Circuit Court for Montgomery County
Case No. 432552-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1808

September Term, 2017

MONTGOMERY BLAIR SIBLEY

v.

LITTLER MENDELSON, P.C., ET AL.

Reed,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 26, 2019

*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 case began as a dispute over $4.88. CarMax Auto Superstores, Inc. asserted that it had overpaid an employee, Montgomery Blair Sibley, in the amount of $4.88, and requested repayment. Although Sibley didn't dispute the overpayment, he didn't repay it either. Around the same time that CarMax was pursuing repayment of the $4.88, Sibley formally requested arbitration on several unrelated grievances. In the course of responding to Sibley's request for arbitration, CarMax learned that Sibley had lied on his job application—he said that he had voluntarily closed his law practice, while in reality, a suspension of his law license had necessitated the closing of his practice. CarMax decided to terminate Sibley's employment based on two grounds: failure to repay the $4.88 and a false job application. Sibley responded that these reasons were trumped up and that, in reality, he was terminated as revenge for having filed the earlier grievances.

Because Sibley's employment contract with CarMax included a mandatory arbitration provision, the parties went to arbitration.[1] During arbitration, a discovery dispute arose when Sibley learned that CarMax had not produced a requested document. The arbitrator found that CarMax had violated the relevant discovery rules and considered appropriate sanctions. Sibley requested "an adverse inference and judgment to [Sibley] on the retaliation claim, with monetary sanctions against [CarMax] and its attorneys." Ultimately, the arbitrator rejected financial sanctions, but precluded CarMax from eliciting witness testimony about the withheld document. The arbitrator then heard the case on the

[1] Despite having made a formal written request for arbitration, Sibley also tried to avoid arbitration by filing suit in the U.S. District Court. *CarMax Auto Superstores, Inc. v. Montgomery B. Sibley*, 194 F. Supp.3d 392 (D. Md. 2016).

merits and rendered a split decision. *First*, the arbitrator found that CarMax had failed to provide necessary COBRA notifications to Sibley upon termination but the arbitrator awarded no damages for the violation. *Second*, the arbitrator found that CarMax did not violate the anti-retaliation provisions of Sibley's arbitration agreement.[2] Thereafter, Sibley instituted this lawsuit against CarMax's lawyers, Joshua Waxman and Richard Black, and Waxman and Black's law firm, Littler Mendelson, P.C. Although framed in five separate counts,[3] no matter how denominated, the focus of the lawsuit is seeking damages for the discovery failure in arbitration. The lawyers moved to dismiss, which the circuit court granted. This appeal followed, in which Sibley argues: (1) the circuit court erred in determining that it lacked subject matter jurisdiction to consider this complaint; and (2) that the circuit court erred in its determination that the complaint failed to state a claim upon which relief could be granted.

It appears to be well-settled that, because of the strong preference for private arbitration built into the Federal Arbitration Act, courts lack subject matter jurisdiction to entertain lawsuits that collaterally attack arbitration outcomes. *See, e.g., Sandler v.*

[2] Sibley has filed suit in the U.S. District Court seeking to have the arbitration set aside. That litigation continues. *CarMax Auto Superstores, Inc. v. Montgomery B. Sibley*, Case No. 8:16-CV-01459-RWT (filed April 3, 2017).

[3] The five counts in Sibley's complaint were: "Concealment of Evidence," "Perversion of the Course of Justice," "Breach of Fiduciary Duty," "Agency," and "Punitive Damages." Sibley has not appealed from the dismissal of his claims labelled "Agency" and "Punitive Damages" so, presumably, he has acquiesced in their dismissal. *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 712 (2013) (holding that failure to brief an issue constitutes a waiver of the right to appeal from that portion of a court's order).

Weyerhaeuser, 966 F.2d 501, 503 (9th Cir. 1992); *Corey v. New York Stock Exchange*, 691 F.2d 1205, 1213 (6th Cir. 1982); *Fahkri v. Marriott Int'l Hotels*, 201 F. Supp. 3d 696, 718 (D. Md. 2016); *Prudential Sec. v. Hornsby*, 865 F. Supp. 447, 452 (N.D. Ill. 1994). Sibley points out that none of these cases are precisely on point, that there are no Maryland cases that explicitly prohibit collateral attacks on arbitration, and that there are no Maryland cases that define what constitutes a collateral attack. Rhetorically, Sibley asks if someone had punched him in the face during arbitration, would he be barred from suing for battery, simply because it happened during an arbitration?

While Sibley is right that there may be hypothetical cases in which it is difficult to determine whether subsequent tort litigation is or is not a collateral attack on arbitration, this is not a hard case. The arbitrator here considered and rejected precisely the same sanction for precisely the same conduct that is sought in the instant tort suit. This is an impermissible collateral attack on the arbitration award and the circuit court was correct to dismiss the lawsuit for lack of subject matter jurisdiction. We affirm.

Because of our resolution of the first issue, we need not consider Sibley's second issue, whether any of the counts of his complaint state a claim. We therefore will not address them other than to say, *first*, that none of the claims Sibley advances is a recognized cause of action in Maryland,[4] and *second*, that in Maryland, counsel's obligations to

[4] "Concealment of Evidence" is not a tort cause of action in Maryland, as Sibley appears to concede. Similarly, "Perversion of the Course of Justice" is not and has never been recognized as a tort cause of action in Maryland. Worse still, Maryland has repeatedly declined to create an independent cause of action at law for "Breach of Fiduciary Duty,"

provide discovery are governed by the discovery rules, the rules of professional conduct, and as appropriate, a supervising court, *not* tort causes of action. We also make one final observation: Courts are a public resource, available to all for serious dispute resolution. It is a waste of that public resource to use courts for other purposes, either as a hobby or to vex a perceived enemy.

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

most recently in *Blondell v. Littlepage*. 185 Md. App. 123, 153 (2009). As noted, *supra* at n. 3, Sibley was waived his other claims.