Circuit Court for Prince George's County
Case No. CAL16-42855

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 309

September Term, 2023

AKAME PASCAL

v.

LECUDO WDC, et al.

Berger,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: May 31, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Acting on behalf of an unincorporated association, two of its members obtained a judgment for $11,000.00 in damages and $5,000.00 in attorneys' fees against the association's former president. The former president appealed. We affirm the judgment for damages; we vacate the award of attorneys' fees and remand the case for further proceedings on that issue.

BACKGROUND

This case concerns the financial affairs of an unincorporated association named LECUDO-WDC. As we explained in an earlier appeal in this case:

> 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.

Tazi v. LECUDO-WDC, Inc., No. 1692, Sept. Term, 2017, 2020 WL 365288, at *8 (Md. App.) (filed Jan. 22, 2020), at *1.

Appellant Akame Pascal served as LECUDO-WDC's president from 2008 through 2013.[1] Throughout his tenure, Pascal prevented the association from conducting the audits that its bylaws require.

After Pascal's presidency ended, the association's General Assembly appointed an audit committee to conduct the audits that had not occurred. The audit showed that

[1] During the period pertinent to this litigation, Pascal used the name Leonard Bekong.

"about $43,000" was paid out of the association's account "that should not have been paid out" and could not be traced.

In a cover letter accompanying the audit reports for the years December 31, 2013, 2012, and 2011, the audit committee chair, Peter Njinyi, wrote that because LECUDO-WDC "does not maintain adequate accounting records to provide sufficient information for the preparation of the basic financial statements[,]" "the scope of our work was not sufficient to enable us to express . . . an opinion of the financial statements" accompanying the report. A management letter cited many deficiencies and problems. For example, on many occasions, the treasurer pre-signed blank checks and left them for the president to complete. In addition, in violation of standard internal controls, the president, rather than the treasurer, had custody of the checkbook.

The audit committee identified a check in the amount of $11,000.00, which was disbursed on December 15, 2012, and signed by Pascal. The check was payable to New Life Church and was ostensibly for rent in 2013 and 2014. The committee, however, found no contract prompting the payment of two years' rent in advance. Nor did the amount appear on the summary of income and expenditure prepared by the financial secretary for the year ended December 31, 2012. The financial secretary was not aware of the $11,000.00 transaction with New Life Church.

Following the audit committee's report, the General Assembly of LECUDO-WDC established a litigation committee to explore potential remedies. The members of the General Assembly voted to bring a lawsuit on the association's behalf. Tazi and Tandongfuet, as members authorized to bring suit on behalf of LECUDO-WDC, formally

asserted claims against Pascal, the former president; Benard Atem, the recipient of the $11,000.00 that supposedly went to for New Life Church; and others. They named LECUDO-WDC as a nominal defendant. One of the miscellaneous defendants was never served with process, and the court granted a pretrial motion to dismiss another.

The case went to trial on a fourth amended complaint. That pleading presented claims for civil theft or conversion (Count 1), constructive fraud and breach of fiduciary duty (Count 2), unjust enrichment (Count 3), aiding and abetting (Count 4), declaratory and equitable relief (Count 5), and punitive damages (Count 6), and a request for attorneys' fees.

At trial, the testimony of Njinyi (the audit committee chair) and Pascal established that the check for $11,000.00 was payable to Benard Atem, another member with close ties to Pascal. The reference to New Life Church was only a notation on that check. According to Njinyi, this was one of the checks that Pascal convinced the treasurer to pre-sign.

Pascal testified that he acted unilaterally in substituting the $11,000.00 check for $12,000.00 in cash that, he said, Atem had asked him to hold. In his capacity as president, Pascal said, he had used Atem's cash to prepay for a two-year lease of the meeting hall at New Life Church. When Atem requested the return of his money, Pascal endorsed and deposited the $11,000.00 check into Atem's bank account. Pascal testified that he viewed this as a simple swap that facilitated LECUDO-WDC's lease of meeting space that was used.

There was, however, no written lease or other documentation of the New Life transaction. According to the audit committee chair, Njinyi, "the meeting never went to that banquet hall" that Pascal claimed he rented. When Njinyi asked Pascal "for a simple receipt and an agreement . . . with the owners of the hall[,]" Pascal "never brought it."

Jonas Njinkeng, who succeeded Pascal as president, testified that after the audit he reviewed "how much was spent on the hall" and obtained a $3,000.00 refund for the balance on the "unused meeting hall rental."

Atem testified that in December of 2012 he asked Pascal to hold $12,000.00 in cash for him. After he requested the return of his money, Atem received a call from Pascal and gave Pascal his bank account information. Although money was deposited into Atem's account, Atem was not aware that it was deposited by check and never saw the check.

One of the appellees, Tazi, testified about the efforts by former President Njinkeng, Pascal's ally, to settle the claims against Pascal for $3,000.00. According to Tazi, about 60 people would usually attend meetings, but at a December 2016 meeting, only about 20 people (including the defendants) attended, because many people were on vacation. At that meeting a vote was taken to accept the settlement. But at the January meeting that followed, the members said that they would not accept the settlement. Afterwards, they collected signatures for authorizing the derivative suit. The members vehemently opposed the settlement, Tazi said.

Before the bench trial, the court dismissed all claims against Njinkeng, including Count 4, the claim for aiding and abetting, which had been asserted against Njinkeng

alone. The trial court denied relief on Count 3, the claim for unjust enrichment, finding that the plaintiffs had not met their burden. The court, however, ruled in the plaintiffs' favor and against Pascal and Atem on the counts for conversion (Count 1) and breach of fiduciary duty (Count 2). In so doing, the court implicitly rejected the proposition that the association had reached a valid settlement with Pascal.

In its written opinion and order, the court found that Atem had given Pascal $12,000.00 to hold for him. When Atem asked for his money back, Pascal used $11,000.00 of the association's funds to repay him. The payment was recorded as a payment to New Life Church, not as a payment to Atem. The court rejected Pascal's claim that the payment secured a two-year lease at New Life Church, explaining that he produced no lease, no receipt, nor any other documentation to corroborate his claim.

On the basis of these findings, the court directed the entry of judgment against Pascal and Atem, jointly and severally, in the amount of $11,000.00. After reviewing a verified statement concerning the attorneys' fees that the plaintiffs incurred as well as the relevant factors in the Maryland Rules, the court awarded $5,000.00 in attorneys' fees. The court denied the request for punitive damages.

Pascal moved to alter or amend the judgment. The court denied that motion, and Pascal noted this timely appeal.

QUESTIONS PRESENTED

Pascal raises three issues, which we consolidate and restate as follows:

I. Is the evidence sufficient to support the liability judgment against Pascal?

II. Did the trial court err in awarding attorneys' fees?[2]

We conclude that there was sufficient evidence to support the judgment for damages. We vacate the award of attorneys' fees because the court had no authority to require Pascal to pay his adversaries' attorneys. We remand the attorneys' fees issue for the court to determine whether the attorneys should be paid from the $11,000.00 in damages, as the common-fund doctrine allows.

DISCUSSION

I. Liability Judgment

Pascal challenges the liability judgment for $11,000.00 on the grounds that "[t]he evidence does not support the finding of civil theft" and that "[a]warding [a]ppellees $11,000.00" unjustly enriched them. We are not persuaded by either contention.

When a civil case is tried by the court, "an appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). The appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the

[2] Representing himself, as he has throughout the litigation, Pascal frames the issues in his brief as follows:

Issue 1: The evidence does not support the finding of civil theft.

Issue 2: Plaintiffs were unjustly enriched.

Issue 3: They were improperly awarded Attorney's fee [sic].

The appellees, who are individual members suing derivatively on behalf of the unincorporated association, did not file a brief in this Court.

witnesses." *Id.* The court "'must consider evidence produced at the trial in a light most favorable to the prevailing party[.]'" *Plank v. Cherneski*, 469 Md. 548, 608 (2020) (quoting *General Motors Corp. v. Schmidt*, 362 Md. 229, 234-34 (2001)) (further citations omitted). "'[I]f substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed.'" *Id.* (quoting *General Motors Corp. v. Schmidt*, 362 Md. at 234-34) (further citations omitted). "'If there is any competent material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.'" *Id.* (quoting *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005)).

As we understand Pascal's contentions, the issue is whether the evidence is sufficient to support Pascal's liability under either the civil theft or conversion count or the breach of fiduciary duty count.

"Conversion is an intentional tort, consisting of two elements, a physical act combined with a certain state of mind." *Darcars Motors of Silver Spring, Inc. v. Borzym,* 379 Md. 249, 261 (2004). "The physical act can be summarized as 'any distinct act of ownership or dominion exerted by one person over the personal property of another in denial of his right or inconsistent with it.'" *Id.* (quoting *Allied Investment Corp. v. Jasen*, 354 Md. 547, 560 (1999)) (further citation omitted). The state of mind is "'an intent to exercise a dominion or control over the goods which is in fact inconsistent with the plaintiff's rights.'" *Id.* at 262 (quoting *Keys v. Chrysler Credit Corp*., 303 Md. 397, 414 (1985)).

"'A fiduciary duty is, in general, a duty to act for the benefit of another on matters within the scope of the parties' relationship.'" *Plank v. Cherneski*, 469 Md. at 601 (quoting *Restatement of the Law Third, Torts: Liability for Economic Harm* § 16 cmt. a. (2018)). "[F]iduciary relationships can be created by common law, by statute, or by contract." *Id.* at 598. Maryland courts "recognize[] an independent cause of action for breach of fiduciary duty" that exists "without limitation as to whether there is another viable cause of action to address the same conduct." *Id*. at 559. "To establish a breach of fiduciary duty, a plaintiff must demonstrate: (1) the existence of a fiduciary relationship; (2) breach of the duty owed by the fiduciary to the beneficiary; and (3) harm to the beneficiary." *Id*. The remedies for a breach of fiduciary duty depend "upon the type of fiduciary relationship, and the historical remedies provided by law for the specific type of fiduciary relationship and specific breach in question[.]" *Id*. at 625.

Pascal disputes whether the evidence is sufficient to prove that he exerted control that was inconsistent with LECUDO-WDC's ownership of the $11,000.00. Although he does not contest his fiduciary duty to LECUDO-WDC, he challenges the sufficiency of the evidence to prove the breach and harm elements of the claim for breach of fiduciary duty.

With respect to both control and breach, Pascal argues that his "action of giving a check of equal value to Mr. Atem for his cash ($11,000.00) used to pay for the hall [should] be viewed as a swap of cash for a check of equal value, a transaction done with the intention to help secure a hall for LECUDO-WDC as intended by the organization and nothing else especially not a civil theft." He contends that drawing a check on

LECUDO-WDC's account was "an accepted practice" for repaying funds that officers spent for the benefit of the organization during his presidency.

With respect to harm, Pascal argues that LECUDO-WDC "use[d] a hall for 16 months and [was] refunded the $3,000.00 unused balance," but now he is unfairly "being asked to repay the $11,000.00 accounted for by LECUDO-WDC." Because "the hall was used by LECUDO-WDC[,]" and there was a partial refund corresponding to the period that the space was "not used," Pascal contends that the only "problem" was "the name on the check" and that there was no "deprivation" of funds and "no harm[.]"

Pointing to testimony by individual witnesses, Pascal maintains that LECUDO-WDC actually "used the space (hall) as needed," so that the organization "didn't suffer a loss of $11,000 nor any portion of it[.]" Consequently, he says, requiring him and Atem to repay LECUDO-WDC would unjustly enrich the organization (i.e., the organization would get a refund of $11,000.00 from him plus a $3,000.00 refund from the church).

We conclude that the evidence, viewed (as it must be) in the light most favorable to the prevailing parties, supports the $11,000.00 judgment against Pascal under both the conversion and breach of fiduciary duty counts.

According to the audit report and the undisputed testimony at trial, the $11,000.00 check dated December 15, 2012, was payable to Atem. The check in question was pre-signed in a manner that violated the two-officer authorization requirement for LECUDO-WDC expenditures. At trial, Pascal admitted that he wrote the check, which already had been signed by the treasurer, made it payable to Atem for $11,000.00, and deposited it in Atem's account. Although Pascal claimed that he merely substituted this check for the

cash from Atem, after using that cash to prepay a two-year lease on New Life Church's hall for LECUDO-WDC meetings, Pascal produced no documents or other witnesses to corroborate his account of this exchange.

The only evidence that Atem gave Pascal $12,000.00 and that Pascal used that money to lease a meeting hall for LECUDO-WDC was the testimony of Atem and Pascal. Their credibility was a matter for the trial court to evaluate. Neither man presented any explanation for the $1,000.00 discrepancy between the $12,000.00 in cash that Atem allegedly gave to Pascal, and the $11,000.00 check that Pascal deposited into Atem's account as "reimbursement." Nor did they produce a lease (or evidence of any communication about one) to corroborate Pascal's claim that he prepaid two years of rent with Atem's cash. And the record reflects no receipt or other evidence to establish that Pascal ever made a cash payment to New Life Church.

Atem denied any knowledge that Pascal used his cash to prepay rent for a meeting hall. Nor did Atem claim to have seen the check for $11,000.00. Instead, he testified that, after he asked Pascal to return his cash, Pascal called him to request his bank account information and then made a deposit into his account. Given his disability and close relationship with Pascal, Atem appreciated that Pascal handled his banking for him. Nor is there clear evidence that LECUDO-WDC used the hall in question.

Although Pascal cites testimony by Tazi, Njinkeng, and another witness for the proposition that the association held meetings there, we do not agree that those accounts require that conclusion. John Tazi testified only that most monthly meetings were held at "a hall in Lanham," but "[b]efore that, there was another hall still in Lanham, where

meetings were held" and which "[s]omeone else owned." We cannot discern from this vague reference which meeting places he means, much less that one or the other was the New Life Church. The testimony by Romanus Bezezuh, who served on the litigation committee, is similarly unclear. When Pascal asked whether he had "knowledge of the organization using a hall and paying for it[,]" Bezezuh answered with a simple "yes" and generically added that "[t]he president is . . . the one that look[s] for locations," "control[s] the narrative" around selection of that hall, and pays "dues for that hall." Which hall, which year, and which meetings are all questions left unanswered. Finally, Pascal cites the testimony of Njinkeng as corroboration, but Njinkeng merely confirmed that the General Assembly approves money for hall rental.

After considering this evidence and the parties' arguments, the trial court did not credit the "cash for check" swap scenario alleged by Pascal. Although Pascal argued that "it was an accepted practice in the organization" to write a check payable to someone who had made a cash payment on behalf of LECUDO-WDC, as reimbursement for an authorized expense, the trial court was not obligated to believe that the $11,000.00 check to Atem constituted such a reimbursement. Instead, the court found, as it was permitted to do on this evidence, that Pascal and Atem converted the $11,000.00 and that Pascal breached his fiduciary duty to LECUDO-WDC by issuing the pre-signed check to Atem.

Based on the law and evidence reviewed above, we discern no error of law or fact in either determination. Likewise, we conclude that Pascal's alternative argument, that LECUDO-WDC will be unjustly enriched by recouping the $11,000.00, fails because it is predicated on the same theory that Pascal used Atem's cash to prepay for a meeting hall

and deposited the $11,000.00 check into Atem's account as repayment for Atem's $12,000.00 cash deposit. Consequently, we shall affirm the liability judgment.

II. Attorneys' Fees

Pascal contends that the trial court erred in awarding attorneys' fees because, he says, LECUDO-WDC did not suffer any loss or damage. Moreover, Pascal argues, "[i]f courts were to award Attorney's fee [sic] for every case because there was an Attorney on the case for Plaintiffs and the duration of the case, then the courts will be flooded with cases without merits so that defendants will pay Attorney's fee [sic] for plaintiffs who will not be accountable or suffer for their frivolous cases."

To the extent Pascal's challenge rests on his unjust enrichment theory or his challenges to the sufficiency of the evidence, we explained in Part I why he is not entitled to appellate relief. To the extent Pascal challenges the basis for the award in this case, we conclude that members of an unincorporated association, suing on the association's behalf, have the same rights to recoup reasonable attorneys' fees as plaintiffs in a derivative action.

"Maryland generally adheres to the common law, or American rule, that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome." *Friolo v. Frankel*, 403 Md. 443, 456 (2008). Nonetheless, attorneys' fees have been awarded under "a few recognized narrow exceptions[.]" *Att'y Grievance Comm'n of Maryland v. Singh*, 483 Md. 417, 426 (2023).

As one exception, Maryland expressly authorizes an award of attorneys' fees to a successful plaintiff in a shareholders' derivative suit. *Boland v. Boland*, 423 Md. 296,

317 (2011) (corporations); Maryland Code (1975, 2014 Repl. Vol), § 4A-804 of the Corporations & Associations Article ("CA") (limited liability companies); CA § 10-1004 (limited partnerships). "'In a derivative action, any recovery belongs to the corporation, not the plaintiff shareholder.'" *Boland v. Boland*, 423 Md. at 317 (quoting *Shenker v. Laureate*, 411 Md. 317, 344 (2009)). "One advantage a derivative action has for the shareholder is that the expenses of the litigation, if successful, may be borne by the corporation, not the shareholder." *Id.*

The common-fund doctrine is another exception to the American Rule. *Bontempo v. Lare*, 217 Md. App. 81, 134 (2014), *aff'd*, 444 Md. 344 (2015). Under the common-fund doctrine:

> [A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. The common-fund doctrine reflects the traditional practice in courts of equity, and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees. The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (citations omitted); *accord Bontempo v. Lare,* 217 Md. App. at 134.

"Maryland courts have applied the [common-fund] doctrine when a plaintiff has prevailed in a lawsuit on behalf of a class that benefits a group of others in the same manner as himself[,]" including "'where a stockholder's derivative action benefitted all

of the shareholders.'" *Bontempo v. Lare*, 217 Md. App. at 134-35 (quoting *Hess Constr. Co. v. Bd. of Educ. of Prince George's Cnty.*, 341 Md. 155, 168 (1996)).

"The application of the common fund doctrine in an individual case lies 'within the discretion of the trial judge,' but whether a prevailing party is *actually entitled* to fees under the doctrine is, as a pure conclusion of law, an issue we review for legal correctness." *Id.* at 135 (quoting *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 662 (2003)) (emphasis in original). "We accord no deference to the trial court's decision as to whether the doctrine actually applies." *Id*.

Because "[m]embers of unincorporated associations have essentially the same right" to bring suit as the shareholders and members of a corporation,[3] they also have the corollary right to recover attorneys' fees when that suit is successful in whole or in part. The fees, however, must come from the association's recovery. *See Boland v. Boland*, 423 Md. at 317 (stating that, in a shareholders' derivative action, the expenses of the litigation, if successful, may be borne by the corporation); *Bontempo v. Lare*, 217 Md. App. at 134 (recognizing that the common-fund doctrine allows a court to prevent inequity by assessing attorney's fees against those benefited by the suit). Absent statutory authorization, the plaintiffs in a derivative suit do not have the right to shift the entity's fees onto the person whose wrongdoing caused the entity to suffer a loss. Thus, although the court could have awarded fees out of the $11,000.00 that the plaintiffs recovered on the association's behalf in this case, it erred in assessing the fees against

[3] *Tazi v. LECUDO-WDC, Inc.*, No. 1692, Sept. Term, 2017, 2020 WL 365288, at *7 (Md. App.) (filed Jan. 22, 2020), at *1 (quoting Md. Rule 19-301.13 comment 12).

Pascal himself. We vacate the award of attorneys' fees and remand the case for the court to determine whether to order the award of fees from the $11,000.00 that the plaintiffs recovered on the association's behalf.

Pascal does not expressly dispute the reasonableness of the fee award, but we are mindful that, when, as here, an award of attorneys' fees is allowed by law rather than by contract, a trial court must consider the factors specified in Md. Rule 2-703(f)(3) in determining the amount. Here, the court considered all these factors. Given the detailed fee affidavit and the outcome of the case, including the amount of the liability judgment, we conclude the court did not abuse its discretion in reducing counsel's itemized fee request of $13,538.50 to $5,000.00.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE EVENLY DIVIDED BETWEEN APPELLANT AND APPELLEES.