Circuit Court for Montgomery County
Case No. 416162-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 749

September Term, 2017

HORTENSE MIMAUSETTE OUAGUEM, et.al.,

v.

GRACE WANDJI

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: July 6, 2018

Appellants, Hortense Mimausette Ouaguem and Pierre Tchakounte, challenge the Circuit Court for Montgomery County's grant of summary judgment and attorney's fees to Appellee, Grace Wandji, for breach of contract, fraud, conversion, unjust enrichment, and violation of the Maryland Consumer Protection Act. Because we hold that Ouaguem and Tchakounte failed to generate a dispute of material fact, we affirm.

BACKGROUND

Wandji, Ouaguem, and Tchakounte were each members of Cercle des Amis de la Casa, a traditional *Njangi* savings club. The *Njangi* is a rotating savings and credit system that originated in the African nation of Cameroon, and traditionally operates amongst family members, friends, or groups with a common interest. *See* Lotsmart Fonjong, *Micro Financial Institutions as Agents of Improvement of Women's Economic Position in North Western Cameroon*, 26.2 ATLANTIS 120, 121-22 (2002).[1] Under the *Njangi* system, members collectively raise and save money for the benefit of the group by contributing mandatory shares at bi-weekly meetings. *Id.* At the end of each meeting, the shares raised by the *Njangi* are distributed to one individual member on a rotating basis, until each member has benefitted at least once. *Id.* Customarily, priority for receiving the *Njangi* is

[1] Similar systems known by different names exist in other African countries and among immigrants from those countries and their descendants. Laura DeLuca & Betty Nakato, *Social Entrepreneurship in Africa: What works, what doesn't – and why*, SEE CHANGE MAGAZINE (Feb. 2, 2015), https://perma.cc/W32A-2N64. Thus, among Malians, Algerians, Moroccans, and other French speakers it is known as "*Pari*." *Id.* Among Liberians and Ghanaians, it is called "*Sousou*." *Id.* Among Nigerians and Americans of Nigerian descent, it is called "*Ajoh*." *Id.* But among the people from Cameroon it is most often called "*Njangi*." Fonjong, *supra*, at 121.

determined based on which members have the greatest financial needs. *Id.* Similarly, a *Njangi* often collects and sets aside money for its members in cases of emergency, including deaths in the family, illness, or financial hardship. *Id.* In addition to the rotating bi-weekly shares disbursements, the *Njangi* can also function as a mutual fund, into which members can invest savings and from which they can obtain small loans with or without interest. *Id.* at 123. Nathanael Ojong, *Bringing Them Into the System: The Role of Financial Co-operatives in Promoting Financial Inclusion in Cameroon*, ICA GLOBAL RESEARCH CONFERENCE 6-7 (2011).[2]

The Cercle des Amis de la Casa *Njangi* operated in 80-week cycles, during which members contributed mandatory shares at bi-weekly meetings. Members could also deposit additional savings at any time, and at the end of the 80-week cycle, any funds deposited by a member would be returned in full. The *Njangi's* bylaws provided that all deposited funds would be returned automatically at the end of a cycle, but if a member requested their funds at some other point during the cycle, it was customary for the *Njangi* to honor that request. Once the funds were returned, members could choose whether to re-invest their money or retain it for themselves.

During the 80-week cycle between September 2013 and March 2015, Appellee Grace Wandji contributed $5000 in mandatory shares to the *Njangi*, along with additional personal savings totaling $11,696. At the end of the cycle, the *Njangi* returned these funds

[2] The panel thanks Paul Benzer, Friends School of Baltimore Class of 2018, for his excellent research assistance.

to Wandji in two separate checks. Instead of cashing the checks, Wandji voided them both, which based on the customs of the *Njangi*, signaled her intention to re-deposit the funds into the *Njangi* for the next cycle. Shortly thereafter, however, Wandji began to have concerns about the *Njangi*'s leadership, and she requested a receipt documenting the amount of her investment from the newly-elected President, Ouaguem, and Vice President, Tchakounte. They refused. Wandji then requested that the *Njangi* refund her investment, which again, was refused. Shortly thereafter, Wandji left the *Njangi* and filed a lawsuit against Ouaguem and Tchakounte in the Circuit Court for Montgomery County alleging breach of contract, fraud, unjust enrichment, and violation of the Maryland Consumer Protection Act. She sought the return of her $17,000 and other damages.

Wandji moved for a preliminary injunction, requesting the circuit court to order Ouaguem to deposit $17,000 from the *Njangi*'s funds into the court's registry to prevent any further dissipation of the investments. Wandji also filed a motion for summary judgment against Ouaguem and Tchakounte, arguing that she was entitled to judgment as a matter of law on each of her claims. Six days after Wandji moved for summary judgment, the circuit court held a hearing on the preliminary injunction. Counsel for Ouaguem and Tchakounte did not appear. After granting the preliminary injunction, the circuit court, on its own initiative, considered Wandji's motion for summary judgment, despite the fact that Ouaguem and Tchakounte had not yet filed an opposition. The circuit court found that it was "plainly clear to [it] that … the defendants have committed fraud, have converted funds belonging to [Wandji], and have clearly violated the Maryland Consumer Protection Act." Accordingly, the circuit court granted summary judgment to Wandji, ordered that she was

entitled to $17,000 in relief,[3] and set a hearing date to determine Wandji's eligibility for attorney's fees under the Maryland Consumer Protection Act. *See* Md. Code, Commercial Law ("CL") § 13-408(b).

Ouaguem and Tchakounte filed a motion for reconsideration of the circuit court's grant of summary judgment to Wandji and requested that the court deny her request for attorney's fees. The circuit court denied the motion for reconsideration and awarded Wandji $59,302.50 in attorney's fees and costs. Ouaguem and Tchakounte noted this timely appeal.

DISCUSSION

Ouaguem and Tchakounte raise three challenges on appeal: *first*, that the circuit court erred in granting summary judgment to Wandji because a dispute of material fact existed; *second*, that the circuit court ruled prematurely on Wandji's motion for summary judgment because Ouaguem and Tchakounte still had time to file an opposition but had not yet done so; and *third*, that the circuit court's award of attorney's fees was excessive and unjust. Because we conclude that the circuit court properly granted summary judgment for Wandji and that its award of attorney's fees and costs was reasonable, we affirm.

[3] Wandji's $17,000 judgment has already been satisfied with the funds that were placed into the court registry pursuant to the circuit court's grant of Wandji's motion for prejudgment attachment and preliminary injunction.

I. SUMMARY JUDGMENT

A. Dispute of Material Fact

Ouaguem and Tchakounte challenge the circuit court's grant of summary judgment to Wandji, arguing that it erred in finding that no dispute of material fact existed as to whether Ouaguem and Tchakounte had "committed fraud, … converted funds belonging to [Wandji], and … violated the Maryland Consumer Protection Act." They allege, instead, that Wandji participated in a scheme with a fellow member to embezzle funds from the *Njangi* and that she retained at least $5,000 in *Njangi* funds to which she was not entitled. Thus, Ouaguem and Tchakounte contend, they did not fraudulently convert any of Wandji's funds, because Wandji had not actually invested the $17,000 she sought to recoup.

We review an order granting a motion for summary judgment without deference to the circuit court. *Todd v. Mass Transit Admin.*, 373 Md. 149, 154 (2003). A grant of summary judgment is proper when the circuit court determines that there is no dispute of material fact and that the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). A motion for summary judgment "shall be supported by affidavit if it is … based on facts not contained in the record." Md. Rule 2-501(a). Likewise, a response to a motion for summary judgment that asserts "the existence of a material fact or [that] controvert[s] any fact contained in the record shall be supported by an affidavit or other written statement under oath." Md. Rule 2-501(b). Appropriate affidavits must be (1) "made upon personal knowledge;" (2) "set forth such facts as would be admissible in evidence;" and (3) "show affirmatively that the affiant is competent to testify to the matters stated." Md. Rule 2-

501(c). When reviewing the circuit court's ruling on a motion for summary judgment, we construe the facts properly before the court as contained in either the record or a supporting affidavit, along with any inference that may reasonably be drawn from them, in the light most favorable to the non-moving party. *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152-53 (2008).

Ouaguem and Tchakounte argue that a dispute of material fact existed as to whether they fraudulently converted Wandji's investments into the *Njangi* because they contend that Wandji, herself, had stolen money from the *Njangi*. Thus, although they do not contest the evidence presented by Wandji in support of her motion for summary judgment, Ouaguem and Tchakounte argue that the circuit court erred in granting summary judgment in Wandji's favor. In support of their position, Ouaguem and Tchakounte primarily relied on two documents. First, they submitted a 2015 "audit report," purportedly issued by the *Njangi*'s internal audit committee, which was formed to investigate missing funds from the *Njangi*'s bank accounts during the 2013-2015 cycle. The report attributed the discrepancy to Wandji, who had served as the General Secretary of the *Njangi* during that period. Second, they attached an unsworn letter from a former member of the *Njangi* accusing Wandji of theft.

Based on our review of these documents, we conclude that the circuit court did not err in determining that Ouaguem and Tchakounte failed to generate any dispute of material fact and therefore did not defeat Wandji's motion for summary judgment. An opposition to a motion for summary judgment may be supported by "any type of evidence that is admissible at trial." *Injured Workers' Ins. Fund v. Orient Express Delivery Serv., Inc.*, 190

Md. App. 438, 452 (2010). Both the audit report and the letter "assert[ed] the existence of a material fact … controverting … fact[s] contained in the record," and thus, pursuant to Maryland Rule 2-501(b), were required to be "supported by an affidavit or other written statement under oath" to be admissible. Md. Rule 2-501(b). None of the "facts" contained in these two documents, however, was supported by any such affidavit or statement under oath.[4] *See id.* Moreover, neither Ouaguem nor Tchakounte presented an affidavit of their own—or of anyone else—to support the allegations of Wandji's theft. Because Ouaguem and Tchakounte failed to present sufficient, admissible evidence under the Maryland Rules to contradict the facts set out in Wandji's motion for summary judgment, the circuit court did not err in concluding that no dispute of material fact existed. Md. Rule 2-501. We hold, therefore, that the circuit court properly granted summary judgment to Wandji.

[4] The document purporting to be an "audit report" consists of two pages of typed text in English followed by seven pages of sometimes illegible handwritten notes in French (some of which are cut off at the margins). The English text corresponds with the topics in the first page and a half of the handwritten notes (noting the period of the audit, members of the committee, the reason for the audit, the work method used, and the beginning of the discoveries from the audit). The handwritten notes, however, contain more than five pages of additional information that did not make its way into the English text. Thus, we cannot discern what most of the document says, and have no knowledge of how the partial and incomplete English translation came about. Furthermore, while the English text asserts a couple of bare conclusions (e.g., the committee "attributed equally" some unspecified amount of "stolen money" to Wandji and another person), it does not disclose any factual basis for the conclusions. In fact, the committee's alleged reasoning, as disclosed by the English text, is largely incomprehensible. A document such as this cannot give rise to a genuine dispute of a material fact.

B. Opportunity to be Heard

Ouaguem and Tchakounte argue that the circuit court deprived them of a meaningful opportunity to oppose Wandji's motion for summary judgment and that it therefore erred in ruling on the motion. A party typically has 15 days to oppose a motion for summary judgment. Md. Rule 2-311(b). Here, however, the circuit court ruled on Wandji's motion for summary judgment only six days later, at the hearing it held to consider Wandji's motion for a preliminary injunction. At the time, Ouaguem and Tchakounte had not yet filed an opposition to Wandji's motion for summary judgment, and their counsel did not appear at the hearing. After the circuit court granted summary judgment in Wandji's favor on its own initiative, Ouaguem and Tchakounte filed a motion for reconsideration, noting that they had not had a chance to oppose Wandji's motion, and contending that "there exist[ed] genuine issues of material fact in th[e] matter that would not warrant a grant of summary judgment against [Ouaguem and Tchakounte]." After reviewing Ouaguem and Tchakounte's argument that Wandji stole funds from the *Njangi* along with the exhibits attached, the circuit court denied the motion for reconsideration.

In its order, the circuit court explicitly found that the motion for reconsideration gave Ouaguem and Tchakounte "a full and fair opportunity to oppose … Wandji's Motion for Summary Judgment" and that their "Motion for Reconsideration raise[d] no genuine issue of material fact that would require the Court to vacate its order granting summary judgment in favor of … Wandji." Thus, although Ouaguem and Tchakounte did not have time to file an opposition to Wandji's motion for summary judgment, initially, they were afforded the full time—even exceeding the typical 15 days to file an opposition—to prepare

their motion for reconsideration. We therefore conclude that Ouaguem and Tchakounte suffered no prejudice from the circuit court's premature ruling because the circuit court afforded them an opportunity to be heard by considering their motion for reconsideration in full. *See Johnson v. Rowhouses, Inc.*, 120 Md. App. 579, 591-92 (1998) ("In a civil case … to win on appeal, an appellant must show not only error but that the error was prejudicial."). Because we see no prejudice to Ouaguem and Tchakounte, any error by the circuit court in ruling prematurely on Wandji's motion for summary judgment was harmless, and we affirm. *See Crane v. Dunn*, 382 Md. 83, 91 (2004) ("[I]t is the policy of this Court not to reverse for harmless error").

II. ATTORNEY'S FEES

Ouaguem and Tchakounte finally challenge the circuit court's award of attorney's fees to Wandji pursuant to the Maryland Consumer Protection Act. Rather than challenging the circuit court's method in calculating its award of attorney's fees, however, Ouaguem and Tchakounte argue that because Wandji's counsel represented her on a *pro bono* basis, the circuit court's award of attorney's fees was excessive. They also contend that they lack the resources to pay Wandji's attorney's fees, and that the award was, therefore, "manifestly unjust." We review the decision to award attorney's fees for abuse of discretion, but note that "that discretion is to be exercised liberally in favor of allowing a fee." *Friolo v. Frankel*, 373 Md. 501, 512 (2003).

The circuit court awarded attorney's fees pursuant to the Maryland Consumer Protection Act, which provides that "[a]ny person who brings an action to recover for injury or loss under this section and who is awarded damages may also seek, and the court may

award, reasonable attorney's fees." CL 13-408(b). Despite the conspicuous absence of any language in this fee-shifting provision that limits its applicability to paying clients, Ouaguem and Tchakounte nevertheless contend that it does not allow for reasonable attorney's fees to *pro bono* counsel. Because "we will not judicially insert language into a statute to impose exceptions, limitations, or restrictions not set forth by the legislature," we cannot accept Ouaguem and Tchakounte's interpretation of this provision. *Henriquez v. Henriquez*, 413 Md. 287, 299 (2010) (cleaned up).[5] Indeed, a moment's thought demolishes their proposal. It would a foolish policy, indeed, to prevent charitable entities from recovering attorney's fees. *See, e.g.*, Reena N. Glazer, *Revisiting the Business Case for Law Firm Pro Bono*, 51 S. TEX. L. REV. 563, 569 n.22 (2010) (allowing *pro bono* counsel to pursue attorney's fees "increases the deterrence benefits of these cases by making defendants pay the full costs associated with their behavior" and can be used as leverage in settlement negotiations); Melissa B. Merkin, *Section 7430 Awards in Pro Bono Cases: Gaskins v. Commissioner*, 50 TAX. LAW. 671, 674 (1997) (explaining the policy behind allowing an award of attorney's fees to *pro bono* counsel and noting that they "compensate[] the *pro bono* attorney for her time, for which the lawyer might otherwise be

[5] "Cleaned up" is a new parenthetical intended to simplify quotations from legal sources. *See* Jack Metzler, *Cleaning Up Quotations*, 18 J. APP. PRAC. & PROCESS 143 (2017). Use of (cleaned up) signals that to improve readability but without altering the substance of the quotation, the current author has removed extraneous, non-substantive clutter such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization.

earning fees" and encourages good lawyers to represent indigent clients who otherwise could not afford an attorney, thereby promoting just results). Thus, we hold that the Consumer Protection Act allows the circuit court to award attorney's fees to *pro bono* counsel and, because we are persuaded that the circuit court properly calculated a reasonable award, we affirm the circuit court's award of attorney's fees to Wandji.

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