

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 306

September Term, 2015

(Revised)

TRAVELOCITY.COM

v.

COMPTROLLER OF MARYLAND

Woodward,
Arthur,
Zarnoch, Robert A.,
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: March 11, 2016

** 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.

The Comptroller of the Treasury (appellant/cross-appellee) assessed a deficiency against Travelocity.com LP, now known as TVL LP (appellee/cross-appellant, “Travelocity”) for sales tax related to hotel and car rental transactions from March 1, 2003 through April 30, 2011. After the Comptroller affirmed the assessment in a notice of final determination, Travelocity appealed to the Maryland Tax Court. In the proceedings before the Tax Court, Travelocity filed a motion to compel production of documents related to sales tax paid by 715 third party hotels, which, Travelocity alleged, had paid part of the taxes it owed and, as a result, Travelocity was entitled to a credit for the taxes that had already been paid by these hotels. On May 30, 2014, the Tax Court issued an order directing the Comptroller to disclose the tax information of the third party hotels.

The Comptroller filed a petition for judicial review of production order in the Circuit Court for Baltimore County on August 28, 2014. Travelocity filed a motion to dismiss the petition for judicial review, which the circuit court denied. However, on March 24, 2015, the circuit court agreed with Travelocity on the merits and affirmed the order of the Tax Court. The Comptroller appealed to this Court, and Travelocity cross-appealed the denial of its motion to dismiss. Then, on October 9, 2015, the Comptroller dismissed its appeal.

The Comptroller now asks this Court to dismiss Travelocity’s cross-appeal on the ground that Travelocity may not appeal from a judgment in which it is not an aggrieved party. Section 10-223(b)(1) of Maryland Code (1984, 2014 Repl. Vol.), State

Government Article provides: “A party who is aggrieved by a final judgment of a circuit court under this subtitle may appeal to the Court of Special Appeals in the manner that law provides for appeal of civil cases.” There is no dispute that the circuit court’s order constituted a final judgment; therefore, the resolution of the Comptroller’s motion to dismiss rests on whether the circuit court’s denial of Travelocity’s motion to dismiss renders Travelocity an “aggrieved party” for the purposes of § 10-223(b)(1). The “aggrieved party” language in § 10-223(b)(1) codifies the general rule that a party who prevails below may not appeal. This rule operates to bar a prevailing party from appealing a judgment even if the lower court resolved some issues against that party. *See Paolino v. McCormick & Co.*, 314 Md. 575, 582 n.3 (1989); *Offutt v. Montgomery County Bd. of Ed.*, 285 Md. 557, 564 n.4 (1979).

Further, the circuit court in this case resolved a motion to dismiss, the denial of which is generally not appealable. *See Breuer v. Flynn*, 64 Md. App. 409, 415 (1985); *cf.* Md. Rule 8-131(e) (“An order denying a motion to dismiss for failure to state a claim upon which relief can be granted is reviewable only on appeal from the judgment”).

Thus, although the circuit court ruled against Travelocity by not dismissing the Comptroller’s appeal, Travelocity ultimately prevailed because the circuit court affirmed the Tax Court’s order requiring the production of documents, exactly the relief that Travelocity sought. We will, therefore, dismiss the cross-appeal.

**CROSS-APPEAL DISMISSED.
COSTS TO BE DIVIDED EVENLY
BETWEEN THE PARTIES.**