Valle, supra*, 229 Md. at 604 (recognizing that the doctrine has application to both public and private corporations with the justification for its use "differing only in degree."); *Cardellino v. Comptroller of Treasury* 68 Md. App. 332, 341 (1986) (holding that an individual was a "*de facto* secretary-treasurer"); *Comptroller of Treasury v. House*, 68 Md. App. 560, 563, 567 (1986) (holding that an individual was a "*de facto* officer" of a private corporation even though not holding "any of the executive offices specified in [the corporation's] original bylaws . . . ").

Our holdings in *Cardellino* and *House* relied, in part, on the Court of Appeals' reference to an excerpt from a treatise on corporations and associations law in *Freestate Land Corp. v. Bostetter*, 292 Md. 570, 580 (1982). In *Bostetter*, the Court of Appeals recited the following from H. Brune's treatise on corporations and associations: "Though

ordinarily a vote of shareholders or directors is necessary to elect or appoint officers, it has been held that the appointment of an officer may be 'inferred.'" *Bostetter, supra,* 292 Md. at 580 (quoting H. Brune, *Maryland Corporation Law and Practice* § 231 at 230 (rev. ed. 1953)).

In *Cardellino* and *House*, we ultimately held that it could be properly inferred that the individuals were *de facto* officers of their respective corporations because their actions were characteristic of corporate officers. *Cardellino, supra,* 68 Md. App. at 341; *House, supra,* 68 Md. App. at 567. In sum, these actions included: (1) signing corporate tax returns as a corporate officer; (2) designation as a corporate officer on documents submitted to third parties; (3) utilizing the title of a corporate officer; (4) signing corporate authorizations; and (5) appointment by a corporate director to undertake tasks that utilized the title of a corporate officer. *Cardellino, supra,* 68 Md. App. at 341; *House, supra,* 68 Md. App. at 567.

Contrary to the origins of the *de facto* officer doctrine, our holdings in *House* and *Cardellino* did not explicitly rely on public policy justifications or concerns regarding third parties to support the inference that the individuals were *de facto* officers. *Cardellino, supra,* 68 Md. App. at 341; *House, supra,* 68 Md. App. at 568. Instead, our holdings in *House* and *Cardellino* employed the rationale that an individual who holds themself out as a corporate officer ought to be considered a *de facto* officer to be subjected to corporate liabilities. *Cardellino, supra,* 68 Md. App. at 341 ("To hold otherwise would allow an individual to avoid liability even though she held herself out to be a corporate officer who,

[] is personally obligated to pay the unpaid sales tax."); *House*, *supra*, 68 Md. App. at 568 (holding that provisions of the Tax-General Article concerning personal liability of corporate officers would be contravened if the statute were construed to not include an individual who acted as a *de facto* corporate officer.).

Although the justifications for applying the *de facto* officer doctrine in the context of public office may not be identical when applied to private corporations, the underlying purpose for finding that an individual was a *de facto* officer is similar. In both contexts, the underlying purpose for finding that an individual is a *de facto* officer is twofold -- holding the *de facto* officer to corporate liabilities, and/or binding corporate actions that concern third parties. *See Valle*, *supra*, 229 Md. at 604 ("In the case of public corporations the reasons for holding the acts of *de facto* officers binding on the corporations they represent are doubtless stronger than in the case of private corporations, but, to some extent at least, they are the same in both, differing only in degree.") (quoting *Fletcher Cyclopedia of Corporations* § 372 (2021)).

Accordingly, in the context of private corporations, the *de facto* officer doctrine may be used to hold a *de facto* officer accountable to his corporate liabilities, and also to bind corporate action when concerning third parties. This interpretation is in accordance with our previous holdings in *Cardellino* and *House*, as well as the origins and subsequent extension of the doctrine as explained in *Valle*. *Cardellino*, *supra*, 68 Md. App. at 341; *House*, *supra*, 68 Md. App. at 568; *Valle*, *supra*, 229 Md. at 604.

B. The *de facto* officer doctrine does not apply as a matter of law to Mr. Schnupp's claims for advancement and/or indemnification of attorney's fees under the circumstances of this case.

The remaining question we must address -- as presented under the circumstances of this current appeal -- is whether the *de facto* officer doctrine can be invoked not only for purposes of accountability and estoppel, but also for the sole purpose of providing a corporate benefit or protection to an alleged *de facto* officer. Unsurprisingly, there is no Maryland case that has applied the doctrine for such a purpose. Further, our research -- thorough we trust -- has failed to unearth a single case from our sister states that have applied the *de facto* officer doctrine solely to advance or indemnify attorney's fees to a *de facto* officer.

We, therefore, look to Delaware case law that has imposed a limitation regarding the application of the *de facto* officer doctrine.[3] Indeed, the Delaware courts have held that the *de facto* officer doctrine is generally invoked to bind corporate action concerning third parties, or to resolve disputes over corporate elections and contested board seats. *Drob v. Nat'l Mem'l Park*, 41 A.2d 589, 598 (1945) ("As a general rule the actions of *de facto*

[3] The Delaware Supreme Court and Court of Chancery have gained a reputation for expertise in matters concerning corporate law. *Kramer v. Liberty Prop. Tr.*, 408 Md. 1, 25 (2009). The Court of Appeals has "noted the respect properly accorded Delaware decisions on corporate law ordinarily in our jurisprudence." *Sutton*, *supra*, 226 Md. App. at 71–72, n. 12 (quoting *Werbowsky v. Collomb*, 362 Md. 581, 618 (2001)). Indeed, regarding the interpretation of the provisions of the very statute that is central to this case -- CA § 2-418 -- the Court of Appeals has "deem[ed] decisions of the Delaware [courts] to be highly persuasive" on the matter. *Kramer*, *supra*, 408 Md. at 25. Accordingly, given the dearth of case law on the subject of the *de facto* officer doctrine in the context of private corporations, we look for guidance from Delaware court decisions.

officers are only binding on the corporation so far as third persons are concerned."); *Prickett v. Am. Steel & Pump Corp*., 253 A.2d 86, 88 (Del. Ch. 1969) ("Where a director assumes office pursuant to an irregular election in violation of the provisions of the corporate charter, he achieves only [*d*]*e facto* status which may be successfully attacked by the stockholders."); *Hockessin Cmty. Ctr., Inc. v. Swift*, 59 A.3d 437, 460 (Del. Ch. 2012) (applying the *de facto* officer doctrine to resolve a dispute between two competing groups of individuals claiming to be the lawful board of directors of the corporation).

In sum, the caselaw concerning *de facto* officers in Maryland and Delaware limits the *de facto* officer doctrine to: (1) binding corporate action concerning third parties; (2) holding the *de facto* officer to individual corporate liabilities; or (3) resolving disputes over corporate elections and contested board seats. *Valle*, *supra*, 229 Md. at 604; *Cardellino*, *supra*, 68 Md. App. at 341 (1986); *House*, *supra*, 68 Md. App. at 568 (1986); *Drob*, *supra*, 41 A.2d at 598. Accordingly, we hold that an individual cannot invoke *de facto* officer status for the *sole purpose* of obtaining a corporate benefit or protection. The *de facto* officer doctrine has never been applied for such a purpose, and we decline to extend the doctrine in a way that would be contrary to its origin and historic application.[4]

[4] We emphasize that our interpretation stands for the proposition that the *de facto* officer doctrine cannot be used for the *sole purpose* of obtaining a corporate benefit. In other words, our holding does not foreclose the possibility of a *de facto* officer obtaining indemnification and/or advancement of attorney's fees from the corporation when the finding of *de facto* officer status has been initially made under any of the doctrine's three limited purposes discussed *supra*. As such, if an individual assumes corporate office as a director or officer pursuant to an irregular election, he may be successfully attacked by the stockholders as a *de facto* officer or director. Under those circumstances, we need not

Mr. Schnupp points to two out-of-state cases to support his overall position that the *de facto* officer doctrine can be used to reap corporate benefits and protections from the *de facto* officer's makeshift status. *Sphinx Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 226 F. Supp. 2d 1326 (M.D. Fla. 2002) (holding that a former *de facto* officer was eligible to be insured under the corporation's director and officer insurance policy), *aff'd sub nom. Sphinx Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 412 F.3d 1224 (11th Cir. 2005); *Stein v. Axis Ins. Co.*, 10 Cal. App. 5th 673, 678, 216 Cal. Rptr. 3d 804, 808 (2017), as modified (Apr. 6, 2017) (holding that the *de facto* officer met the definition of "insured person" under the corporation's director and officer insurance policy). Mr. Schnupp argues that these cases -- although limited to the context of director and officer insurance coverage -- stand for the general proposition that it would be inequitable to subject *de facto* officers to corporate liabilities without providing them with the same protections and benefits befitting *de jure* officers.

We are unpersuaded. In our view, the equitable considerations underlying the *de facto* officer doctrine concern binding corporate action that impacts third parties, not whether a *de facto* officer should obtain corporate benefits from his *de facto* status. *See Valle, supra*, 229 Md. at 604 (referencing *Fletcher Cyclopedia of Corporations* § 372 (2021) ("The doctrine is one of those legal makeshifts by which unlawful or irregular

foreclose the possibility that the corporation may indemnify the *de facto* officer's attorney's fees in defending against the stockholder suit. Such circumstances would not result in a perversion of the doctrine because the underlying purpose of the doctrine is still being utilized, i.e., binding corporate action concerning third parties.

corporate and public acts are legalized for certain purposes on the score of necessity."); *see also Fletcher Cyclopedia of Corporations* § 383 (2021) ("Acts of *de facto* officers may not inure to their own benefit. In other words, a person cannot enforce rights dependent upon their legal position as an officer where they are merely a *de facto* officer, for example, a claim for salary.")).

Accordingly, Mr. Schnupp's claim for advancement fails as a matter of law because the *de facto* officer doctrine cannot be invoked for the sole purpose of obtaining a corporate benefit -- including advancement and/or indemnification of attorney's fees. Although the doctrine is rooted in public policy justifications for matters concerning public office, it shares a common element in the context of private corporations which is to bind a *de facto* officer's actions concerning third parties. *See Drob v. Nat'l Mem'l Park*, 28 Del. Ch. 254, 273, 41 A.2d 589, 598 (1945); *Prickett v. Am. Steel & Pump Corp.*, 253 A.2d 86, 88 (Del. Ch. 1969). Furthermore, the doctrine -- in the context of private corporations -- has only served the additional purposes of holding the *de facto* officer to individual corporate liabilities or resolving disputes over corporate elections and contested board seats. *Cardellino*, *supra*, 68 Md. App. at 341 (1986); *House*, *supra*, 68 Md. App. at 568 (1986); *Drob*, *supra*, 41 A.2d at 598. In short, there is no allegation that this case involves: (1) binding Atlantic's actions concerning third parties; (2) holding Mr. Schnupp accountable to corporate liabilities; or (3) resolving disputes over corporate elections.

Simply put, under the circumstances of this case, Mr. Schnupp cannot invoke the *de facto* officer doctrine as a matter of law for the sole purpose of obtaining advancement of

attorney's fees from Atlantic. The *de facto* officer doctrine is limited to the three purposes discussed *supra*, and none of those purposes or circumstances are present in this case. Because the doctrine cannot be used for the sole purpose of giving a corporate benefit to the alleged *de facto* officer, the circuit court did not err in dismissing Mr. Schnupp's counterclaim for advancement.[5]

II. The circuit court did not abuse its discretion in denying Mr. Schnupp's motions for preliminary injunction and/or summary judgment.

We review a circuit court's decision regarding a preliminary injunction for an abuse of discretion. *Ehrlich v. Perez*, 394 Md. 691, 707 (2006); *Lamone v. Lewin*, 460 Md. 450, 466 (2018). A trial court must examine four independent factors when considering whether it is appropriate to grant a preliminary injunction.[6] *Perez*, *supra*, 394 Md. at 707. The first

[5] Our holding rests on the inapplicability of the *de facto* officer doctrine as a matter of law to Mr. Schnupp's claim for advancement. Our review of the record and the pleadings below, however, indicates that there was ample evidence that Mr. Schnupp failed to satisfactorily plead that he was a *de facto* officer of Atlantic. Mr. Schnupp acknowledged multiple times in the agreements concerning his employment and stock ownership that he was merely an employee of Atlantic and had no power to bind or manage the corporation as a corporate officer. In the face of these agreements, Mr. Schnupp's assertions that he was a *de facto* officer merely because of his extensive duties as laboratory director fall short of the duties that are characteristic of a *de jure* corporate officer. *See Cardellino*, *supra*, 68 Md. App. at 341; *House*, *supra*, 68 Md. App. at 568. Crucially, there was no indication in the pleadings below that Mr. Schnupp held himself out to be a corporate officer to any third parties, or that Atlantic represented to any third parties that Mr. Schnupp was a corporate officer. *See Cardellino*, *supra*, 68 Md. App. at 341.

[6] The four factors are: "(1) the likelihood that the plaintiff will succeed on the merits; (2) the 'balance of convenience' determined by whether greater injury would be done to 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) the public interest." *Perez*, *supra*, 394 Md. at 708 (cleaned up).

factor a trial court must examine is "the likelihood that the plaintiff will succeed on the merits[.]" *Perez, supra,* 394 Md. at 708.

After the circuit court dismissed Mr. Schnupp's claim for advancement, the circuit court also denied his motion for injunctive relief finding that he could not meet the initial threshold of establishing a likelihood of success on the merits. The circuit court judge noted that, "given that I've just granted otherwise the motion to dismiss, there is no likelihood [of success on the merits] so that count will be dismissed, as well." The circuit court declined to evaluate the remaining three factors for injunctive relief.

In light of our affirming the circuit court's dismissal of Mr. Schnupp's counterclaim for advancement -- and because the *de facto* officer doctrine does not apply as a matter of law -- we also affirm the circuit court's determination that there was no likelihood that Mr. Schnupp would succeed on the merits of his counterclaim. We hold that the circuit court did not abuse its discretion in denying Mr. Schnupp's motion for preliminary injunction, and similarly, we need not address the remaining three factors for injunctive relief.[7] We, therefore, affirm the judgment of the circuit court.

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

[7] After Mr. Schnupp's counterclaim for advancement of attorney's fees was dismissed, the circuit court issued an order denying his motion for summary judgment and his request for a hearing on that motion. Because the circuit court dismissed Mr. Schnupp's counterclaim for advancement, there was nothing for the circuit court to review or rule upon regarding his motion for summary judgment -- which was premised on his lone counterclaim for advancement of attorney's fees. We hold, therefore, that the circuit court did not err in denying Mr. Schnupp's motion for summary judgment after dismissing his counterclaim for advancement of attorney's fees.