Circuit Court for Montgomery County
Case No. 445697-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3369

September Term, 2018

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MONTGOMERY BLAIR SIBLEY

v.

CARMAX, INC., ET AL.

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Berger,
Leahy,
Wilner,
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: July 20, 2020

Appellant, Montgomery Blair Sibley, appeals from the dismissal of his claims alleging malicious use of process and wrongful use of civil proceedings under Restatement (Second) of Torts § 674 (1977) ("Section 674") in the Circuit Court for Montgomery County. This is the latest action in successive litigation between Mr. Sibley and his former employer, CarMax, Inc. and CarMax Auto Superstores, Inc. (collectively, "CarMax"), following CarMax's termination of Mr. Sibley from employment in May 2016.

Mr. Sibley's underlying claims are predicated on a defamation suit filed against him by CarMax in the Commonwealth of Virginia after Mr. Sibley issued a press release stating that CarMax engaged in fraudulent and predatory lending practices. Mr. Sibley supplied the press release to a newswire service, which, according to Mr. Sibley, "automatically and without human intervention" posted his press release to more than 3,000 individuals and press outlets. The parties engaged in protracted litigation in Virginia for over two years. Ultimately, the trial court in Virginia dismissed CarMax's defamation suit after it found that "the evidence was legally insufficient to establish publication."

Following dismissal of the defamation suit, Mr. Sibley filed the underlying complaint for malicious use of process. The first amendment to the complaint added a law firm and certain individuals—the attorneys and CarMax executives who purported to prosecute the suit—as defendants.

The defendants moved to dismiss the action. The circuit court granted a motion for lack of personal jurisdiction as to Alan D. Wingfield, Julie Hoffmeister, Eric Margolin, Russell Wood Jordan, IV, and Ross Longood (the "Individual Defendants") but granted Mr. Sibley leave to amend the complaint to allege special damages. Mr. Sibley then filed

a second amendment to the complaint adding a claim under Section 674. After a hearing, the court granted the motion to dismiss the remaining defendants, CarMax and the law firm, because Mr. Sibley failed to plead special damages.

Mr. Sibley timely appealed to this Court and presents three questions for our review, which we have rephrased for clarity:[1]

I. Did the circuit court err in dismissing Mr. Sibley's claim for malicious use of process?

II. Did the circuit court err in dismissing Mr. Sibley's claim for "Wrongful Use of Civil Proceedings" under Section 674 of the Restatement (Second) of Torts?

III. Did the circuit court err in dismissing the Individual Defendants for lack of personal jurisdiction?

We affirm the circuit court's dismissal of Mr. Sibley's claim for malicious use of process because he failed to plead special damages as required under Maryland law. We also affirm the court ruling on Mr. Sibley's Section 674 claim. Maryland does not recognize a claim for violation of Section 674 and requires that a party plead special damages when bringing a parallel malicious use of process claim. Consequently, we do

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

"1. Whether [Mr.] Sibley stated a claim for Malicious Use of Process[.]

2. Whether [Mr.] Sibley stated a claim for Unjustifiable Litigation – Wrongful Use of Civil Proceedings.

3. Whether the dismissal for lack of personal jurisdiction over Appellees Alan D. Wingfield, Julie Hoffmeister, Eric Margolin, Russell Wood Jordan, IV, and Ross Longood was in error."

not reach the remaining question concerning the dismissal of the Individual Defendants for lack of personal jurisdiction.

## BACKGROUND

### A. Initial Complaint and First Amended Complaint

On April 16, 2018, Mr. Sibley filed a complaint against CarMax alleging malicious use of process. Mr. Sibley's complaint was predicated on a defamation suit filed against Mr. Sibley by CarMax in the Circuit Court of Goochland County, Virginia ("Goochland Suit"). Mr. Sibley, purportedly on behalf of the KMX Collective—a group of CarMax employees concerned with wage and working conditions—issued a press release stating that CarMax engaged in fraudulent and predatory lending practices. Mr. Sibley supplied the press release to a newswire service, which, according to Mr. Sibley, "automatically and without human intervention" posted his press release to various news outlets. The Goochland Suit ended following the conclusion of CarMax's presentation of its case-in-chief on the second day of a jury trial. The trial court held that the "evidence submitted was legally insufficient to establish publication."

Before CarMax was served with Mr. Sibley's first complaint, on May 15, 2018, Mr. Sibley had already filed an amended complaint, adding the following additional parties as defendants: (a) Troutman Sanders LLP ("Troutman Sanders"), the law firm that represented CarMax in the Goochland Suit; and (b) the Individual Defendants: Alan D. Wingfield and Julie Hoffmeister (the individual Troutman Sanders attorneys that represented CarMax in the Goochland Suit); Eric Margolin (CarMax's General Counsel),

Russell Wood Jordan, IV (CarMax's Assistant Vice President for Consumer Finance), and Ross Longood (CarMax's Deputy General Counsel).[2]

In his first amended complaint, Mr. Sibley, representing himself, alleged the following pertinent facts under the heading "General Allegations":

> - On or about **June 13, 2016**, while in Montgomery, Maryland, Sibley, a former CarMax employee who had been fired by CarMax on **May 6, 2016**, after he sought to raise wage and working conditions to his 15,000 fellow CarMax employees by a **May 1, 2016** email, he sent, issued a Press Release . . . through ICrowdNewswire.com which automatically and without human intervention posted the Press Release on various Internet Websites.
>
> - The Press Release reported that a collective of CarMax employees had, upon their First Amendment rights to petition and freedom of speech, petitioned various state and federal consumer protection agencies to review the subprime auto loan practices of CarMax which they deemed predatory as the practices: "interfere[d] with the customer's ability to understand: (i) the material terms, costs, and conditions of an automobile loan and (ii) took unreasonable advantage of customers' lack of understanding about the costs of the loan by withholding complete cost information during the application process."
>
> - On **April 13, 2018**, (i) after almost two (2) years of extensive and time consuming discovery and motion practice litigation, (ii) numerous hearings in Goochland Circuit Court which required Sibley to travel to Goochland, Virginia, (iii) a deposition requiring Sibley to travel to Richmond, Virginia and (iv) a two day jury trial in Goochland County Circuit Court which required Sibley to travel to Goochland, Virginia and lodge there for three (3) days, the Defamation suit was **dismissed** at the conclusion of the direct case of CarMax by the judge presiding at the jury trial as the Defendants had <u>failed</u> to prove all the requisite elements of the Defamation suit.

(Emphasis in original.)

[2] CarMax, Troutman Sanders, and the Individual Defendants are the "Appellees".

In the single count complaint, Mr. Sibley alleged malicious use of process against the Appellees. Specifically, he alleged that the Goochland Suit was brought without "probable cause" to harass Mr. Sibley:

> The Defamation suit was instituted by the Defendants without probable cause as they had no proof of the requisite element of "publication" either at the time of their filing of the Defamation suit or some two (2) years later at trial. The prosecution of the Defamation suit by the Defendants against Sibley was malicious, vindictive and brought for an ulterior motive; to wit, for the purpose of attempting to legally harass and to defame Sibley as a result of Sibley's efforts to raise wage and working condition issues at CarMax.

(Emphasis in original.)

Mr. Sibley set forth the damages that he allegedly sustained due to Appellees' malicious use of process:

> As a result of the Defamation suit, Sibley suffered special injuries, to wit, (i) the lost time from the ordinary pursuits in Sibley's life and home, (ii) the quality of Sibley's life was significantly diminished, (iii) the draining of Sibley's resources from deployment in other litigation in which Sibley and CarMax were and are involved and (iv) the chilling of and infringement on Sibley's (a) National Labor Relations Act rights and (b) First Amendment right to petition and engage in free speech.

The first amended complaint set forth two potential bases for personal jurisdiction over the Individual Defendants: first, that the Individual Defendants "purposefully directed their activities at Sibley in Maryland and as a result of Sibley's claims arise out of or relate to those activities," and, second, that "the Defendants served the summons and complaint in the Defamation suit on Sibley in Montgomery County, Maryland."

### B. Motions to Dismiss First Amended Complaint and Motion for Protective Order

Appellees moved to dismiss Mr. Sibley's first amended complaint for failure to plead special damages for a claim for malicious use of process as required under Maryland or Virginia law.[3] The Individual Defendants moved to dismiss separately on jurisdictional grounds because Mr. Sibley had failed to plead sufficient facts to establish personal jurisdiction of them in Maryland.

After the motions to dismiss were filed, Mr. Sibley served 18 separate discovery requests on Appellees, including jurisdictional discovery on the Individual Defendants. Appellees moved for a protective order to defer discovery until after their pending motions to dismiss were decided and requested that the circuit court strike the jurisdictional discovery propounded by Mr. Sibley.

On October 2, 2018, the circuit court (Hon. Steven G. Salant, presiding) held a hearing on the Appellees' various motions. First, the circuit court dismissed the Individual Defendants for lack of personal jurisdiction without hearing oral argument from either party:

> There's a laundry list of defendants here, some of which the Court finds on the basis of the papers that there is no personal jurisdiction over in the state of Maryland and so I'm going to truncate some of the argument in this case.
>
> The Court specifically finds as to and dismisses out Alan Wingfield and Julie Hoffmeister who are two attorneys who work for the defendant

[3] In this appeal, Mr. Sibley and the Appellees only address causes of action under Maryland law and do not confront Maryland's choice of law rules or otherwise analyze whether Maryland or Virginia law should apply. Appellees make the blanket assertion, without further argument or analysis, that this case "does not belong in Maryland and should be governed by Virginia law."

> Troutman Sanders. The Court just does not find that they have the personal contacts or a sufficient basis or personal jurisdiction. Likewise, with Eric Margolin, Russell Wood Jordan, and Ross Longood, I understand that the plaintiff argued a conspiracy theory of jurisdiction. The Court does not find that to be appropriate or adequate in this case, and therefore, I'm going to dismiss out those two [sic].

Next, the circuit court heard argument on the motion to dismiss the malicious use of process claim. The remaining Appellees, CarMax and Troutman Sanders, argued that the complaint failed to allege a claim for malicious use of process because Mr. Sibley's first amended complaint did not allege special damages. Specifically, CarMax and Troutman Sanders argued that "[t]here needs to be greater damage than the mere incidence of litigation, which is what we have here." They also argued that Mr. Sibley's distribution of the press release on the internet was probable cause justifying the Goochland Suit.

The Court then directed Mr. Sibley to "take all the time you need, sir" to respond to CarMax and Troutman Sanders' arguments. Mr. Sibley responded that the "injury is that I have to deal with this suit." Mr. Sibley concluded:

> Judge, to allow [the defamation suit] to happen is to allow the devolution of the law to the favor of a corporate employer, rather than what I'm asking here, and I ask it very clearly, a novel argument that the law must evolve to recognize that the process becomes the punishment if there's no consequence for filing lawsuits without probable cause.

The trial court then asked Mr. Sibley to specify the special damages that he was pleading in his complaint. Mr. Sibley responded: "I spelled them out to the extent I'm able and willing to in the complaint. Is it chilling, primarily. I put the normal damages in there. I recognize that they don't qualify." The circuit court judge responded:

> Well, a general claim of chilling, I think, is something that can happen with lots of different [litigation]. I don't think that it necessarily comes under

> the category of special damages because, as I was saying, anytime somebody is sued for defamation, which is essentially alleging publication of some false fact - - so it is speech one way or the other, whether it's written or oral - - and then somebody sue you for that, naturally the result would be, you'd be chilled because somebody - - you're all of a sudden coming to the realization that somebody can in fact sue you, whether rightfully or wrongfully, that they can sue on that basis.
>
> But other than that, I mean, you're got your time, you've got your money, and what else?

In response to the court's question, Mr. Sibley replied that CarMax's conduct can only be viewed in light of the "entire range of behaviors" between CarMax and Mr. Sibley. According to Mr. Sibley, the defamation suit becomes "part of a pattern and practice to oppress a former employee who is trying to exercise National Labor [] Relations Board rights to organize his fellow employees to raise the wage and working condition issues."

After the circuit court received further argument from Appellees' counsel on whether CarMax had sufficient probable cause to file the Goochland Suit, the circuit court announced its ruling:

> In this case, I find that [the first amended complaint] fails only in the area of special damages. It requests special damages, but it doesn't quite say what those are. I just looked at it again right now. And both Maryland and Virginia require special damages, not the usual damages like attorney's fees, time, cost, et cetera.
>
> Therefore, I am going to dismiss the complaint in its entirety, but I am going to give the plaintiff leave to amend . . . , specifically to articulate the exact damages that he believes constitute special damages in this case, because without that—and it is a required element—the cause of action can't survive. So, that's what we're going to do.

On October 4, 2018, the circuit court issued a written order memorializing its ruling and denying Mr. Sibley's request for jurisdictional discovery from the Individual Defendants.

### C. Second Amended Complaint

Following the circuit court's ruling and written order, Mr. Sibley filed a second amended complaint against CarMax and Troutman Sanders and added a claim for wrongful use of civil proceedings under Section 674. According to Mr. Sibley, his second amended complaint purported to serve two purposes: first, to compensate Mr. Sibley for damages from "special injuries" he sustained for his malicious use of process claim and, second, to challenge Maryland law:

> [B]y this lawsuit, Sibley challenges Maryland's perverse, antiquated and judge-made minority "rule" that proof of "special injuries" are required to maintain an action for Malicious Use of Process. That "rule" allows – indeed encourages – an overreaching party to pursue meritless suits without fear of meaningful and deterring consequences. Such a "rule" can no longer be justified on the basis of either logic or social policy. Instead, it is high time for Maryland to move into the 21st Century and adopt [Section 674] thus allowing Sibley to recover for the harm caused by Defendants to Sibley: (i) for the chilling of Sibley's fundamental and Constitutional rights, (ii) to Sibley's reputation, (iii) to Sibley's physical and emotional well-being, (iv) for Sibley's compensatory damages, (v) for Sibley's costs, disbursements and reasonable *quantum meruit* attorney fees and (iv) for punitive damages to deter the Defendants from engaging in similar actions in the future.

While Mr. Sibley provided additional background information concerning the circumstances and aftermath of his termination from CarMax and the Goochland Suit, his allegation of special damages for malicious use of process was identical to that pled in his first amended complaint:

> As a result of the Defamation suit, Sibley suffered special injuries, to wit, (i) the lost time from the ordinary pursuits in Sibley's life and home, (ii) the quality of Sibley's life was significantly diminished, (iii) the draining of Sibley's resources from deployment in other litigation in which Sibley and CarMax were and are involved and (iv) the chilling of and infringement on Sibley's (a) National Labor Relations Act rights and (b) First Amendment right to petition and engage in free speech.

### D. Motion to Dismiss Second Amended Complaint

The remaining Appellees, CarMax and Troutman Sanders, moved to dismiss Mr. Sibley's second amended complaint for failure to state a claim upon which relief can be granted. Specifically, CarMax and Troutman Sanders argued that Mr. Sibley's malicious use of process claim failed as a matter of law, because Mr. Sibley had not pled special damages. Also, they averred that Mr. Sibley's Section 674 claim failed because neither Maryland nor Virginia recognizes a Section 674 claim.

On December 19, 2018, the circuit court (Hon. Anne K. Albright, presiding) held a hearing on CarMax and Troutman Sanders' motion to dismiss the second amended complaint. CarMax and Troutman Sanders argued that, based on Mr. Sibley's second amended complaint, first, it is "clear that Mr. Sibley admits he has no special damages and second[], he is asserting a claim under Section 674 . . . where Maryland law does not recognize such a [cause] of action."

Mr. Sibley replied that, because "the defamation suit . . . was part of a larger pattern of practice of a vindictive employer employing a law firm with 1,000 attorneys that only represent employers in labor related disputes," he satisfied the special damages requirement. While Mr. Sibley noted that the circuit court was "constrained to say yes or no" concerning whether he had properly pled special damages for a malicious use of process claim, Mr. Sibley argued that Section 674 was a "blank slate," which would permit the circuit court to allow Mr. Sibley's case to progress without the requirement of special damages.

The circuit court dismissed the malicious use of process claim:

> So, first with respect to the first cause of action. It seems to me that the flaw that Judge Salant identified was a failure on the part of the plaintiff to adequately allege special damages or special injuries. And so, he afforded Mr. Sibley a chance to replead that. I am now looking at, and I have reviewed the transcript of Judge Salant's decision. I have reviewed the second amended complaint and specifically paragraph number 35. And it seems to me that this allegation does not materially change the prior allegation that Judge Salant dismissed. I don't think there's any real debate about that.
>
> It seems to me that the law of this State requires special injuries, those have not been adequately alleged. And so, I am bound of course to follow the existing law of the State. And so, for that reason count one continues to be flawed. I will not allow for an additional chance to amend because Mr. Sibley has already had that.

The circuit court then addressed Mr. Sibley's Section 674 claim. While the circuit court found that there was no caselaw regarding whether Maryland has adopted, or should adopt, Section 674, the circuit court noted that "there are a number of good reasons why as a State we should not tolerate this kind of claim and they're apparent from this pleading as well as the [S]ection 674 itself." The circuit court articulated three reasons: first, the Maryland Rules already limit frivolous claims; second, attorneys are entitled to some immunity to make claims in pleadings and in court; and, third, Section 674 requires "exactly the same sort of special injury[.]" The circuit concluded that: "even if Maryland were to recognize a cause of action under 674, it seems to me that Mr. Sibley has not pled that because back to the beginning, he has not proven special injuries that would be required under 674 as it's laid out in the [S]econd [R]estatement." The circuit court then entered a detailed order dismissing the second amended complaint with prejudice.

Mr. Sibley noted his timely appeal to this Court.

## DISCUSSION

### I.

### Standard of Review

Under Maryland Rule 2-322(b)(2), a defendant may seek a dismissal of a complaint if it fails "to state a claim upon which relief can be granted[.]" A motion to dismiss avers that, "despite the truth of the allegations, the plaintiff is barred from recovery as a matter of law." *Porterfield v. Mascari II, Inc*., 374 Md. 402, 414 (2003). We review a grant of a motion to dismiss de novo for legal correctness. *Rounds v. Maryland-Nat. Capital Park & Planning Comm'n*, 441 Md. 621, 635 (2015).

Confining our analysis to the "four corners" of the second amended complaint, *Parks v. Alpharma, Inc*., 421 Md. 59, 72 (2011), we determine "whether the complaint, on its face, discloses a legally sufficient cause of action[,]" *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71-72 (1998). We review the case in the light most favorable to Mr. Sibley, the non-moving party, assuming the truth of all well-pleaded facts and allegations contained therein, as well as any reasonable inferences. *Alpharma*, 421 Md. at 72.

Under Maryland's liberal pleading standard, "a plaintiff need only state such facts in his or her complaint as are necessary to show an entitlement to relief." *Johns Hopkins Hosp. v. Pepper*, 346 Md. 679, 698 (1997). A litigant need not "state minutely all the circumstances which may conduce to prove the general charge," *Smith v. Shiebeck*, 180 Md. 412, 420 (1942), but must describe the claim with "such reasonable accuracy as will show what is at issue between the parties," *Fischer v. Longest*, 99 Md. App. 368, 380 (1994) (citation omitted). We have observed that "essentially, a complaint is sufficient to

state a cause of action even if it relates 'just the facts' necessary to establish its elements." *1000 Friends of Md. v. Ehrlich*, 170 Md. App. 538, 546 n.8 (2006) (brackets and quotation marks omitted). Although the pleading standard is liberal, a plaintiff must still meet certain basic requirements. The facts establishing the cause of action "must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *Alpharma,* 421 Md. at 72 (quotations omitted). In sum, a dismissal is proper only if the allegations and permissible inferences, if true, would not afford relief to the non-moving party. *Pittway Corp. v. Collins*, 409 Md. 218, 239 (2009).

**II.**

**Malicious Use of Process**

Mr. Sibley argues that the claim for malicious use of process contained in the second amended complaint satisfied the "special damages" element of that cause of action because it included allegations concerning a "chilling of and infringement on" his fundamental rights. In support of his argument, Mr. Sibley relies on a New Jersey case, *Baglini v. Lauletta*, 768 A.2d 825 (N.J. Super. Ct. App. Div. 2001), and contends that CarMax's defamation suit was intended to "censor, intimidate, and silence Sibley . . . by burdening him with the cost of a legal defense until he abandoned his criticism of CarMax's employee compensation and working conditions." According to Mr. Sibley, the alleged constraint on his exercise of his constitutionally protected right to raise working condition issues with other CarMax employees constitutes "special damages."

Appellees counter that Mr. Sibley "failed to plead any compensable special damages" in his second amended complaint. They contend that Mr. Sibley's reliance on

*Baglini* is misplaced for two primary reasons. First, unlike *Baglini*, "this case does not involve SLAPP litigation or First Amendment rights as there is no state or governmental action involved." Second, citing *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29, 44 (1997), they contend that "Maryland courts have 'steadfastly adhered to the so-called 'English' rule that no action will lie for malicious prosecution of a civil suit when there has been no arrest of the person, no seizure of the property of the defendant, and no special injury sustained which would not ordinarily result in all suits prosecuted for like causes of action.'"

The Court of Appeals "has long recognized that '[s]uits for malicious prosecution are viewed with disfavor in law and are to be carefully guarded against.'" *One Thousand Fleet*, 346 Md. at 37 (quoting *N. Point Constr. Co. v. Sagner,* 185 Md. 200, 206 (1945)). "Public policy requires that citizens be free to resort to the courts to resolve grievances without fear that their opponent will retaliate with a malicious use of process lawsuit against them." *Id.* "If this were not the case, a large proportion of unsuccessful civil actions would be followed by suits for malicious prosecution, and so there would be a piling of litigation on litigation without end." *Herring v. Citizens Bank & Tr. Co.,* 21 Md. App. 517, 538 n.7 (1974) (quoting *Owens v. Graetzel*, 149 Md. 689, 694-95 (1926)).

To state a cause of action for malicious use of process, a party must allege facts sufficient to show five required elements:

> First, a prior civil proceeding must have been instituted by the defendant. Second, the proceeding must have been instituted without probable cause. Probable cause for purposes of malicious use of process means a reasonable ground for belief in the existence of such state of facts as would warrant institution of the suit or proceeding complained of. Third, the prior civil

> proceeding must have been instituted by the defendant with malice. Malice in the context of malicious use of process means that the party instituting proceedings was actuated by an improper motive. As a matter of proof, malice may be inferred from a lack of probable cause. Fourth, the proceedings must have been terminated in favor of the plaintiff. **Finally, the plaintiff must establish that damages were inflicted upon the plaintiff by arrest or imprisonment, by seizure of property, or other special injury which would not necessarily result in all suits prosecuted to recover for a like cause of action.**

*One Thousand Fleet*, 346 Md. at 37 (citations and quotations omitted) (emphasis added). "The plaintiff's failure to satisfy even one element mandates dismissal." *Id.* at 41. In the case at bar, the dispositive issue concerns the fifth element—whether Mr. Sibley properly pled the required special damage in his second amended complaint.

Maryland courts have consistently limited the type of damages that qualify under a claim for malicious use of process, despite the views proffered by other jurisdictions or the Restatements of Law:

> **Regardless of the attitude of the courts of other jurisdictions, concerning which there is much conflict, and regardless of the contrary view indicated in Restatement-Torts, Vol. 3, page 442,** Maryland has steadfastly adhered to the so-called 'English' rule that no action will lie for the malicious prosecution of a civil suit when there has been no arrest of the person, no seizure of the property of the defendant, and no special injury sustained which would not ordinarily result in all suits prosecuted for like causes of action.

*N. Point Const. Co. v. Sagner*, 185 Md. 200, 207 (1945); *see also Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 534 (2004). "The mere expense and annoyance in defending a civil action is not a sufficient special damage or injury to sustain an action" for malicious use of process. *N. Point Const. Co.*, 185 Md. at 207.

Because Mr. Sibley does not argue that the defamation suit resulted in his arrest or seizure of his property, we analyze whether Mr. Sibley has alleged a "special injury sustained which would not ordinarily result in all suits prosecuted for like causes of action." *Id.* We are unaware of any case in Maryland supporting the contention that interference with speech would qualify as special damage under Maryland law in a malicious use of process claim. However, Maryland's appellate courts have had occasion to examine this special injury requirement in various factual scenarios.

In *Campbell*, we held that the restriction of a homeowner's liberty, imposed through a peace order, did not constitute a special injury. 157 Md. App. at 534. Due to an ongoing dispute with a homeowner,[4] the president of the homeowner's association filed a petition in the district court requesting a peace order. *Id.* at 515. The order was granted based on the president's allegations that the homeowner was "stalking and harassing him and his family." *Id.* The order directed the homeowner to refrain from contacting the president or his family and to stay away from the president's residence and place of employment and his children's school, which the homeowner's children also attended. *Id.* at 515-16. The homeowner noted an appeal to the circuit court, which found that there was "no evidence presented to support the allegations of stalking or harassment[.]" *Id.* at 516. The homeowner then filed a complaint in the circuit court against the homeowner's association, its board of directors, and the president, alleging, among other things, a malicious use of

[4] The quarrel between the homeowner and the homeowners' association began with the location where the homeowner was parking his vehicle, escalated with the placement of a basketball hoop, and ultimately resulted in at least four separate legal actions. 157 Md. App. at 510-17.

process claim against the president. *Id.* at 516-17. The defendants filed dispositive motions on each count, including a motion for summary judgment on the malicious use of process claim. *Id.* at 517. The circuit court granted the motion for summary judgment because the homeowner could not establish probable cause or special damages. *Id.* at 532-33.

On appeal, the homeowner argued that a "deprivation of liberty"—an inability to attend association meetings while the peace order was in effect—constituted special damages. *Id.* at 534. We disagreed and held that the homeowner's "restricted liberty . . . is a damage that would ordinarily, if not always, result from the issuance of a peace order. For that reason, it is not a 'special injury' as contemplated by [a] malicious use of process claim." *Id.* Consequently, we affirmed the judgment of the circuit court. *Id.* at 512.

In *One Thousand Fleet Ltd. Partnership v. Guerriero*, the Court of Appeals held that financing issues, delays, and decreased rental revenue that a developer suffered on account of a legal challenge to a property's zoning classification did not qualify as special damages. 346 Md. 29, 44 (1997). After a developer received approvals for a real estate development project in Baltimore's Little Italy neighborhood, a community organization and property owner filed multiple lawsuits challenging the zoning modification and issuance of building permits. *Id.* at 32, 35. The circuit court dismissed each lawsuit because the community organization and property owner lacked standing. *Id.* at 35. The real estate developer brought a suit for malicious use of process and abuse of process against the community organization and two property owners based on lawsuits filed by the community organization and one of the property owners. *Id.* at 32. The complaint alleged that the community organization and one of the property owners, at the other's

behest, filed suit to prevent the developer from completing the project and to allow one of the property owners to purchase the property at a reduced rate. *Id.* at 35. The developer's malicious use of process count alleged the following damages:

> Plaintiff has sustained actual damages as a consequence of the actions of the Defendants in that it has been unable to obtain final financing for the Project, has suffered delays which have increased costs and has sustained a loss of rental revenue among other damages.

*Id.* at 44. The community organization and property owners moved to dismiss, and the circuit court granted the motion. *Id.* at 35-36. The developer appealed to this Court, but, before consideration in this Court, the Court of Appeals granted certiorari. *Id.* at 36. The Court of Appeals held that the alleged damages were "inadequate to maintain a cause of action for malicious use of process" because the damages are no different than those that ordinarily result from suits for like causes of action:

> [Developer's] alleged damages do not qualify as a special injury because any real estate developer facing a legal challenge to the zoning of its property would have suffered the same damages regardless of whether the zoning challenge was rightfully or wrongfully instituted. The [community organization and property owner's] zoning challenges would likely have impeded financing, caused delays, and decreased rental revenue under any circumstances. The damages [developer] suffered as a result of the four lawsuits are those that would ordinarily result from proceedings for similar causes of action.

*Id.* at 44. The Court of Appeals affirmed the judgment of the circuit court. *Id.* at 32.

In *Herring v. Citizens Bank & Trust Co.*, this Court held that damage sustained to debtors' credit ratings and business reputations did not constitute special damages. 21 Md. App. 517, 548 (1974). In that case, a bank instituted a confessed judgment action on two demand notes against three debtors. *Id.* at 519. As a result of the confessed judgment

action, the debtors filed suit against the bank, alleging, among other counts, malicious use of process. *Id.* After a jury returned a verdict in favor of the debtors, the circuit court entered judgment notwithstanding the verdict in favor of the bank. *Id.* at 520. The debtors appealed. We noted that: "[t]he common denominator claim [of the three debtors] . . . is that the filing of the confessed judgment notes was unnecessary and malicious and resulted in injury to the[ir] credit ratings . . . and injury to their personal and business reputations." *Id.* at 525. Our predecessors rejected the debtors' argument that damage to their credit ratings and business reputations constituted special damages:

> Any damage which they may arguably have sustained to their credit ratings and business reputations by virtue of the filing of the confessed judgments was only that damage typically sustained by anyone placed in similar straits. Their argument constantly returns to the theme that they should not have been placed in such straits; they were required to show in this regard, however, not that they should not have been placed in such straits, but rather they suffered a type of damage that would not ordinarily result to one so placed. In this, they have failed.

*Id.* at 548. Accordingly, the Court affirmed the decision of the circuit court. *Id.*

In *Walker v. American Security & Trust Co. of Washington, D.C.*, a son brought his mother from Washington, D.C. to Talbot County, without the knowledge or consent of the mother's corporate conservator, to see a medical specialist in Baltimore. 237 Md. 80, 83 (1964). From there, son and his mother, under the care of a physician, traveled to the mother's house in Talbot County. *Id.* After the conservator learned that the mother and her son were in Talbot County, the conservator petitioned the Circuit Court for Talbot County for a writ of habeas corpus and alleged that "the son had secretly taken his mother out of Washington and that the ward was unlawfully detained by the son to her 'detriment,

health and welfare.'" *Id.* at 84. The writ commanded the sheriff to serve the writ on the son and commanded the son and his mother to appear immediately before the circuit court. *Id.* Before a hearing to determine custody, the corporate conservator dismissed the habeas corpus proceedings. *Id.* Some time after dismissal, the son filed suit for malicious use of process in the circuit court due to being "compelled, under arrest, in the custody and control of the sheriff, to travel from Webley to Easton and there made to appear before the court at a hearing in open court." *Id.* at 85. The defendants filed a joint motion for summary judgment and asserted, among other theories, that "arrest is a necessary element of [malicious use of process] and the [son] was not arrested." *Id.* The circuit granted the motion, and the son appealed. *Id.* at 83.

The Court of Appeals affirmed, holding that the grant of summary judgment was proper because there was "no showing of any damage to the plaintiff from having been *produced* by the sheriff before the court . . . other than that which would likely result in other similar habeas corpus proceedings." *Id.* at 90. The Court instructed that "[m]ere annoyance and the expense of defending a civil action are not enough" to satisfy the damages requirement of malicious use of process. *Id.*

In *Shamberger v. Dessel*, the Court of Appeals held that a delay in gaining possession of real property, due to a caveat proceeding prior to the probate of a will, did not constitute special damages. 236 Md. 318, 321 (1964). After the decedent died, leaving a purported last will and testament bequeathing the rest and residue of the decedent's estate to one beneficiary, an heir instituted a caveat proceeding. *Id.* at 319. The beneficiary then counterclaimed and asserted, among other counts, that the heir "maliciously prosecuted a

caveat to the aforesaid will[.]" *Id.* at 320. The heir filed a demurrer, which the circuit court sustained. *Id.* The beneficiary appealed. *Id.*

The Court of Appeals held that the plaintiff had not suffered a special injury, even though the caveat to the will was "filed maliciously and without probable cause" and the plaintiff was denied use of the real property. *Id.* at 321. The plaintiff had no right to possession of the property "[u]ntil there was an adjudication on the merits of the caveat to the instrument under which he claimed title[.]" *Id.* The inability to possess the real estate during the caveat proceeding would result from "all caveats to wills involving devises of real property," and, therefore, was not a special injury. *Id.*

We glean one consistent canon in the foregoing cases: regardless of the type of damage alleged, the relevant inquiry is whether the plaintiff suffered a type of damages that would not customarily be suffered by a similarly placed individual in a similar proceeding. *Herring*, 21 Md. App. at 548. In the case at bar, Mr. Sibley, to his considerable credit, recognizes that most of the damages alleged in his complaint are the very sort that stem normally from litigation and do not qualify as special damages. "[L]ost time from the ordinary pursuits" of life, stress, a "diminished" quality of life, and the expense related to defending a lawsuit are common consequences of civil litigation and typical of the expense and annoyance in defending a civil action and, consequently, are not actionable as special damages in Maryland. *See N. Point Const. Co.*, 185 Md. at 207. Accordingly, Mr. Sibley asserts that he has alleged special damages due to a "chilling" of the "exercise of his National Labor Relations Act right to 'concerted activity' and fundamental and

Constitutional rights to raise wage and working condition issues with his fellow employees at CarMax."

Mr. Sibley finds his best support in a case from New Jersey, *Baglini v. Lauletta*, 768 A.2d 825 (N.J. Super. Ct. App. Div. 2001), which held that a challenge to First Amendment freedoms could "constitute a sufficient interference with one's liberty to satisfy the special grievance element." 768 A.2d at 836. In *Baglini*, a developer submitted a development application to construct condominiums. *Id.* at 828. After neighborhood residents learned of the developer's plan, they pursued a coordinated effort to oppose the project and voiced their concerns and opposition before the local land use commission. *Id.* at 828-30. The developer then filed a complaint against the objecting neighbors for defamation and unlawful interference. *Id.* at 830. The complaint in *Baglini* directly concerned the objections lodged by the objecting neighbors and the developer's attempts to constrain their First Amendment rights to protest a governmental land use proceeding. *Id.* at 836. After the initial complaint was resolved, the objecting neighbors filed a separate complaint against the developer, charging that the developer filed the prior complaint in an effort to "silence their objections to the condominium project and to coerce [the neighbors] into withdrawing their prerogative writs action challenging the approval." *Id.* at 830-31. The developer filed for summary judgment on, among other things, the plaintiffs' claim of malicious use of process, and the New Jersey trial court granted summary judgment on that claim, observing:

> I'm satisfied there are not federal constitutional rights implicated here because there isn't any state action. I'm also satisfied that plaintiffs' First Amendment rights were not chilled. The [] lawsuit strengthened plaintiffs'

> resolve, if anything. They did petition for redress through the judicial branch and they met with significant success. I don't see how it can be construed that their rights were trampled and I don't think that the element of special grievance has been established as a matter of law[.]

*Id.* at 831, 835.

On appeal, the Superior Court of New Jersey, Appellate Division, reversed and held that the "trial court erred in concluding that plaintiffs had not demonstrated a 'special grievance.'" *Id.* at 837. In the context of what the New Jersey Court deemed a Strategic Lawsuit Against Public Participation ("SLAPP")—a suit "intending to impose on citizens the expense and burden of defending a lawsuit and thus force them to give up their protest" and constitutionally protected right to speak—the *Baglini* Court held that impairment of a citizen's right to protest and communicate regarding public issues may constitute a special grievance for a malicious use of process claim under New Jersey's common law. *Id.* at 836 n.5.[5]

To the contrary, at least one of our sister states reached a more nuanced conclusion on the issue. In *Thomas v. Hileman*, the Appellate Court of Illinois for the Fourth District determined that a plaintiff failed to adequately plead special damages because the defendant did not interfere with or "chill" his First Amendment freedom of expression,

[5] Although the New Jersey Court made reference to SLAPP suits generally, as the Supreme Court of New Jersey explained in *LoBiondo v. Schwartz,* the New Jersey Legislature had "not enacted anti-SLAPP legislation." 970 A.2d 1007, 1022 (2009). The Court deemed that "the traditional cause of action for malicious use of process well serves the role of affording a remedy to one who has been victimized by a SLAPP suit," because its precedents concluded that "being deprived of this bundle of rights [including the First Amendment right to free speech and the right to petition the government] could suffice to meet the special grievance requirement[.]" *Id.* at 1024.

merely by filing a defamation action. 775 N.E.2d 231, 235-36 (Ill. App. Ct. 4th Dist. 2002). In that case, Mr. Hileman was campaigning to become commissioner of a village when Mr. Thomas wrote a letter to the editor of a local paper criticizing Hileman's work as the business representative of a labor union and urging residents not to vote for him. *Id.* at 232-233. After winning the election, Mr. Hileman filed a defamation action against Mr. Thomas. *Id.* The case was dismissed, and the dismissal was affirmed on appeal. *Id.*

Mr. Thomas then filed a complaint for malicious prosecution against Mr. Hileman and his attorney based on the defamation action. *Id.* Mr. Thomas contended in his complaint that the "suit against him was brought maliciously and with the intent to silence [Mr.] Thomas's criticism of [Mr.] Hileman and that [the attorney] . . . should have known that [Mr.] Hileman had no claim against [Mr.] Thomas and [Mr.] Hileman's motivation was malicious in nature." *Id.* The trial court found that the facts alleged "failed to show a special injury as required in Illinois for a malicious prosecution claim," and Mr. Thomas appealed. *Id.* at 234.

On appeal, the Illinois appellate court, relying on its prior decision in *Levin v. King*, 648 N.E.2d 1108, 1114 (Ill. App. Ct. 1995), held that "[t]o satisfy the special injury requirement, one must allege more than a voluntary decision not to protest as a result of the alleged wrongfully brought suit." *Hileman*, 775 N.E.2d at 236. Because Mr. Thomas alleged "no injury or damage apart from the ordinary costs associated with defending a lawsuit" and Mr. Thomas was "free to criticize [Mr.] Hileman's candidacy," he "failed to allege any facts that indicate [Mr.] Hileman's actions interfered with his exercise of his [F]irst [A]mendment rights." *Id.*

We are guided by our Maryland decisional law and persuaded by the reasoning employed by the Illinois Appellate Court in *Thomas*, a case factually closer to the present case. The impact of litigation, regrettably, may cause a defendant to voluntarily decline to exercise First Amendment rights. However, if a plaintiff could sufficiently plead special damages through the plaintiff's voluntary decisions and subjective intuitions, "every unsuccessful civil action, no matter how pedestrian, could be the basis of a malicious prosecution suit by the mere assertion that a defendant's idiosyncratic injuries constituted special damages." *Thomas*, 775 N.E.2d at 236 (quoting *Levin*, 648 N.E.2d at 1112). In effect, every defendant would be potentially armed with a weapon for retaliation. We decline to utilize such a broad brush to cover the potential problems that Mr. Sibley presents.

In Maryland, our courts have struck a balance by requiring that "special damages" amount to something more than that which "would ordinarily result from proceedings for similar causes of action." *One Thousand Fleet,* 346 Md. at 44. Furthermore, unlike New Jersey, the Maryland General Assembly has enacted legislation to shield defendants from SLAPP suits. Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5-807. The statute allows for a defendant to move to dismiss a SLAPP suit[6] by special motion and exempts a defendant from liability:

[6] The statute provides that a lawsuit "is a SLAPP suit if it is:"

> (1) Brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the

(Continued)

> A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, reports on, comments on, rules on, challenges, opposes, or in any other way exercises rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern.

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> First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern;
>
> (2) Materially related to the defendant's communication; and
>
> (3) Intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights.

CJP § 5-807(b). The Fiscal and Policy Note to Senate Bill 464, which established the legislation, recounted its purpose:

> SLAPP suit laws protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Covered activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions.
>
> Plaintiffs in these lawsuits, who typically have far greater resources than defendants, may allege a number of legal wrongs. The more common causes of action include defamation, invasion of privacy, intentional infliction of emotional distress, interference with contract or economic advantage, and abuse of process. Their goal is often not to win the case, but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.
>
> Approximately 20 states have enacted SLAPP suit laws. There are judicial precedents in other states that accomplish this same result.

Dep't Legis. Servs., Fiscal and Policy Note, S.B. 464, at 2 (2004 Session).

CJP § 5-807(c). [7] We believe this statute is a more effective remedy to forestall the impact on First Amendment rights that SLAPP suits impose.

Returning to the case at bar, Mr. Sibley does not allege in his second amended complaint how CarMax's defamation lawsuit deprived or limited Mr. Sibley's First Amendment and National Labor Relations Act rights beyond the filing of the suit itself. Mr. Sibley does not allege that the Appellees sought to enjoin Mr. Sibley's right to concerted activity or his concerns regarding wage and working conditions at CarMax. Further, even if Appellees had successfully enjoined these rights, Mr. Sibley would have to plead, and ultimately prove, that the resulting damage is the sort that would not ordinarily result from a defamation suit or an injunction. *Campbell*, 157 Md. App. at 534.

The thrust of Mr. Sibley's second amended complaint is that the defamation suit was "one part of a pattern and practice of Defendants to legally harass, financially-exhaust, and defame [Mr.] Sibley." Annoyance and expense are not special damages but typical of litigation broadly. *Walker*, 237 Md. at 90. Appellees' alleged practice to "defame Sibley" also is characteristic of a defamation action. In the case of a defamation suit, the plaintiff is asserting damage in a public forum due to the defendant's allegedly false defamatory statement, *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012), and the defendant may realize that he or she may be forced to pay damages, rightly or wrongly, for his or her allegedly

[7] Under the statute, the defendant has the option of moving to "(1) [d]ismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; or (2) [s]tay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved." CJP § 5-807(d).

untruthful statements. A common response to this scenario is to decline to speak, regardless of whether there are any actual impediments to speech imposed. As the circuit court below observed, Mr. Sibley's allegations do not

> come[] under the category of special damages because. . . anytime somebody is sued for defamation, which is essentially alleging publication of some false fact - - so it is speech one way or the other, . . . naturally the result would be, you'd be chilled because somebody - - you're all of a sudden coming to the realization that somebody can in fact sue you, whether rightfully or wrongfully[.]

In short, the damages alleged in Mr. Sibley's second amended complaint are the sort that ordinarily, if not always, result from a defamation suit. *See Campbell*, 157 Md. App. at 534. Accordingly, we hold that Mr. Sibley failed to plead special damages, and therefore, the circuit court properly dismissed his claim for malicious use of process. [8]

## II.

## Section 674

Mr. Sibley urges this Court to abrogate the special injury rule and adopt Section 674 of the Restatement (Second) of Torts. As both he and Appellees concede, no Maryland court has addressed whether a claim under Section 674 is a recognized cause of action under Maryland law.

[8] The only other allegation in Mr. Sibley's second amended complaint concerning speech is that other CarMax employees declined to "step up publicly." To satisfy the special injury requirement, Mr. Sibley must do more than allege that *other* CarMax employees made a voluntary decision to decline to further support Mr. Sibley or the KMX Collective. Again, Mr. Sibley has failed to allege any facts that indicate that the Appellees interfered with his ability to exercise his First Amendment rights.

Section 674 provides:

> One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if
>
> (a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and
>
> (b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought.

Restatement (Second) of Torts § 674 (1977).

A comparison of the elements of a malicious use of process claim under Maryland law and a Section 674 claim bears a single distinction between the two causes of action: a malicious use of process claim requires special damages, whereas a Section 674 claim does not. Otherwise, the elements of Section 674 generally mirror the elements for a claim for malicious use of process under Maryland law.

As detailed above, our precedent requires a showing of special injury. *See One Thousand Fleet*, 346 Md. at 44 ("Maryland has steadfastly adhered to the so-called 'English' rule that no action will lie for malicious prosecution of a civil suit when there has been no arrest of the person, no seizure of the property of the defendant, *and no special injury sustained which would not ordinarily result in all suits prosecuted for like causes of action*.") (emphasis added); Richard J. Gilbert & Paul T. Gilbert, Maryland Tort Law Handbook, § 5.1 at 52 (3rd ed. 2000) (noting that Maryland follows the English rule).

We recognize that other states do not require this element. Indeed, the Reporter's Note to Section 674 records that, as of 1977, Maryland is one of "some 16 states [that] do

not accept the general principle[.]" Restatement (Second) of Torts § 674, Reporter's Note.[9] The Reporter's Note further references *Krashes v. White*, 275 Md. 549 (1975), as a case "taking the minority rule." In *Krashes*, the Court of Appeals certified questions of law from the United States District Court for the District of Maryland and reiterated that a plaintiff in a malicious use of civil process suit must allege "in addition to the four essential elements of malicious prosecution of a criminal charge. . ., that there be 'damage . . . inflicted on the plaintiff by seizure of [] property or other special injury."' 275 Md. at 555 (citations omitted).

As a court of intermediate review, we are "bound by the Court of Appeals precedent." *Shaarei Tfiloh Congregation v. Mayor of Balt.*, 237 Md. App. 102, 145 (2018).

[9] A leading treatise likewise notes:

> In many jurisdictions, an action for malicious prosecution or malicious use of civil process will not lie unless the former proceeding included either the arrest of the person, the seizure of property, or other "special injury" beyond that which normally flows from any litigation. The requirement of special injury is the minority position, however.

Barry A. Lindahl, 4 Modern Tort Law: Liability and Litigation § 39:18 (2d ed.), Westlaw (database updated June 2020). This treatise cites to an opinion from the Fourth Circuit, applying Maryland law, *Dostert v. Crowley*, 394 F.2d 178 (4th Cir. 1968), as a jurisdiction that requires a special injury. *Id.* Similarly, Professor Dobbs, in his treatise, explains:

> A substantial number of courts . . . permit the action for wrongful civil proceedings only when the plaintiff has suffered "special injury" or "special grievance" as a result of the wrongful litigation. And many cases that purport to ignore special-injury requirements are actually decided on facts consistent with such requirements.

Dan B. Dobbs, Paul T. Hayden, & Ellen M. Bublick, The Law of Torts § 593 (2d ed.), Westlaw (database updated June 2020) (footnotes omitted) (collecting cases).

Accordingly, we cannot adopt Section 674, as Mr. Sibley requests, to allow his malicious use of process claim without the requisite special damages.

**JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**