

Circuit Court for Montgomery County  
Case No: 463004V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 920

September Term, 2019

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SAUL ELBAUM

v.

GOOGLE, INC.

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Arthur,  
Beachley,  
Woodward, Patrick L.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 8, 2020

\*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 February 2019, Saul Elbaum, appellant, filed a complaint in the Circuit Court for Montgomery County, contending that Google, Inc. (“Google”), appellee, committed “deception boarding on fraud” and breached its duty to act in good faith when it “repeatedly withdrew money from [his] bank account...without notice.” The complaint also asserts, pertinently, that venue in Maryland was “proper and reasonable,” contrary to the forum selection clause which set venue in Santa Clara, California as provided in the Terms of Service to which he agreed with Google.

Because Mr. Elbaum filed a “nearly identical” suit in the D.C. Superior Court and that court held that Mr. Elbaum “should be subjected to the venue to which he agreed,” Google moved to dismiss Mr. Elbaum’s complaint arguing, in pertinent part, that the suit was barred under the doctrine of collateral estoppel. On June 27, 2019, following written opposition by Mr. Elbaum, the circuit court entered an order dismissing Mr. Elbaum’s complaint.

On appeal, Mr. Elbaum advances four issues for the Court’s consideration, which we restate verbatim:

1. Whether Appellee should be permitted to repeatedly withdraw funds from Appellant’s bank account without notice[;]
2. Whether Appellee should be permitted to conduct internet business in Maryland while limiting disputes resolution to California[;]
3. Whether prior litigation in the District of Columbia precludes the current suit[;]
4. Whether Appellee Google’s behavior constitutes malicious fraud of such severity as to justify punitive damages[.]

Because three of the four issues posed by Mr. Elbaum address the underlying merits of the complaint and not the basis of the circuit court’s dismissal, we will consider only whether the circuit court erred in dismissing Mr. Elbaum’s complaint on the grounds of collateral estoppel. *See Robinson v. State*, 404 Md. 208, 216 (2008) (Pursuant to Maryland Rule 8-131(a), “an appellate court ordinarily will not consider any point or question unless it plainly appears by the record to have been raised in or decided by the trial court.”).

For the following reasons, we shall affirm the judgment of the circuit court.

### **DISCUSSION**

On appeal, Mr. Elbaum challenges the dismissal of his complaint by the circuit court. This 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). However, if the court, in ruling on a motion to dismiss, considers materials outside of the pleadings, the motion to dismiss “shall be treated as one for summary judgment.” Md. Rule 2-322(c); *see also Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 476 (2004). A motion for summary judgment is properly granted where “there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.” Md. Rule 2-501.

We hold that Google was entitled to judgment as a matter of law because Mr. Elbaum was collaterally estopped from filing suit against Google in the Circuit Court for Montgomery County. The doctrine of collateral estoppel, or issue preclusion, is triggered “[w]hen an issue of fact or law is actually litigated and determined by a valid and final

judgment, and the determination is essential to the judgment.” *John Crane, Inc. v. Puller*, 169 Md. App. 1, 26 (2006) (internal citation omitted). Under these circumstances, “the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Id.* In order to satisfy the defense of collateral estoppel, four questions must be answered in the affirmative:

- (1) Was the issue decided in the prior adjudication identical with the one presented in the action in question[;]
- (2) Was there a final judgment on the merits[;]
- (3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication[;] and
- (4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

*Dabbs v. Anne Arundel Cty.*, 458 Md. 331, 342 (2018).

With respect to the first question, the enforceability of Google’s forum selection clause and whether venue could lawfully be held outside of Santa Clara, California were issues previously adjudicated in the Superior Court of the District of Columbia (“the Superior Court”). The Superior Court found that “the forum selection clause was reasonably communicated to [Mr. Elbaum],” that he agreed to be bound by its terms, and that enforcement of the clause was not unreasonable under the circumstances. The Superior Court held, therefore, that Mr. Elbaum “should be subjected to the venue to which he agreed,” dismissing his complaint without prejudice. The circuit court, here, faced with Mr. Elbaum’s repeated effort to maintain his claim against Google outside of Santa Clara,

California, was faced with the exact issue addressed by the Superior Court. Therefore, the first prong for collateral estoppel is satisfied.

As to the second and third questions, Mr. Elbaum does not assert on appeal that the Superior Court’s ruling did not constitute a final judgment, nor does he assert that the parties to the Superior Court action are different than the parties to the circuit court action. We, therefore, decline to review whether these questions were satisfied on appeal. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain “[a]rgument in support of the party’s position.”); *Klaunberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

With respect to the fourth question, Mr. Elbaum contends on appeal that he missed a hearing date before the Superior Court because “the court’s notice of a hearing...never arrived.” As a result, he missed the hearing and contends that Google’s practice of “taking money without notice” did “not get raised before the DC Superior Court.” The circuit court did not have the benefit of the record from the Superior Court to ascertain whether proper notice of the hearing was provided to Mr. Elbaum or whether he missed the hearing through some fault of his own. However, it did have the benefit of the Superior Court’s order, attached as an exhibit to Google’s motion to dismiss, which reflected that the Superior Court considered Mr. Elbaum’s written opposition to Google’s motion to dismiss filed therein. Accordingly, there was a sufficient basis for the circuit court to find that Mr. Elbaum was provided an opportunity, through written opposition, to be heard by the Superior Court.

For the foregoing reasons, the circuit court did not err in dismissing Mr. Elbaum’s complaint on the grounds of collateral estoppel.

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