

Circuit Court for Queen Anne's County  
Case No: C-17-CV-21-000007

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 683

September Term, 2021

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XINHUI ZHU

v.

MITCHELL E. DENHAM

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Nazarian,  
Leahy,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 6, 2022

\*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.

In April 2019, Mitchell Denham, appellant, and Xinhui Zhu, appellee, entered into a written “Personal Loan Agreement,” whereupon Mr. Denham agreed to loan the sum of \$100,000 to Ms. Zhu. By the terms of the agreement, the loan was “to be repaid in full at the end of [a] [o]ne year term, April 16, 2020,” without interest. On April 16, 2019, the agreement was executed by both parties, and \$100,000 was paid, in full, to Ms. Zhu. Contending that Ms. Zhu had failed to repay any of the loan by the agreed upon date, Mr. Denham filed a complaint in the Circuit Court for Queen Anne’s County for breach of contract.

Ms. Zhu, in turn, filed an answer, a motion to dismiss, and a “Motion[] for Judgment,” which was treated by the court as a counterclaim. In her answer, Ms. Zhu acknowledged that the parties “execute[d] the personal loan of \$100,000,” that she received the money from Mr. Denham, and that the loan was “to be paid back on [the] due date unless the parties agree[d] to extend the due date.” In her counterclaim, Ms. Zhu contended that she had repaid the amount owed to Mr. Denham by “delivering services to him,” including personal, spiritual, and emotional support and guidance rendered during the course of their romantic relationship which, purportedly, spanned from February 2019 through January 2021. She also requested compensation for the “emotional suffering” and the “blocking of [her] life advancement” incurred during the relationship. She requested the sum of \$375,000 to compensate for these damages.

Mr. Denham requested that the counterclaim be dismissed for failure “to state grounds upon which relief may be granted.” He, further, moved for summary judgment. Ms. Zhu also requested summary judgment. Following a June 2021 hearing, the court

entered an order granting Mr. Denham’s motion for summary judgment and entered judgment in the amount of \$100,000. The court also dismissed Ms. Zhu’s counterclaim for failure to state a claim upon which relief could be granted and denied her motion for summary judgment.

Ms. Zhu noted a timely appeal of the court’s order. On appeal, Ms. Zhu raises the following questions for our review, which we consolidate and rephrase for clarity:

- 1) Did the circuit court err in denying Ms. Zhu’s motion to dismiss without a hearing?
- 2) Did the circuit court provide sufficient notice of a rescheduled “settlement conference hearing?”
- 3) Did the circuit court err in granting summary judgment to Mr. Denham?
- 4) Did the circuit court err in dismissing Ms. Zhu’s counterclaim?

For the following reasons, we shall affirm.

### **DISCUSSION**

#### *Denial of Ms. Zhu’s Motion to Dismiss*

In Ms. Zhu’s first claim of error, she contends that the circuit court erred in denying her motion to dismiss without a hearing. Though Ms. Zhu correctly cites Maryland Rule 2-311(f) as support for this contention by stating that “the court may not render a decision that is dispositive of a claim or defense without a hearing,” she omits four important words from the rule: “if one was requested.” The record reflects that Ms. Zhu did not request a hearing in her motion to dismiss. Therefore, the court was permitted to rule on her motion without a hearing.

The Court, moreover, does not observe any error in the denial of Ms. Zhu’s motion to dismiss. Generally, a motion to dismiss “challenges the sufficiency of the complaint without resort by the court to any matters outside of the pleadings.” *Williams v. Prince George’s Cnty.*, 112 Md. App. 526, 558 (1996). Ms. Zhu’s motion to dismiss, however, did not address the sufficiency of Mr. Denham’s complaint. It made no reference to his complaint whatsoever. The motion, instead, generally denied Mr. Denham’s allegations, contending that Ms. Zhu had “repaid” the loan. Accordingly, the factual assertions set forth in Ms. Zhu’s motion did not set forth a proper basis for the dismissal of Mr. Denham’s complaint. *Id.* The court, therefore, properly denied Ms. Zhu’s motion. Further, upon review of Mr. Denham’s complaint, it does set forth a proper cause of action for breach of contract.

#### *Scheduling Conference*

In Ms. Zhu’s next claim of error, she contends that the court improperly rescheduled a settlement conference to an earlier date, giving her less time to gather evidence and prepare for the proceedings. Because Ms. Zhu did not raise this issue for the circuit court’s consideration, it was not preserved for appellate review. *See* Maryland Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”). We, therefore, decline to review this issue on appeal.

#### *Grant of Summary Judgment*

In Ms. Zhu’s next claim of error, she contends that the court erred in awarding summary judgment to Mr. Denham. In support, she asserts that she “repaid” the loan via

personal services rendered to Mr. Denham. In reviewing the grant of summary judgment, this Court must first determine “whether there is a genuine dispute of material fact.” *Duffy v. CBS Corp.*, 458 Md. 206, 217 (2018). “If there is no genuine dispute of material fact, then we review the grant of summary judgment de novo to determine if the hearing judge’s legal conclusions were correct.” *Id.* In doing so, we view the evidence, and all inferences therefrom, in the light most favorable to the non-moving party. *See Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 676 (2001).

The record reflects no dispute that the parties executed the Personal Loan Agreement, that Mr. Denham loaned \$100,000 to Ms. Zhu, that the loan specified that repayment of the loan amount would occur within one year, and that Ms. Zhu did not, at any point, repay Mr. Denham in kind. Ms. Zhu contends that repayment did occur by way of personal, emotional, and spiritual services rendered during the course of the parties’ romantic relationship. However, the record does not reflect that there was any agreement between the parties that these services would be rendered as a form of repayment for the loan. Instead, the record reflects that Ms. Zhu performed these services consistent with the normal give-and-take associated with romantic relationships. Because Ms. Zhu did not repay the \$100,000 to Mr. Denham in kind, the undisputed evidence established that Ms. Zhu breached the Personal Loan Agreement executed by the parties. Accordingly, it was proper for the court to grant Mr. Denham’s motion for summary judgment.

#### *Denial of Counterclaim*

Lastly, Ms. Zhu contends that the court erred in dismissing her counterclaim for damages. The Court, in reviewing the grant of a motion to dismiss, “must determine

whether the Complaint, on its face, discloses a legally sufficient cause of action.” *Scarborough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019) (citation omitted). In her counterclaim, Ms. Zhu failed to assert that there was any agreement between the parties that her services would serve as remuneration. She, therefore, failed to sufficiently plead a cause of action for breach of contract. *See Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005) (“In an action for breach of contract, the plaintiff must prove that the defendant had a contractual obligation and that the obligation was breached.”). The court, therefore, properly dismissed the counterclaim.

**JUDGMENT OF THE CIRCUIT  
COURT FOR QUEEN ANNE’S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**