

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1692

September Term, 2017

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JOHN TAZI, et al.

v.

LECUDO-WDC, INC., et al.

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Meredith,  
Kehoe,  
Salmon, James P.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: January 22, 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.

After John Tazi and George Tandongfuet, appellants, filed a third amended complaint in the Circuit Court for Prince George's County against Akame Pascal, Matthew Fondu, Margaret Atem, Benard Atem, Julie Fuatabreh, Jonas Njinkeng, and LECUDO-WDC, Inc., alleging misappropriation of funds from an unincorporated voluntary membership organization, Jonas Njinkeng, appellee, filed a motion to dismiss for failure to state a claim or, in the alternative, for summary judgment, and he requested a hearing. On September 6, 2017, the court held a hearing, and on September 12, 2017, entered an order dismissing appellants' claims with prejudice.

On September 28, 2017, appellants filed a motion to reconsider the judgment in the circuit court. On October 18, 2017, the circuit court entered an order denying appellants' motion to reconsider. On October 20, 2017, appellants filed a notice of appeal.

On November 21, 2017, appellee Njinkeng filed a motion in this Court asking us to dismiss the appeal because it was not filed within 30 days after entry of the September 12, 2017 judgment. On December 26, 2017, this Court entered an order denying appellee's motion to dismiss the appeal, but limiting the scope of review because the notice of appeal was timely only with respect to the denial of appellants' motion to reconsider.

### **QUESTION PRESENTED**

Pursuant to the order this Court entered on December 26, 2017, limiting the scope of review, the question appellants are permitted to raise on appeal is: "whether the Circuit

Court abused its discretion when it denied Appellants' Motion for Reconsideration by Order dated October 18, 2017.”<sup>1</sup>

For the reasons set forth herein, we shall affirm in part the judgment of the circuit court as to LECUDO-WDC, Inc., only, but shall vacate the remainder of the judgment and remand the case for further proceedings.

### **FACTS AND PROCEDURAL BACKGROUND**

LECUDO stands for “Lebang Cultural and Development Organization.” LECUDO-USA, Inc. is a non-profit, private, voluntary social and cultural association serving the Lebang people of the country of Cameroon who reside in the United States. Lecudo-Washington DC Metro Area Branch, more commonly referred to as LECUDO-WDC, is an unincorporated association that is a chapter of the parent organization, LECUDO-USA, Inc., and serves the greater metropolitan area of Washington, D.C. LECUDO-WDC is governed by bylaws but is an unincorporated association of voluntary members.

On December 5, 2016, a complaint that purported to be filed by “LECUDO-WDC, Plaintiff” was filed in the Circuit Court for Prince George’s County against former board members Akame Pascal (former president), Matthew Fondu (former financial secretary), and Margaret Atem (former treasurer), alleging constructive fraud and breach of fiduciary

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<sup>1</sup> Appellants phrased the question for review as follows:

Whether the trial court was legally incorrect when it ruled that private-voluntary-unincorporated associations cannot maintain derivative suits in the State of Maryland.

duty. The complaint also included a claim against Pascal and Fondu alleging unjust enrichment, and another claim against Benard Atem, Julie Fuatabreh, Pascal and Fondu alleging civil theft.

In January of 2017, certain officers of LECUDO-WDC filed articles of incorporation to form an entity that was to be known as LECUDO-WDC, Inc. This action led to confusion regarding the issue of which individuals and entities are the proper parties to the claims asserted in this case. Counsel for LECUDO-WDC, Inc. explained the history LECUDO-WDC, Inc., as follows at a hearing in the circuit court:

. . . The idea was [that LECUDO-WDC was] going to convert the unincorporated association to a nonprofit corporation. So the national chapter, Lecudo USA, Inc. is a 501(c)(3) nonprofit corporation. LECUDO-WDC, Inc., the Maryland corporation, was incorporated as a 501(c)(4) corporation and for various reasons the 501(c)(4) IRS designation makes Lecudo WDC, Inc. incompatible with Lecudo USA, Inc. So this concept where they were trying to change the unincorporated association to a corporation, it didn't work out and they just abandoned the effort.

So Lecudo[-WDC] Inc. exists and it is in good standing right now because it was incorporated less than a year ago, but it exists in name only. There are no officers, there are no members, it has no bank accounts, it has no property, it has no assets, it's nothing. It's a piece of paper. The only document that has ever been filed related to LECUDO-WDC, Inc., is [] the Articles of Organization, and that's it.

So LECUDO-WDC, the unincorporated association still exists . . . .

On March 17, 2017, an amended complaint was filed. Instead of identifying LECUDO-WDC as the plaintiff, the amended complaint represented that it was filed “derivatively on behalf of LECUDO-WDC” by six of its members and former members: Nicholas N. Forchaleke, George Fortaboh, John Tazi, Michael Mnetonga, Fidelis

Njinkeng, and George Efuatlatch Tandongfuet. The amended complaint again named as defendants Akame Pascal, Benard Atem, Margaret Atem, Matthew Fondu, and Julie Fuatabreh, but also added “LECUDO-WDC” as a named defendant. The amended complaint reasserted claims of misappropriation of \$43,063 during 2011 and 2012, and added a claim for declaratory and equitable relief against Pascal, Atem, Fondu, and Fuatabreh.

On June 7, 2017, appellants filed a second amended complaint which reasserted the misappropriation claims, but listed only John Tazi and George Efuatlatch Tandongfuet as named plaintiffs. The other four individual plaintiffs named in the (first) amended complaint have not had further involvement as parties in this litigation. The second amended complaint again named Akame Pascal, Matthew Fondu, Benard Atem, Margaret Atem, Julie Fuatabreh, and LECUDO-WDC as defendants, but also added Jonas Njinkeng as a defendant, in his individual capacity, in the counts alleging constructive fraud and breach of fiduciary duty, and added a count against Njinkeng alone alleging that he had aided and abetted the other individual defendants (*i.e.*, Akame Pascal, Matthew Fondu, Bernard Atem, Margaret Atem, and Julie Fuatabreh) in committing their “wrongful and tortious conduct.”

On June 9, 2017, LECUDO-WDC filed a motion to dismiss the *first* amended complaint for failure to state a claim upon which relief may be granted. LECUDO-WDC argued the following:

- a. The Amended Complaint Must Be Dismissed Because Derivative Claims Cannot Be Asserted By Members (or Former Members) of an Unincorporated Association[.]

\* \* \*

- b. Even if the Plaintiffs Had Standing To Assert Derivative Claims, They Have Not Satisfied The Pre-Suit Demand Requirements Necessary To Maintain Such A Suit[.]

On June 27, 2017, Tazi and Tandongfuet filed a response in opposition to WDC's motion to dismiss the first amended complaint. They argued the following:

- A. Defendant's Motion To Dismiss Should Be Denied As Moot [because a second amended complaint had been filed prior to defendant's motion to dismiss being filed].

\* \* \*

- B. Maryland Statute[, Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings ("CJP"), § 6-406,] Allows Unincorporated Associations To Sue, Be Sued, And Bring Derivative Suits.<sup>[2]</sup>

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<sup>2</sup> Section 6-406 of the Courts and Judicial Proceedings Article states:

(a) **An unincorporated association**, joint stock company, or other group which has a recognized group name **may sue or be sued in the group name on any cause of action affecting the common property**, rights, and liabilities **of the group**.

(b) An action under this section:

- (1) Has the same force and effect with respect to the common property, rights, and liabilities of the group as if all members of the group were joined; and
- (2) Does not abate because of any change of membership in the group or its dissolution.

(Emphasis added.)

\* \* \*

C. Plaintiffs[] Had Standing to Assert a Derivative Claim Because Their Pre-suit Demand Necessary to Initiate A Suit Was Futile.

Appellants represent in their brief in this Court that, the day after filing their opposition to the motion to dismiss the second amended complaint, they learned of the incorporation of LECUDO-WDC, Inc., stating:

The following day [*i.e.*, June 28, 2017], it was brought to undersigned's attention that [LECUDO-]WDC had suddenly become incorporated on January 23, 2017. The incorporated association was formed for the same purpose as the unincorporated [LECUDO-]WDC, adopted the same bylaws, had the same membership, and the same officers. Assuming that the unincorporated association was no longer in existence, on June 28, 2017, the derivative-plaintiffs filed a Third Amended Complaint adding [LECUDO-]WDC, Inc. and dismissing the unincorporated [LECUDO-]WDC association.

On June 28, 2017, the previously-filed complaints were all superseded by virtue of Tazi and Tandongfuet filing the third amended complaint—which is the subject of this appeal—against the original five individual defendants, *plus* Jonas Njinkeng and LECUDO-WDC, Inc.<sup>3</sup>

The third amended complaint asserted that it was filed “derivatively on behalf of and for the benefit of LECUDO-WDC, INC.” The unincorporated LECUDO-WDC was

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<sup>3</sup> “An amended complaint supersedes the initial complaint, rendering the amended complaint the operative pleading.” *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 267 (2015), *aff'd*, 447 Md. 31 (2016) (citing *Gonzales v. Boas*, 162 Md. App. 344, 355, 874 A.2d 491, *cert. denied*, 388 Md. 405, 879 A.2d 1086 (2005)). “The amended complaint replaces the initial complaint in its entirety, and the initial complaint is considered withdrawn.” *Perry*, 221 Md. App. at 267 (citing *Shapiro v. Sherwood*, 254 Md. 235, 238–39, 254 A.2d 357 (1969)).

not listed as a party in either the caption or the introductory paragraphs of the third amended complaint. Instead, the caption listed “LECUDO-WDC, Inc.” as a “Nominal Defendant,” and the first sentence of the complaint asserted that “[t]he above-named Plaintiffs bring suit derivatively on behalf of and for the benefit of LECUDO-WDC, INC.” Paragraphs 3 and 4 of the third amended complaint alleged: “The nominal defendant LECUDO-WDC, INC. (herein after [sic] “LECUDO-WDC”) . . . is a non-profit organization incorporated in the State of Maryland . . . . At sometimes [sic] material in this lawsuit, LECUDO-WDC was an unincorporated association.” The third amended complaint alleged the same misappropriations of \$43,063 between January 2011 and December 2012 as had been alleged in the second amended complaint.

On August 14, 2017, Jonas Njinkeng alone filed a motion to dismiss the third amended complaint or, in the alternative, for summary judgment, and he requested a hearing. Njinkeng asserted the following:

- a. LECUDO-WDC was voluntarily dismissed from the lawsuit and LECUDO[-WDC,] INC. is now the entity for which derivative relief is sought, but it has yet to be served with process[.]

\* \* \*

- b. The Plaintiffs have no standing to bring a derivative claim on behalf of LECUDO[-WDC,] INC. because it is not the proper party in interest, and it has suffered no harm in any event[.]

\* \* \*

- c. The Plaintiffs should not be granted leave to amend the complaint yet again[.]



The motion seeking dismissal or summary judgment asserted that the failure to name the unincorporated association (LECUDO-WDC) in the third amended complaint was a fatal revision because the new corporation that had been formed (LECUDO-WDC, Inc.) was a mere shell of a corporation.

In support of the motion for summary judgment, Jonas Njinkeng filed an affidavit dated August 14, 2017, in which he declared and affirmed under penalties of perjury that “LECUDO-WDC is a chapter of LECUDO-USA, Inc.,” which is “a 501(c)(3) Maryland nonprofit corporation” that is “dedicated to promoting the social, cultural, educational, and developmental wellbeing of the Lebang dynasty [of Cameroon] in the diaspora. (See <http://lecudo-usa.org/index.html>).”

Njinkeng’s affidavit further stated that LECUDO-WDC “was founded in 1994 and currently has over 100 members.” “All active members in good standing of LECUDO-WDC are designated as the ‘general assembly,’ which is the overall governing body of LECUDO-WDC.” The affidavit stated that, although articles of incorporation for LECUDO-WDC, INC. had been filed in Maryland in January 2017, “LECUDO-WDC and LECUDO[-WDC,] INC[.] are two separate and distinct entities and have no organizational or financial relationship to each other.” Moreover, the unincorporated association, LECUDO-WDC, “continues to exist as an unincorporated association and chapter of LECUDO USA, [Inc.] as it has since its inception.” The affidavit further explained that, because LECUDO-WDC, Inc., had (apparently mistakenly) been “registered as a 501(c)(4) corporation under the IRS Code,” that “made it incompatible to

become a chapter of LECUDO USA[, Inc.] . . . because of LECUDO USA’s 501(c)(3) designation.” As a consequence, and because the unincorporated LECUDO-WDC “is prohibited from engaging in any activity that would interfere with LECUDO USA[, Inc.]’s designation as a 501(c)(3) corporation,” the newly formed LECUDO-WDC, Inc. “has never conducted any official business, has never merged with or become affiliated in any way with LECUDO-WDC, and has no relation or relevance to Plaintiffs[’] claims.” The affidavit further asserted that the recently-incorporated LECUDO-WDC, Inc. exists “in name only.” It has “no members, funds, bank accounts or any assets.”

On September 5, 2017, Tazi and Tandongfuet filed a response in opposition to Njinkeng’s motion seeking dismissal or summary judgment as to the third amended complaint. They did not file any supporting affidavit, but they argued that they had properly named LECUDO-WDC, Inc., because that entity was incorporated on January 23, 2017, and was intended to be a successor to LECUDO-WDC.

On September 6, 2017, the Circuit Court for Prince George’s County held a hearing on Njinkeng’s motion to dismiss, or in the alternative, for summary judgment. At the hearing, counsel for Njinkeng emphasized the fact that the unincorporated association LECUDO-WDC was still in existence and operating, but was not the subject of the allegations contained within the third amended complaint. Counsel for Njinkeng also asserted that, although there is statutory authority in Maryland for stockholders of corporations and members of LLCs to bring derivative actions on the behalf of the corporation or LLC, there is no comparable statutory authority for a member of an

unincorporated association (like LECUDO-WDC) to file a derivative suit on behalf of the unincorporated association.

The attorney for the plaintiffs responded that there was no requirement to include the unincorporated association in the complaint even though it was the entity that had allegedly suffered the wrongs and would allegedly benefit from this derivative action being pursued by the plaintiffs. Nevertheless, as appellee acknowledges in his brief in this Court, counsel for the plaintiffs also “requested leave to amend the complaint for a fourth time to re-add [LECUDO-]WDC as a defendant, which was denied.”

Counsel for the plaintiffs also argued that CJP § 6-406 provides authorization for members of unincorporated associations to bring derivative suits. But the motion judge was not persuaded, and commented: “[T]here is no caselaw that says a member can sue on behalf of the unincorporated association.” Near the end of the hearing, the following exchange occurred between plaintiffs’ counsel and the court with respect to plaintiffs’ contention that CJP § 6-406 authorizes members of unincorporated associations to bring derivative suits:

[PLAINTIFFS’ COUNSEL]: Your Honor, I understand that the issue you’re having in this case is whether a derivative suit can be brought on behalf of an [unincorporated] association.

THE COURT: Right.

[PLAINTIFFS’ COUNSEL]: And again, I’m going to reiterate that this, Maryland has allowed –

THE COURT: You keep saying that, but I have not seen any case law and I’m not aware of any, nothing has been brought to me. Okay. You cite me a statute, I appreciate that. A good piece of advocacy. I’ve been reading

that, I've read that a couple of times already since you brought it up. You keep saying, but you haven't cited me one case yet, have you?

[PLAINTIFFS' COUNSEL]: No, Your Honor. . . .

At the end of the motion hearing, the circuit court issued an oral ruling from the bench, granting the motion to dismiss the third amended complaint, and explaining:

. . . I agree with the defendants for the reasons stated. I agree with them.

But the most important reason I see is this is a derivative, not to use the words shareholder derivative, it's your derivative action, which is not permitted under the Maryland Corporation Act or the Court of [sic] Judicial Proceeding Article 6-406 that you've cited. However, if I'm wrong about the first syllogism of their argument, I agree with them on the second, third and fourth that they brought forth in their motion.

So Clerk, show the motion heard, motion is granted, [] dismissed with prejudice. Okay. Thank you.

The court further clarified that it was dismissing the claims against "everybody," meaning all of the named defendants, not just the moving party (Njinkeng). The judgment was entered on September 12, 2017.

On September 28, 2017, the plaintiffs filed a motion to reconsider. They argued that (1) the rights at common law of an unincorporated association have not been abrogated by statute, (2) Federal Rule of Civil Procedure 23.1(a) expressly provides for derivative suits by unincorporated associations, and (3) Njinkeng's oral argument asserting that the money allegedly stolen was a gift was not an argument that had been made in his motion to dismiss. On October 18, 2017, the circuit court entered an order denying the motion to reconsider.

On October 20, 2017, the plaintiffs filed a notice of appeal. On November 21, 2017, Njinkeng filed a motion asking this Court to dismiss the appeal because the notice was filed later than thirty days after judgment was entered pursuant to Maryland Rule 2-601 on September 12, 2017. On December 26, 2017, this Court entered an order denying Njinkeng's motion to dismiss the appeal, but the order limited the scope of review because the notice of appeal was timely only with respect to the ruling that denied appellants' motion to reconsider the order entered on September 12, 2017. Only Jonas Njinkeng filed a brief as appellee.

### **STANDARD OF REVIEW**

“In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.” *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010) (citation omitted). Nevertheless, “[a] court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when that error is brought to its attention in a timely manner, abuses its discretion.” *Morton v. Schlotzhauer*, 449 Md. 217, 232 (2016) (citations omitted).

### **DISCUSSION**

The appellants make no serious argument contesting the appellee's assertion that, as filed, the third amended complaint asserted claims that confused the unincorporated association known as LECUDO-WDC with a shell corporation named LECUDO-WDC, Inc., and named the wrong entity in the allegations set forth in that revision of the

complaint. Appellee correctly points out: “The misconduct alleged in all four versions of the complaint occurred between January 14, 2011 and December 17, 2012, and solely concerned the assets of [LECUDO-]WDC. LECUDO[-WDC,] INC. simply has nothing to do with this dispute.” Appellants did not file an affidavit or other document admissible in evidence to contest the assertion in Njinkeng’s affidavit that LECUDO-WDC, Inc. was not even in existence until January 2017. Because LECUDO-WDC, Inc. was formed in January 2017, it could not have suffered from any alleged misconduct on the part of the individual defendants that occurred in 2011 and 2012. And, therefore, the appellants’ third amended complaint was properly dismissed for failure to state a claim upon which relief could be granted. To that extent, we agree with the appellee that it was not an error for the court to grant the motion to dismiss the third amended complaint, and we also agree with the appellee that the court did not err in essentially entering summary judgment in favor of LECUDO-WDC, Inc. by granting the dismissal with prejudice as to that entity.

The more difficult question is whether it was an abuse of discretion for the motion court to deny appellants leave to amend their complaint one more time with respect to the individual defendants and the unincorporated association LECUDO-WDC. As noted above, the specific reason given by the motion court for denying appellants’ request to file a fourth amended complaint seeking relief on behalf of LECUDO-WDC was the court’s legal conclusion that members of unincorporated associations in Maryland do not

have standing or authority to file derivative actions seeking to recover a benefit on behalf of the unincorporated associations.

Having further reviewed the authorities cited by the parties on appeal, we acknowledge that the precedent in support of derivative actions being filed by members of unincorporated associations in Maryland is sparse. But we ultimately conclude that there is some authority indicating that such actions can be pursued. Consequently, we also conclude that the motion judge's refusal to grant the appellants the right to amend one more time was based upon an erroneous legal assumption, and therefore, was an abuse of discretion. *See, e.g., Morton, supra*, 449 Md. at 232 (“[A]n error in applying the law can constitute an abuse of discretion, even in the context of a motion for reconsideration made pursuant to Maryland Rule 2–534. A court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when that error is brought to its attention in a timely manner, abuses its discretion.” (footnote omitted)).

Like the motion court, we are not persuaded that authorization for members of unincorporated associations to file derivative actions on behalf of the associations is found in CJP § 6-406. That statute provides: “**An unincorporated association**, joint stock company, or other group which has a recognized group name **may sue or be sued in the group name on any cause of action affecting the common property**, rights, and liabilities **of the group**.” (Emphasis added.) But the statute appears not to confer any

powers upon individual members of the unincorporated association to prosecute legal actions on behalf of the association.

Nevertheless, as appellants point out in their brief in this Court, a comment to Maryland Rule 19-301.13. makes the following statement about derivative actions in Maryland: “Under generally prevailing law, **the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations** in the supervision of the organization. **Members of unincorporated associations have essentially the same right.** Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.” Comment [12] (emphasis added).

In *N.A.A.C.P. v. Golding*, 342 Md. 663 (1996), Judge Irma Raker reviewed at length the law in Maryland and elsewhere with respect to judicial intervention into the affairs of unincorporated associations. Although the Court of Appeals ultimately concluded that the law governing judicial intervention into the affairs of foreign corporations controlled the result in *N.A.A.C.P.*, the Court’s review of precedent regarding unincorporated associations (such as LECUDO-WDC) is extensive, and is persuasive authority.

The Court of Appeals in *N.A.A.C.P.* “note[s] at the outset that as a general rule, courts will not interfere in the internal affairs of a voluntary membership organization.” 342 Md. at 672. Focusing on unincorporated associations, the opinion states: “In a seminal article in the Harvard Law Review, Professor Chafee outlined the analytic



approaches courts had applied to disputes involving voluntary non-profit organizations. Z. Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993 (1930).” 342 Md. at 674-75 (footnote omitted). Notwithstanding the wide variety of approaches across the country identified by Professor Chafee, the Court noted: “In determining whether courts should intervene in the disputes of voluntary membership organizations, Maryland has traditionally applied a narrow rule.” *Id.* at 677 (citing *Donnelly v. Supreme Council*, 106 Md. 425, 430 (1907)). In *Donnelly*, the Court had held in 1907 that, when a voluntary membership organization has its own tribunals to decide disputed questions, “the Courts cannot be invoked to review their decisions of questions coming properly before them, **except in cases of fraud.**” 342 Md. at 663 (quoting 106 Md. at 430; emphasis added). The *N.A.A.C.P.* Court stated that “decisions of the unincorporated organization are insulated from judicial review **absent fraud, irregularity, or arbitrary action.**” 342 Md. at 678 (emphasis added). And, the Court stated: “Where no economic interest is at stake, however, we shall not ordinarily review the decisions of a voluntary private organization **absent fraud, arbitrary action, bad faith, or other wrongful conduct.**” *Id.* at 679 (emphasis added; footnote omitted). Furthermore: “Even when a dispute between an organization and its members is of a character that warrants judicial intervention, courts have typically required exhaustion of internal remedies as a prerequisite to judicial involvement.” *Id.*

In the present case, we conclude that the plaintiffs’ allegations that officers of an unincorporated association had misused their positions and access to funds to

misappropriate \$43,000 from the association falls within the exceptions, recognized in *N.A.A.C.P.*, to the general rule precluding judicial intervention into the internal affairs of a voluntary membership unincorporated association. Under the circumstances alleged, we conclude that Maryland permits members of the association to pursue a derivative action on behalf of the association in an effort to recover misappropriated funds for the association.

We are not ruling as a matter of law that whatever the appellants allege in a fourth amended complaint will satisfy all necessary pleading requirements to state a derivative claim upon which relief can be granted. *Cf. Boland v Boland*, 423 Md. 296 (2011) (addressing shareholders' derivative actions with respect to corporations). But we are holding that it was an abuse of discretion for the circuit court to refuse to grant appellants another opportunity to amend their complaint.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE'S COUNTY IS  
AFFIRMED AS TO THE JUDGMENT IN  
FAVOR OF LECUDO-WDC, INC. ONLY,  
AND IS OTHERWISE VACATED. THE  
CASE IS REMANDED TO THE CIRCUIT  
COURT FOR PRINCE GEORGE'S  
COUNTY FOR FURTHER  
PROCEEDINGS NOT INCONSISTENT  
WITH THIS OPINION.**

**COSTS TO BE EQUALLY DIVIDED  
BETWEEN APPELLANTS AND  
APPELLEE.**