Circuit Court for Baltimore City
Case No. 24-C-23-005315

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1112

September Term, 2024

THE COUNCIL OF UNIT OWNERS OF THE MILLRACE CONDOMINIUM INC., ET AL.

v.

SHAPIRO SHER GUINOT AND SANDLER, P.A., ET AL.

Wells, C.J.,
Beachley,
Battaglia, Lynne A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: November 19, 2025

Appellants are two homeowners' associations in the Clipper Mill community in Baltimore City and four individual board members of the homeowners' associations (collectively, "the HOAs").[1] Appellees are a development company that owns property in Clipper Mill,[2] the development company's parent company, the principal of the development company's predecessor,[3] the development company's attorney, and the attorney's law firm (collectively, "the Developers"). Previously, the Developers had sued the HOAs for tortious interference, breach of contract, and civil conspiracy. The Developers' prior lawsuit was dismissed as a Strategic Lawsuit Against Public Participation ("SLAPP suit") in violation of § 5-807 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code,[4] and this Court affirmed the dismissal on appeal.

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[1] As discussed in detail below, the HOAs brought their complaint on behalf of a putative class of 133 individual homeowners in their communities.

[2] The named development company in this action, MCB Woodberry Developer, substituted itself for the original development company in the prior proceedings, VS Clipper Mill, LLC.

[3] The predecessor is VS Clipper Mill, LLC, who instituted the prior proceedings.

[4] CJP § 5-807 states:

. . .

(b) 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

MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc., 253 Md. App. 279 (2021). The HOAs filed the present complaint alleging malicious use of process stemming from the Developers' SLAPP suit against them. The Developers moved to dismiss the complaint, which the circuit court granted.

The HOAs timely appealed the complaint's dismissal and present two questions for our review, which we have rephrased:[5]

> 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.
>
> . . .
>
> (d) A defendant in an alleged SLAPP suit may move to:
> (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; . . .
>
> (e) This section:
> (1) Is applicable to SLAPP suits notwithstanding any other law or rule; and
> (2) Does not diminish any equitable or legal right or remedy otherwise available to a defendant in a SLAPP suit.

[5] The HOAs' verbatim questions are the following:

1. Do the targets of an abusive, bad faith lawsuit state a cause of action for malicious use of process when the underlying lawsuit was filed and prosecuted solely as a means of punishment and intimidation, and was aimed entirely at conduct that was lawful and privileged?

2. Where developers and their attorneys are charged with specifically intending to damage, and did actually damage, a class of property owners, by filing a lawsuit against their homeowners' associations and their officers, propounding abusive discovery to them, and pleading a $25 million damage claim in violation of the Rules of Procedure in order to achieve that goal, do the targeted victims of that scheme have a right to recover for damages they sustained?

1. Did the circuit court err in dismissing the HOAs' complaint for failing to plead sufficient factual allegations of a "special injury" as required for a malicious use of process cause of action?

2. Did the circuit court err in dismissing the HOAs' class claims for naming putative class members who were not parties to the underlying SLAPP suit?

For the reasons set forth below, we hold (1) the HOAs did not sufficiently plead a special injury to maintain a malicious use of process suit, and (2) the HOAs cannot bring a class claim naming putative class members who were not parties to the underlying SLAPP suit. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We recited the relevant factual background to this litigation in our opinion affirming the dismissal of the Developers' SLAPP suit, which is reprinted here:[6]

> VS Clipper Mill, LLC ("VS"), a real property development business in Baltimore City was the developer of a project known as the Clipper Mill Planned Unit Development ("the PUD"). VS sought approval from the Baltimore City Planning Commission ("the Planning Commission") for proposed changes to the previously approved PUD plan in order to allow it to construct additional townhomes on land committed previously to surface vehicular parking and to redevelop an existing building for office and retail use. Residents from two existing residential communities within the PUD opposed those efforts, individually and through their homeowners' associations [("the HOA parties")]. VS responded by filing the instant lawsuit in the Circuit Court for Baltimore City against the [HOA parties], alleging that their opposition to the proposed changes to the PUD plan contravened the Clipper Mill Community Declaration and interfered tortiously with VS's business and economic relations, entitling VS to

[6] The developer that brought the prior SLAPP suit is VS Clipper Mill, LLC. As noted above in footnote two, VS Clipper Mill was substituted by its successor in interest, MCB Woodberry Developer, during the pendency of the SLAPP suit's appeal. The factual recitation provided here therefore refers to VS Clipper Mill; we treat them and MCB Woodberry Developer as one and the same for purposes of the present appeal.

> compensatory damages, $25 million in punitive damages, and declaratory relief.
>
> . . .
>
> Ten days after it filed its complaint, VS served on the individual HOA parties its first request for production, which directed them to produce all documents included in an earlier preservation request, as well as their personal banking records from January 2015 to the present. The earlier preservation request, dated 20 May 2020, directed the HOA parties to preserve all electronically stored information on personal and business devices, including phones, laptops, and tablets, for potential discovery.
>
> The HOA parties moved to dismiss the complaint arguing that it was a SLAPP suit and that they were immune from suit for their protected communications pursuant to CJP § 5-807. They emphasized that the conduct that VS alleged was unlawful all concerned the HOA parties' public participation in opposition to VS's efforts to amend the PUD before the Planning Commission and the circuit court, which was protected activity under the First Amendment. The HOA parties maintained that the timing of the filing of the lawsuit, just four days after the circuit court issued its remand order in the Townhouse Project administrative appeal, coupled with the demand for punitive damages and "onerous, overbroad, and intentionally intrusive discovery requests[,]" exemplified bad faith and justified dismissal of the complaint. . . .
>
> VS opposed the motions to dismiss, arguing that the HOA parties asserted "fact-dependent defenses" that were inappropriate for resolution on a preliminary motion to dismiss. . . .
>
> The circuit court held a hearing and, by order entered 23 November 2020, granted the motions to dismiss. It ruled that the lawsuit was a SLAPP suit, that the Community Declaration did not prohibit the HOA parties' conduct, and that the HOA parties were immune civilly from suit for their protected communications made in opposition to the Projects. . . .

MCB Woodberry Dev., 253 Md. App. at 1–2, 9–11 (internal footnotes omitted).

We subsequently affirmed the SLAPP suit's dismissal, concluding the lawsuit's "timing, coupled with the unsupported and exorbitant request for punitive damages, the overbroad discovery requests, and the lack of any non-conclusory allegations of tortious conduct by the HOA parties, demonstrated that the lawsuit was pursued vexatiously in retaliation against the HOA parties for their public opposition to VS's development efforts and to deter them from continuing those efforts." *Id.* at 29. As a result, the Developers paid the HOAs' attorneys' fees and expenses.

The HOAs filed the present class action complaint in December 2023, approximately two years after we affirmed the SLAPP suit's dismissal in their favor. The HOAs filed the complaint on behalf of a putative class made up of all homeowners in their communities—at least 133 individuals—who were not parties to the underlying SLAPP suit. The complaint alleged the following bases for malicious use of process on behalf of the class: (1) the SLAPP suit's "effort to impose a $25 [m]illion liability on all Class members"; (2) the Developers' use of the SLAPP suit "as an improper means of intimidation against all Class members, to cause anxiety and concern throughout the Class, and to seek or threaten to seek intrusive, abusive discovery of personal and confidential business communications throughout the Class"; and (3) the SLAPP suit's alleged effects on "the real property interests of all Class members," including that the suit was "effectively a freeze on the Class members' assets, . . . significantly diminished property values as to all class members, and impaired the class members' ability to use and enjoy their homes and property." The complaint claimed compensatory damages in an amount exceeding $75,000 and punitive damages.

The Developers filed a joint motion to dismiss the complaint. In their motion to dismiss, the Developers argued the following: (1) the HOAs cannot bring suit on behalf of additional plaintiffs who were not sued in the SLAPP suit below; (2) the HOAs cannot sue defendants who were not parties to the SLAPP suit below; (3) the complaint did not sufficiently allege the Developers instituted the SLAPP suit without probable cause and with malice as required for a malicious use of process claim; and (4) the complaint did not sufficiently allege the HOAs suffered a special injury as required for a malicious use of process claim.

The circuit court granted the Developers' motion to dismiss on two grounds: (1) the HOAs cannot assert malicious use of process claims on behalf of plaintiffs who were not defendants in the SLAPP suit, and (2) the HOAs cannot show they suffered a special injury under the malicious use of process elements. The HOAs now appeal on both grounds.

STANDARD OF REVIEW

We review a circuit court's ruling on a legal question *de novo*, meaning "without deference" to the lower court's decision. *Rodriguez v. Cooper*, 458 Md. 425, 437 (2018). Whether to grant a motion to dismiss is a question of law; therefore, "[w]e review a motion to dismiss de novo." *Creighton v. Montgomery Cnty.*, 254 Md. App. 248, 253 (2022) (internal citation omitted).

Upon reviewing a motion to dismiss, we must "determine whether the trial court was legally correct in concluding that the alleged facts and permissible inferences of a complaint nonetheless fail to afford relief to the plaintiff." *Havilah Real Prop. Servs., LLC* *v. Early*, 216 Md. App. 613, 622 (2014) (citing *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21 (2007)) (internal quotes omitted). In conducting this review, "we must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted." *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011) (internal quotes and citations omitted). "[T]he facts comprising the cause of action must be pleaded with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice." *Bobo v. State*, 346 Md. 706, 708–09 (1997). "On the other hand, any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Ronald M. Sharrow, Chartered v. State Farm Mut. Auto. Ins. Co.*, 306 Md. 754, 768 (1986).

DISCUSSION

I. The Circuit Court Properly Found the HOAs Cannot Sufficiently Plead Special Injury as Required for a Malicious Use of Process Claim.

A. Parties' Contentions

The HOAs' allegations of error focus on the unique nature of the lawsuit giving rise to their present claim in that it was deemed a SLAPP suit. The HOAs argue they suffered injuries unique from those that usually arise from a regular suit for tortious interference or breach of contract because the prior suit was brought in bad faith and for the purpose of instilling fear in the HOAs for engaging in lawful activities. The HOAs claim that a SLAPP suit, “by definition,” causes special injury because a SLAPP suit “attempt[s] to chill constitutional rights . . . .” As a result of being wrongfully sued for $25 million and served “abusive” discovery requests, the HOAs contend they suffered intimidation, harassment, and burdens on property titles. The HOAs maintain that intimidation and harassment arising from a bad faith lawsuit should not be considered the ordinary results of typical litigation based on tortious interference or breach of contract. As far as title burdens, the HOAs assert the SLAPP suit’s filing “immediately devalued all properties in Clipper Mill” because it allegedly exposed all homeowners to potential liability for a $25 million judgment against their HOAs. The HOAs also allege the SLAPP suit “held up sales in some cases and caused reduction in the contract sales price in at least one other case.”

The Developers contend that successfully asserting a claim for malicious use of process is a high bar in Maryland due to the “special injury” requirement and that the cause of action itself is disfavored. The Developers characterize the HOAs’ injuries as mere “expense and annoyance,” which are insufficient for pleading special injury. They point out that the SLAPP suit, however intentioned, did not cause an actual restriction to the HOAs’ constitutional rights since the HOAs continued exercising those rights. The Developers further describe the HOAs’ alleged injuries as insufficiently pled and, regardless of sufficiency, “incidental and ordinary results of almost any litigation.” The Developers contend the SLAPP suit’s bad faith element does not automatically mean the SLAPP suit caused special injury because special injury is an element of malicious use of process separate and distinct from the bad faith element of a SLAPP suit. They maintain that the discovery requests served on the HOAs could not have caused special injury because the HOAs were never actually required to comply with the discovery requests, as discovery was stayed while the SLAPP suit's motion to dismiss was pending. Finally, the Developers emphasize the HOAs already received the appropriate remedies for a SLAPP suit—dismissal of the suit and an award of attorneys' fees—rendering their malicious use of process claim retaliatory.

B. Analysis

A complaint alleging malicious use of process must assert facts to establish the following elements: "(1) a prior civil proceeding [was] instituted by the defendant; (2) the proceeding [was] instituted without probable cause; (3) the prior civil proceeding [was] instituted . . . with malice; (4) the proceedings [were] terminated in favor of the plaintiff; and (5) 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." *Havilah*, 216 Md. App. at 623–24 (emphasis added). Failure to properly plead just one element mandates dismissal. *One Thousand Fleet Ltd. P'ship v. Guerriero*, 346 Md. 29, 41 (1997). The question here is whether the HOAs properly pled element (5) in their complaint. The HOAs do not assert any of them were arrested or their property was seized; rather, the dispute is whether the underlying SLAPP suit caused a "special injury which would not necessarily [have] result[ed] in all suits prosecuted to recover for a like cause of action."

The Developers properly characterize malicious use of process claims as being disfavored. The Supreme Court of Maryland summed up the policy rationale long ago in *Owens v. Graetzel*:

> [P]ublic policy requires that parties may freely enter the courts to seek redress and relief and to enforce their rights, and that this may be done without the peril of a suit for damages in the event of an unfavorable judgment . . . . 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.

149 Md. 689, 694–95 (1926).[7] Rather than piling on the litigation, our judicial system provides for the payment of costs and attorneys' fees for the hassle of defending a bad faith lawsuit:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in *bad faith* or *without substantial justification*, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Md. Rule 1-341(a) (emphasis supplied); *see also Graetzel*, 149 Md. at 695 ("[T]he payment of costs, incident to the failure to maintain the suit, is commonly a sufficient penalty and

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[7] *Owens v. Graetzel*, a seminal case on malicious use of process, refers to suits for malicious "prosecution." With the susequent development of malicious process torts in Maryland, the torts became split into three: "Despite the similarity in language, '[a]buse of process, malicious use of process, and malicious prosecution are essentially different and independent torts.'" *Guerriero*, 346 Md. at 36 (citing R. Gilbert & P. Gilbert, *Maryland Tort Law Handbook* § 5.3, at 54 (1992)). "In Maryland, the term 'malicious use of process' means malicious prosecution of a civil claim. 'Malicious prosecution' in Maryland applies to criminal charges, but otherwise shares the same elements as malicious use of process." *Guerriero*, 346 Md. at 36 (citing S. Speiser, et al., *The American Law of Torts* § 28:20, at 114 (1991, 1996 Supp.)).

the fear of the burden of making the payment ordinarily is sufficient deterrent to unfounded actions."); *Shamberger v. Dessel*, 236 Md. 318, 321 (1964) ("[I]f the costs are inadequate to compensate a harassed defendant, he should look to the legislature, not the courts; [ ] if recovery [for malicious prosecution] were allowed in [cases without showing special injury], . . . such actions would lead to interminable and vexatious litigation.") (citing 34 Am. Jur., Malicious Prosecution, § 10). Therefore, to go beyond the remedy of attorneys' fees and bring a claim for malicious use of process, the plaintiff bears the burden to show he has suffered an injury unique from that which ordinarily results from being subjected to the type of process he was served with in the prior proceeding.

It is well established that "[t]he mere expense and annoyance of defending a civil action is not a sufficient special damage or injury to sustain an action for malicious prosecution." *N. Point Const. Co. v. Sagner*, 185 Md. 200, 207 (1945). "Similarly, generalized emotional distress, humiliation, and the like do not constitute special damages." *Gilbert v. Bach*, 697 F. Supp. 202, 203 (D. Md. 1988) (citing 14 M.L.E. Malicious Prosecution § 10) (applying Maryland state law), *aff'd*, 887 F.2d 1079 (4th Cir. 1989).

One Thousand Fleet Ltd. P'ship v. Guerriero illustrates further what does *not* constitute sufficient special injury for a malicious use of process claim. 346 Md. 29 (1997). There, community members and an organization challenged a real estate developer's building permits and recent zoning modifications in their community. *Id.* at 32. The real estate developer eventually brought suit for malicious use of process and abuse of process.

Id. at 35. Our highest court found the real estate developer had inadequately pled special injury in its complaint for the malicious use of process claim by asserting "it ha[d] been unable to obtain final financing for the Project, ha[d] suffered delays which [] increased costs[,] and ha[d] sustained a loss of rental revenue among other damages." *Id.* at 44. The Court explained that the developer's alleged damages were not 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*." *Id.* (emphasis added).

While asserting a claim for malicious use of process is a high bar, it is not an insurmountable one. This Court found appellants sufficiently alleged special injury in *Hooke v. Equitable Credit Corp.*, 42 Md. App. 610 (1979). There, we explained that "the mere existence of [a] lien" on property as a result of a confessed judgment, even a wrongful one, is not a special injury. *Id.* at 614. However, we found the appellants suffered special injury because but for the wrongful judgment lien, appellants would have been able to prevent a mortgage foreclosure on their property—appellants had secured a refinancing agreement for their mortgage, but the agreement fell through upon discovery of the lien. *Id.* at 614–15. As such, we concluded appellants suffered special injury because their injury, mortgage foreclosure, was "not the sort of injury which necessarily follows from the filing of a confessed judgment . . . ." *Id.* at 615.

Here, the HOAs cannot surmount the high bar of pleading special injury. Their assertion that the SLAPP suit's bad faith requirement inherently exposed the HOAs to special injury misses the mark under our aforementioned case law. Neither this Court's reasoning in *Hooke* nor our Supreme Court's reasoning in *Guerriero* support the proposition that bad faith in the prior proceeding equates to special injury. Quite the opposite, in fact—*Hooke* stated a lien created by a wrongful confessed judgment is not a special injury, *id.* at 614, while *Guerriero* concluded that damages suffered by the real estate developer would have still been ordinary had the prior zoning challenges been instituted wrongfully, 346 Md. at 44. Here, the prior challenge—the SLAPP suit—was indeed instituted wrongfully. However, the wrongfulness does not automatically equate to special injury.

We conclude the present case is more akin to *Guerriero* than *Hooke*. Any temporary devaluation of property or delay of sales caused by the pending SLAPP suit were ordinary results of litigation. The HOAs' allegations are plainly comparable to those asserted in *Guerriero*. In *Guerriero*, the appellants asserted they experienced an inability to obtain financing, delays that increased costs, and loss of rental revenue. Here, the HOAs assert all community properties were devalued, some sales were held up, and a contract sales price was reduced in at least one case. The HOAs here and the appellants in *Guerriero* may well have suffered real economic effects of facing their respective legal challenges, but such economic effects are typical of those caused by litigation. In other words, the HOAs' bare allegations of property devaluation do not constitute special injury sufficient to plead malicious use of process.

Although the Developers were found to have instituted the prior proceeding in bad faith, that finding alone does not necessitate a finding that the HOAs suffered special injury as a result. This is not to say that the expenses and emotional hardship of being sued are insignificant and should be ignored. This Court recognizes and understands that being subjected to suit, particularly a bad faith suit, has very real impacts on people and organizations such as the HOAs here. While the Court empathizes with the stresses a lawsuit can bring, a successful litigant in a SLAPP lawsuit must plead more under our case law to show special injury.

II. The Circuit Court Properly Found the HOAs Cannot Assert a Class Action Claim on Behalf of Putative Class Members Who Were Not Parties to the Underlying SLAPP Suit.

A. Parties' Contentions

The HOAs claim there is no standing issue as to the putative class members at the pleading stage because the class members have not yet been certified so as to become "parties" to the litigation. Regardless, the HOAs assert the underlying SLAPP suit was, indeed, resolved in the putative class members' favor as required for element (4) of a malicious use of process claim because the class members were "directly relieved of a potential personal liability" for any judgment against their HOAs. The HOAs argue the circuit court's interpretation of element (4) (that the prior proceeding was "terminated in favor of the plaintiff") to mean the prior proceeding was instituted "against the plaintiffs" is "hyper-technical and inapt." The HOAs maintain that in addition to being relieved of potential liability, the SLAPP suit injured the class members because the "abusive" discovery request was directed towards all members of the HOAs.

The Developers respond that the putative class members were neither sued in the SLAPP suit nor served with discovery requests directly. Because discovery cannot change the fact that the absent class members were not sued below, the Developers argue, the class will never have standing and dismissal at the pleading stage was proper. The Developers also contend that even if the SLAPP suit subjected the class members to potential liability, any liability would have been both speculative under the HOAs' community declarations and an ordinary injury resulting from a lawsuit.

B. Analysis

We concluded in Section I of this opinion that the HOAs could not prove special injury. On that basis alone, a class action claim could not survive. Either way, element (4) of a claim for malicious use of process requires the underlying proceeding to have been terminated in favor of the plaintiff now bringing suit. The Supreme Court of Maryland has stated this means that the underlying proceedings were "terminated in favor of the person against whom they [were] brought." *Guerriero*, 346 Md. at 41–42 (internal quotations omitted) (citing Second Restatement of Torts § 674(b)). In a footnote, the court declined to answer "whether a party who was not an original party in the underlying lawsuit but rather participated as an intervenor may maintain a cause of action for malicious use of process," but noted that most states which had addressed the issue held that a "malicious use of process plaintiff *must have been an original party* to the underlying action." *Id.* at 42 n.4 (emphasis added).

The basic purpose of even providing a cause of action for malicious use of process can also guide our understanding of what "in favor of the plaintiff" means. The purpose of malicious use of process is to provide a very limited additional remedy for parties who were subjected to such abusive litigation that fees and costs do not suffice. This purpose is narrow. A party who was *not* subjected to the abusive litigation complained of does not have a cause of action for malicious use of process. Here, the putative class members were not original parties to the underlying action; therefore, the HOAs cannot sue on behalf of them.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY THE COSTS.