

Circuit Court for Prince George's County
Case No. CAL22-27507

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1447

September Term, 2024

BRANDON VARGAS, ET AL.

v.

ACCUPERMIT LLC

Berger,
Friedman,
Robinson, Dennis M., Jr.
(Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 16, 2026

* 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).

FACTS

Appellee AccuPermit LLC provides traffic control services. Appellant Brandon Vargas was an employee at AccuPermit. He signed a covenant not to compete during his employment and for two years after. But shortly after Vargas's employment ended, he founded Extinguished Fire Protection LLC, a company also engaged in the business of traffic control. Through Extinguished, Vargas performed those services for customers, including his former clients at AccuPermit.

AccuPermit filed suit in the Circuit Court for Prince George's County against Vargas to enforce the covenant not to compete and to claim that Extinguished tortiously interfered with its economic relations.¹ During discovery, AccuPermit requested that Vargas answer interrogatories and produce documents that detailed his client transactions. AccuPermit argued that Vargas's responses were incomplete and moved for an order compelling discovery. The circuit court found Vargas's responses incomplete in violation of the discovery rules and entered an order compelling discovery. Vargas supplemented his responses, but AccuPermit maintained that they were still incomplete and filed a motion for sanctions. The circuit court postponed its ruling on the motion because it determined that some of AccuPermit's requests were vague. The circuit court instructed AccuPermit to rephrase its requests, and directed Vargas to respond. After AccuPermit rephrased the requests and Vargas responded, the court found that Vargas's responses were still

¹ We note that Vargas acted on behalf of Extinguished at all times relevant to this appeal. As a result, we refer to them collectively as Vargas.

incomplete and constituted a violation of the order compelling discovery. As a sanction against Vargas, the circuit court entered a default judgment. At a subsequent damages hearing, AccuPermit presented evidence that its profits decreased after Vargas's employment ended. Based on that evidence, the court awarded \$164,756 in compensatory damages, \$200,000 in punitive damages, and \$95,427.55 in attorney's fees. Vargas noted this timely appeal. He presents four issues, which we have rephrased as follows:

1. Did the trial court abuse its discretion in sanctioning Vargas with a default judgment?
2. Did the trial court clearly err in finding that AccuPermit was entitled to compensatory damages?
3. Did the trial court err in awarding AccuPermit punitive damages?
4. Did the trial court abuse its discretion in awarding AccuPermit attorney's fees?

ANALYSIS

I. SANCTIONS

We begin with the first issue in Vargas's appeal: whether the circuit court abused its discretion by entering a default judgment as a discovery sanction. Vargas contends that (1) the trial judge struck the order compelling discovery when it asked AccuPermit to rephrase its requests, so any noncompliance with that order could not justify sanctions; and (2) the trial judge failed to properly consider the required factors in entering a default judgment as a discovery sanction.

Discovery is intended to be a cooperative process that eliminates confusion about evidence. *Rodriguez v. Clarke*, 400 Md. 39, 57 (2007). Parties exchange interrogatories

and requests to produce relevant documents as part of this process. But when a party fails to completely answer or object to discovery requests, they violate the discovery rules. MD. R. 2-402(a), 2-421(b), 2-422. The other party may then move for an order compelling discovery. MD. R. 2-432(b). If the court grants this motion, the violating party must supplement their responses. If these supplemental responses are still incomplete, the other party may then move for sanctions. The court, upon a finding that the supplemental responses are still incomplete, may exercise its broad discretion to grant the motion for sanctions and to select an appropriate sanction. MD. R. 2-433. But in exercising its discretion, the trial court must consider the five *Taliaferro* factors: “(1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason for the violation; (4) the degree of prejudice to the parties; and (5) whether any resulting prejudice might be cured by a postponement, and, if so, the overall desirability of a continuance.” *Taliaferro v. State*, 295 Md. 376, 390-91 (1983) (cleaned up).

We review a trial court’s finding of a discovery violation without deference. *Cole v. State*, 378 Md. 42, 56 (2003). We review the trial court’s choice of sanctions for an abuse of discretion. *Rodriguez*, 400 Md. at 57.

First, Vargas claims that any violation of the circuit court’s order compelling discovery cannot justify sanctions. He contends that the court struck this order when it ordered AccuPermit to rephrase certain discovery requests. According to Vargas, because the court struck this order, he could not have violated it. We disagree.

Vargas contests neither the legal merits of the order compelling discovery nor the court's determination that his responses were incomplete. Vargas's only issue is his belief that the court struck its own order compelling discovery. Our review of the record reveals that it did not. The court explained the intended effect of its decision to postpone its ruling on AccuPermit's motion for sanctions:

I am reserving on the sanctions ... because at the present the Court does agree that some of the wording may have been a little ambiguous[.] ... Now that we all have the clarity, then if it is not provided, then that is problematic. ... And the reason is just for judicial economy. If I deny [the motion for sanctions] today, [and] it is not provided, *it is going to be another motion* [for sanctions].

The court indicated no intent to strike its prior order. In fact, the court explained that, if it denied AccuPermit's motion for sanctions, any further incomplete responses from Vargas would likely result in another motion for sanctions—which requires the prior violation of an order compelling discovery. *See* MD. R. 2-433(c). In that context, we hold that the court did not err in finding that Vargas violated the order compelling discovery, which may serve as a basis for sanctions.

Second, Vargas contends that, when the court sanctioned him, it failed to consider the five required *Taliaferro* factors.

Vargas is incorrect. The court considered each required factor:

The factors that the Court looks at in order to determine what, if any, sanction is appropriate is [1] whether it is a technical or substantial violation. This is a clear cut indication of a substantial violation. This is not a technical violation. There is no way [AccuPermit] would be able to know what, if any, clients that were previously with AccuPermit are now

with Mr. Vargas because that is the whole purpose of the complaint. ...

[2] The timing of the ultimate disclosure—well, there has been no timing of ultimate disclosure because [Vargas] hasn't ultimately disclosed all that was required. [3] The reason, if any for the violation where the Court hears again confusion, not in my possession, and would continue to provide the information at some later date, the Court has zero confidence in that statement.

... [I]t is very clear [to] this Court that [Vargas] is either attempting to avoid producing information or [cause] continued delay in this case. And [4] the degree of prejudice is unknown at this point really because [Vargas] fails to provide the documents and the information. So what the Court does know is there is a high level of prejudice[.] ...

The next factor is [5] prejudice can be cured by a postponement and desirability of a continuance. Trial in this case is set for March the 12th, three day trial. And the reason why the Court held a hearing back in January was to avoid having to continue the case, to make sure that everyone was under the same rubric as to what was missing, what needed to be provided. And so the ... appellate courts are very clear that default or dismissal are draconian and those are extreme measures. But the reason why they are in the rules and the reason why the courts uphold certain cases is because there [are] occasions where you have extreme measures, and this is one of them.

There is nothing that the Court can order that the Court has not already ordered that [Vargas] just neglects to provide. And while default is an extreme measure, the Court finds [Vargas's] actions willful, deliberate, and intentional.

... As such, the Court will grant Plaintiff's motion for default.

The trial court could not have been clearer. It applied the facts of the case to each factor and explained why the factors, here, supported sanctions. We conclude that the court did not abuse its discretion in sanctioning Vargas.

II. COMPENSATORY DAMAGES

After the circuit court entered the default judgment, it convened a damages hearing after which it awarded \$164,756 in compensatory damages to AccuPermit. In his appeal, Vargas complains that AccuPermit’s evidence was insufficient to meet its burden to prove compensatory damages. The plaintiff, here, AccuPermit, must prove compensatory damages to a reasonable certainty, which is satisfied with evidence of the plaintiff’s profits before the solicitation and the resulting decline in profits after solicitation. *Ingram v. Cantwell-Cleary Co., Inc.*, 260 Md. App. 122, 190-91 (2023). We review the trial court’s findings of fact, such as entitlement to compensatory damages, for clear error. MD. R. 8-131(c). The trial court’s findings are not clearly erroneous if they are supported by competent and material evidence in the record. *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007).

Vargas contends that AccuPermit’s evidence of its own profits was insufficient to meet its burden of proof. Instead, Vargas argues, AccuPermit needed to present evidence of Vargas’s profits from soliciting AccuPermit’s clients. The law is clear, however, that AccuPermit’s evidence of its own profits satisfy its burden to prove loss to a reasonable certainty. *See Ingram*, 260 Md. App. at 190-91 (“an award of lost profits as consequential damages may be calculated based on the past profits of an established business, because such a predictable figure provides a reasonable basis for future profits which would have existed at the time of contracting”) (cleaned up). At the damages hearing, AccuPermit introduced evidence of its earnings from Vargas’s clients during his final year as an AccuPermit employee. It then compared that to its decreased earnings from those clients

after he resigned. To calculate its compensatory damages, AccuPermit applied an industry standard profit margin to that decrease in its earnings. Based on this evidence, the circuit court found that AccuPermit was entitled to compensatory damages. Because that finding relied on competent and material evidence, we conclude that it was not clearly erroneous, and we affirm.

III. PUNITIVE DAMAGES

In addition to compensatory damages, the trial judge awarded \$200,000 in punitive damages to AccuPermit. Vargas argues that this was error, because punitive damages are not recoverable for a contract claim. Even if they were, Vargas argues that a plaintiff is required to plead punitive damages to recover, which AccuPermit did not do. Vargas is correct. Punitive damages are not recoverable for AccuPermit's contract claim. *See Miller Bldg. Supply, Inc. v. Rosen*, 61 Md. App. 187, 194 (1985) (holding that punitive damages are not recoverable for a contract claim). Even if AccuPermit could recover punitive damages, it was required to plead sufficient facts to establish actual malice and punitive damages. *See Scott v. Jenkins*, 345 Md. 21, 35-36 (1997). Because AccuPermit did not demand punitive damages in its complaint, it failed to satisfy the pleading requirement to recover punitive damages. The court's decision to award punitive damages was in error, and as a result, we vacate this award.

IV. ATTORNEY'S FEES

In addition to awarding damages, the trial judge also sanctioned Vargas by awarding AccuPermit \$95,427.55 in attorney's fees for every phase of trial: pleading, discovery, compelling discovery, sanctions, and damages. Vargas argues that the court could not have

awarded attorney's fees for every phase of trial as a discovery sanction. We agree. The only attorney's fees available for a discovery sanction are those that a party incurred to obtain an order compelling discovery and those incurred because the other party violated that order. MD. R. 2-433(c), (d). The court's award should not have included any other fees. Accordingly, we vacate the award of attorney's fees and remand for the purpose of determining whether AccuPermit is entitled to attorney's fees incurred to obtain the order compelling discovery and incurred because Vargas violated that order, and if so, in what amount.²

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED IN PART AND REVERSED IN
PART; AWARD OF PUNITIVE DAMAGES
VACATED; AWARD OF ATTORNEY'S
FEES VACATED; CASE REMANDED FOR
FURTHER PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.
COSTS ASSESSED TO APPELLANTS.³**

² On remand, the court may also entertain a motion for attorney's fees under Rule 1-341(a) due to any bad faith on the part of Vargas in defending the proceeding.

³ Although we ordinarily assess costs against the non-prevailing party, we may assess the costs differently under Maryland Rule 8-607(a). Vargas's repeated discovery violations delayed the case and ultimately created the issues on which he prevails. As a consequence, we exercise our discretion to assess the costs of this appeal against him. *See Tobin v. Marriott Hotels, Inc.*, 111 Md. App. 566, 576-77 (1996) (assessing costs against prevailing party whose failure to timely respond to issues in the case created the issues on appeal).