

Circuit Court for Baltimore City  
Case No: 24-C-19-002417

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1638

September Term, 2019

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DAX JOHNSON

v.

ALLY FINANCIAL, *et al.*

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Nazarian,  
Shaw Geter,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 16, 2020

\*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.

In October 2018, Dax Johnson (“Mr. Johnson”), appellant, entered into a “Retail Installment Sale Contract” with Easterns of Baltimore for the purchase of a used automobile. By the terms of the contract, Mr. Johnson agreed to repay the amount financed through 72 monthly payments of \$415.29 to Easterns of Baltimore or “upon assignment, the assignee of [the] contract,” beginning on November 19, 2018. The contract was, thereafter, assigned to and secured by Ally Financial, appellee.<sup>1</sup>

A dispute arose between the parties regarding whether the loan was fully satisfied through Ally Financial’s acceptance of four checks tendered by Mr. Johnson in the amount of \$415.29. The memo line on each of the four checks read: “Full Satisfaction of Claim #628927855452,” the account number referenced on Ally Financial’s statements to Mr. Johnson. Contending that his account had been settled, Mr. Johnson filed suit in the Circuit Court for Baltimore City alleging breach of contract (“Claim I”) and violation of § 3-311 of the Commercial Law Article (“Claim II”).

Ally Financial, in turn, filed a motion to dismiss, contending that Mr. Johnson had failed to state a claim upon which relief could be granted. Alternatively, Ally Financial moved for summary judgment, attaching, in pertinent part, the “Retail Installment Sale Contract” entered into between the parties, a statement reflecting the outstanding balance owed by Mr. Johnson as of January 2019, and an affidavit executed by the custodian of records for Ally Financial attesting to the authenticity of the aforementioned documents.

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<sup>1</sup> Jeffrey Brown, the C.E.O. of Ally Financial is also a named appellee in this appeal. The appellees shall be collectively referred to as Ally Financial.

Following written opposition by Mr. Johnson<sup>2</sup> and reply by Ally Financial, the court entered an order dismissing Claim II because § 3-311 of the Commercial Law Article “is an affirmative defense, not a claim.” The court also granted summary judgment in favor of Ally Financial as to Claim I, stating that “[s]ince the monthly checks were already required payments under the installment contract, they [could not] act as new consideration for a new contract.”

Mr. Jackson noted a timely appeal of the court’s order. On appeal, Mr. Jackson raises the following questions for our review, which we rephrase for clarity:

- 1) Did the circuit court err in denying Mr. Johnson a “trial by jury?”
- 2) Did the circuit court err in considering purportedly “unsworn statements” when it entered judgment against Mr. Martin as to Count I?
- 3) Did the circuit court err in determining that § 3-311 of the Commercial Law Article was an affirmative defense, not a claim?

For the following reasons, we affirm the decision of the circuit court.

## **DISCUSSION**

### **RIGHT TO JURY TRIAL**

Mr. Johnson first contends on appeal that in dismissing Claim II and entering judgment as to Claim I, the circuit court had denied him his “right to trial by [j]ury.” However, this issue was not preserved by Mr. Johnson for appellate review. As we have previously stated, “[a] contention not raised below...and not directly passed upon by the trial court is not preserved for appellate review.” *Baltimore Cty., Maryland v. Aecom*

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<sup>2</sup> Mr. Johnson’s opposition, filed on August 23, 2019, was entitled “Plaintiff’s Motion to Dismiss Defendants Motion to Dismiss.”

*Servs., Inc.*, 200 Md. App. 380, 421 (2011) (internal quotations omitted). Mr. Johnson did not allege in his opposition to Ally Financial’s motion to dismiss or, in the alternative, motion for summary judgment, that a grant of the relief sought by Ally Financial would deprive him of his right to a jury trial. Because Mr. Johnson did not raise this issue in the circuit court, we will not consider the issue on appeal. *See* Maryland Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).

Even had Mr. Johnson properly preserved this argument, he would not have prevailed in his claim of error that he was entitled to a jury trial. Indeed, pursuant to § 4-401 of the Courts and Judicial Proceedings Article, the circuit court had exclusive jurisdiction over Mr. Johnson’s complaint by virtue of his ad damnum in excess of \$30,000.00. However, his complaint was devoid of a jury demand sufficient to satisfy Maryland Rule 2-325(a), which requires that a party electing a trial by jury file “a demand...in writing either as a separate paper or separately titled at the conclusion of a pleading.” Moreover, Mr. Johnson did not file any pleading before the entry of the court’s judgment which explicitly requested a trial by jury. Accordingly, by failing to demand one in writing, Mr. Johnson waived his right to a trial by jury. *See* Maryland Rule 2-325(b) (“[t]he failure of a party to file the demand within 15 days after service of the last pleading filed by any party directed to the issue constitutes a waiver of trial by jury.”).

Furthermore, even had Mr. Johnson demanded a jury trial, such a demand would not free him of his obligation to state a claim upon which relief could be granted in his complaint. Additionally, such a demand would not divest the court of its ability to enter

judgment where there was no dispute of material fact and Ally Financial was entitled to judgment as a matter of law.

#### UNSWORN STATEMENTS

Mr. Johnson’s second contention on appeal is that the circuit court “accepted unsworn statements as facts.” In support, Mr. Johnson ambiguously states that Ally Financial’s motion to dismiss or, in the alternative, motion for summary judgment “had unsworn statements and an affidavit from someone that [had] nothing to do with the case or contract.” With regard to the alleged “unsworn statements,” Mr. Johnson does not in his brief direct the court to the specific statements he found objectionable. Because he has failed to set forth his argument with particularity, we decline to review this claim of error on appeal. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain “[a]rgument in support of the party’s position.”); *Klaunberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

With regard to Mr. Johnson’s contention that Ally Financial had submitted “an affidavit from someone that has nothing to do with the case or contract,” the record reveals that the single affidavit submitted by Ally Financial and attested to by LeAndrian Wright was relevant to the case. As custodian of records for Ally Financial, Ms. Wright’s affidavit was relevant to the extent that she authenticated, under the penalties of perjury, the “Retail Installment Sale Contract” and January Statement attached as exhibits to Ally Financial’s motion for summary judgment.

§ 3-311 OF THE COMMERCIAL LAW ARTICLE

Mr. Johnson’s last contention on appeal is that the court erred in determining that § 3-311 of the Commercial Law Article was an affirmative defense rather than a claim. However, Mr. Johnson failed to preserve this argument for appellate review. In its motion to dismiss, Ally Financial explicitly argued that Count II “based on §3-311, must be dismissed because that statute sets up an affirmative defense not a claim.” In Mr. Johnson’s written opposition, he raised no response or opposition to this argument. Moreover, Johnson’s brief is devoid of any argument supporting his contention that § 3-311 of the Commercial Law Article establishes a cause of action. Unpreserved and unargued, we decline to exercise review of this issue on appeal.

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