

Circuit Court for Montgomery County
Case Nos. 456709V & 459566V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2188

September Term, 2019

JIMMY TRAETTINO, et al.

v.

GLENN WOOLSCHLAGER

Fader, C.J.,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 25, 2021

*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 1996, Luigi and Angela Traettino created The Luigi and Angela Traettino Irrevocable Trust (the “Trust”) to hold various assets for their children and grandchildren. The Trust’s monetary assets were held in a brokerage account managed by Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors (“Wells Fargo”) and its financial advisor, Glenn Wooschlager, appellee.

In October 2018, Jimmy Traettino and his son, Romeo Traettino, appellants,¹ filed a complaint seeking, among other things, a declaratory judgment that Jimmy Traettino was the proper Trustee and a judgment ordering Wells Fargo and Mr. Wooschlager to return to the Trust all commissions, fees, bonuses, and compensation earned from the Trust. Wells Fargo and Mr. Wooschlager filed a motion for summary judgment, arguing that appellants’ claims were moot and appellants lacked standing to assert them. The circuit court granted their motion.

On appeal, appellants present four questions for this Court’s review, which we have rephrased slightly, as follows:

1. Did the circuit court err in finding that appellants did not have standing to pursue a claim for damages against appellee?
2. Did the circuit court err in finding that appellants were contractually obligated to pursue claims for damages against appellee through arbitration?
3. Was appellants’ claim for damages barred by limitations?
4. Did the circuit court err in granting summary judgment in favor of appellee?

¹ Appellants initially were represented by counsel below, but they are self-represented litigants on appeal.

5. Were appellants denied an opportunity to pursue discovery prior to being obliged to respond to the motion for summary judgment?

Mr. Wooschlager, in addition to arguing that the court properly granted summary judgment in his favor, included in his brief a motion to dismiss, arguing that: (1) appellants' claims are moot; and (2) the appeal should be dismissed because appellants failed to substitute the Trustee of the Trust as the appellant. For the reasons set forth below, we shall grant Mr. Wooschlager's motion to dismiss. As a result, we need not reach the merits of appellants' claims.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Irrevocable Trust

In 1996, Luigi and Angela Traettino established the Trust. It provided that the Trustee "shall hold, manage, administer, invest and reinvest the property of this Trust, IN TRUST, NEVERTHELESS, for the benefit of the beneficiaries of this Trust as herein provided." Doug Woloshin, Esq. was named Trustee of the Trust, and Morton Frome, Esq. was named substitute Trustee if Mr. Woloshin "cease[d] to serve" as Trustee. Mr. Frome died in 2009. Luigi Traettino died on June 10, 2016.

The Trust Agreement designated as beneficiaries Luigi and Angela's three children, Jimmy Traettino (appellant), Janet A. Traettino, and John Traettino, as well as their three grandchildren, Glenn Wooschalger, Jr., Christian J. Wooschlager, and Romeo Traettino

(appellant).² A fourth grandchild, Antonio Traettino, was born to John Traettino after the execution of the Trust, and he was eligible to become a beneficiary if an equal share was established for him in accordance with the Trust terms. Documents in the record indicate that, in 2016, the Trust included approximately \$700,000 in monetary assets.

As pertinent to the issues on appeal, the Trust Agreement provided as follows:

Section 7.04 – Resignation. Any Trustee shall have the right to resign at any time upon giving his or her Co-Trustee or successor Trustee, as the case may be, written notice at least sixty (60) days in advance of the effective date of such resignation; provided, however, that such sixty (60) days advance notice may be waived and a different effective date of such resignation may be selected if the successor Trustee agrees to the same. If there is a sole Trustee then serving hereunder, and there is no successor or substitute Trustee named herein who is available to serve, such Trustee shall not have any such right to resign unless and until such Trustee has, in accordance with the laws of the jurisdiction in which the Trust is being administered, properly attended to the valid appointment of a successor Trustee.

Mr. Woloshin, in his capacity as Trustee, established a trust account (“Trust account”) with Wachovia Securities, which later was acquired by Wells Fargo. The Amended Complaint stated that the account was managed by Mr. Wooschlager, who was both a financial advisor at Wells Fargo and, as Janet’s husband, Jimmy’s brother-in-law.

² Jimmy Traettino is the father of Romeo Traettino. Janet Traettino is married to Glenn Wooschlager (appellee), and they are the parents of two adult children who were listed as beneficiaries, Christian Wooschlager and Glenn Wooschlager, Jr. Angela Traettino, Jimmy’s mother, survived her husband and was listed as a defendant in the litigation below. We will refer to the members of the Traettino family by their first names, with the exception of Glenn Wooschlager, appellee, who we refer to as Mr. Wooschlager. We do so for clarity and mean no disrespect by this informality.

This Trust account was subject to a Client Agreement, which contained an arbitration provision. The pertinent section of that provision provided as follows:

All of the Parties to this Agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which the claim is filed.

* * *

It is agreed that all controversies or disputes which may arise between you and [Wachovia Securities (“WS”)] including controversies or disputes with WS’s clearing agent (collectively “us”) concerning any transaction or the construction, performance or breach of this Agreement or any other agreement between us, whether entered into prior to, on, or subsequent to the date of this Agreement, including any controversy concerning whether an issue is arbitrable, shall be determined by arbitration[.]

On September 15, 2016, Mr. Woloshin sent a letter to Angela memorializing his understanding that she desired to have Jimmy become a Co-Trustee. The letter stated that once she signed the letter, he would “create and forward documentation to Jimmy . . . for his approval and execution[,] acknowledging agreement to become a Co-Trustee.” Angela signed the letter on September 19, 2016.

On January 23, 2017, Mr. Woloshin signed a notarized document stating that he resigned as Trustee of the Trust on January 18, 2017, and before resigning, he appointed Jimmy as “successor Co-Trustee.” On January 24, 2017, Mr. Woloshin sent an e-mail to Mr. Wooschlager at Wells Fargo to advise that he had resigned on January 18, 2017, and Jimmy had been appointed “Co-Trustee/successor Trustee.” Jimmy did not take additional action to become authorized to direct the Trust account, nor did Mr. Wooschlager add Jimmy’s name to the account.

On March 9, 2017, Jimmy signed a notarized document stating that he was resigning as Trustee effective immediately.³ He did not appoint a successor or Co-Trustee.

On September 24, 2018, an attorney representing Jimmy sent a letter to Wells Fargo advising that, although Jimmy believed that his resignation was legally effective, Jimmy was incorrect because the Trust provided that a Trustee could not resign unless there was a valid appointment of a successor Trustee. Because that was not done, Jimmy remained the Trustee, and he requested documentation regarding the Trust.

II.

Complaints & Subsequent Proceedings

On October 19, 2018, Jimmy filed in the Circuit Court for Montgomery County (Case No. 456709-V) a Complaint for Declaratory Relief and Mandatory Injunctive Relief against Glenn Wooschlager and Wells Fargo. On November 28, 2018, Glenn Wooschlager filed a motion to dismiss based on Jimmy's failure to include necessary parties, including all beneficiaries of the Trust.

Jimmy subsequently amended his complaint to add Romeo as a plaintiff and to add Angela (as surviving Trust settlor), Janet, Glen Jr., Christian, John, and Antonio (Trust beneficiaries) as defendants. The amended complaint alleged that, despite Jimmy's

³ In his brief, Jimmy states that he resigned to "dissociate himself from any appearance of complicity in the misdeeds of Janet and Glenn Wooschlager and to avoid any further false accusations of misdeeds by Angela Traettino." With respect to the last statement, we note that, in a prior case in this Court, we discussed Angela's lawsuit against Jimmy related to her transfer of property to Jimmy, which she alleged was the result of fraud and undue influence. *Angela Traettino v. Jimmy Traettino*, Case No. 2271, Sept. Term, 2018 (filed Aug. 11, 2020).

purported resignation in March 9, 2017, he was the current Trustee because he did not comply with the requirement of the Trust to resign, i.e., he did not appoint a successor or Substitute Trustee. Appellants further alleged that, beginning on March 10, 2017, the Trust account was impermissibly managed by a “committee” composed of Angela, Janet, John, and Janet’s husband, Mr. Wooschlager, until Wells Fargo froze the brokerage account on November 16, 2018, to prevent further trading pending resolution of the status of Jimmy as the Trustee of the Trust.

The amended complaint also alleged that Wells Fargo and Mr. Wooschlager, in his capacity as a Well Fargo’s employee, withheld certain tax documents and forms that Jimmy needed in order to be recognized as Trustee and to access the Trust account. The complaint further alleged that Mr. Wooschlager and Wells Fargo had been “unjustly enriched by the receipt of commissions on asset trading transactions which were not authorized by the Trustee of the [Trust] from January 18, 2017 through November 16, 2018.” Moreover, it alleged that there was an “as-yet unexplained 2013 loss carry-over of \$65,000, and that trades ha[d] occurred without prior authorization by a Trustee for the account.”

The amended complaint requested the following relief:

- A. That this Court issue a Declaratory Judgment determining that Jimmy Traettino remains the Trustee for The Luigi and Angela Traettino Irrevocable Trust;
- B. That this Court issue a Mandatory Injunction decreeing that Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors and its employee, Glenn Wooschlager, provide to Jimmy Traettino forthwith (a) all communications with Wells Fargo Financial Advisor Glenn Wooschlager concerning the subject brokerage account; (b) all trade records for securities in said account; (c) all records reflecting the source of decisions made

concerning investments within said account from January 2017 to the present; (d) an accounting of all commissions, fees, bonuses, compensation related to this account; (e) complete Wells Fargo Form 1099s for 2016 and 2017; (f) any agreement in existence between the Irrevocable Trust and Glenn Wooschlager and/or Wells Fargo; (g) original funding document and proof of Grantor contributions in order to account for the funding of the conditional seventh beneficiary's (Antonio Traettino) trust share[;] and (h) the complete signed Irrevocable Trust Tax returns for 2016 and 2017;

C. That Douglas Woloshin's name be replaced with Jimmy Traettino's name in the title of the account as it should have been since January 2017;

D. That Glenn Wooschlager and Wells Fargo Clearing Services, LLC be ordered to return to the Irrevocable Trust account all commissions, fees, bonuses, compensation that he received for himself and for Wells Fargo by conducting trades and investments without proper authorization, and that he be held legally liable for all losses in said account;

E. That Glenn Wooschlager be enjoined from making any future investment decisions without the express authorization of Jimmy Traettino, as Trustee of the Irrevocable Trust.

After receiving notice of the initial complaint in October 2018, Wells Fargo froze the Trust account, pending the entry of a court order determining the Trustee. It also removed Mr. Wooschlager as the financial advisor on the Trust account.

On October 23, 2018, appellants filed a Petition for Temporary Restraining Order ("TRO") to prevent Mr. Wooschlager from conducting any trading of the Trust account. On November 1, 2018, the circuit court held a hearing. It denied the petition on the ground that "Wells Fargo has frozen the account, and Mr. Wooschlager cannot make any trades, which was the relief that was sought."

On December 6, 2018, John (in his individual capacity and on behalf of his minor son, Antonio Traettino), Janet, Glenn Jr., and Christian (the "beneficiary defendants") filed

a complaint against appellants and Mr. Woloshin (in his capacity as Trustee for the Trust) (Case No. 459466-V). That complaint sought a declaratory judgment stating that (1) Mr. Woloshin did not effectively resign as Trustee of the Trust, and Jimmy was not properly appointed, because Mr. Woloshin did not provide 60 days' notice in advance of his resignation in accordance with Section 7.04 of the Trust Agreement; (2) Jimmy did not effectively accept the trusteeship, and therefore, Mr. Woloshin retained the right to remove him as a Co-Trustee; (3) Jimmy was unfit to serve as a Trustee; (4) if Mr. Woloshin was unable or unwilling to continue as Trustee, another qualified person should be appointed by the court as Trustee; and (5) the beneficiaries were entitled to immediate distribution of the Trust shares.

On December 20, 2018, Wells Fargo filed its answer to appellants' amended complaint. In addition to denying numerous allegations, Wells Fargo asserted that appellants' claims for reimbursement of commissions and unspecified losses were subject to binding arbitration pursuant to the Client Agreement. Moreover, it argued that, although its records included documents that Mr. Woloshin sought to resign as Trustee in January 2017, it did not appear that Mr. Woloshin provided 60 days' notice in accordance with Section 7.04 of the Trust Agreement, and therefore, Wells Fargo questioned whether his resignation was effective. Additionally, its records did not reflect that Jimmy had completed the forms necessary to add his name as Trustee and to authorize him to trade on the Trust account prior to his resignation in March 2017. Wells Fargo argued that appellants lacked standing as beneficiaries of the Trust to seek monetary claims against it

on behalf of the Trust, and to the extent that the Trust had such claims, they were subject to the contractual arbitration provision.

On January 17, 2019, Mr. Wooschlager filed an answer to the amended complaint. He raised arguments similar to those of Wells Fargo and noted that he already had been removed from the account. He further denied appellants' allegation that he failed to send Jimmy the proper paperwork to be recognized as a Co-Trustee, asserting that he provided Jimmy with the requisite forms in "early February 2017," but Jimmy did not return them to Wells Fargo.

On February 11, 2019, appellants noted the deposition of Wells Fargo's corporate designee, which was scheduled for April 11, 2019. The deposition was rescheduled for December 19, 2019, because Wells Fargo could not obtain an appropriate corporate designee by April 11, 2019.

Appellants also noted the deposition of Angela. Angela filed an Objection to Subpoena and Notice of Deposition *Duces Tecum* and a Motion for Protective Order to preclude the taking of her deposition in appellants' case against Wells Fargo and Mr. Wooschlager. The circuit court denied her motions, and she appealed to this Court in *Traettino v. Traettino*, Case No. 218, Sept. Term, 2019. That case was settled and voluntarily dismissed prior to any opinion from this Court. The parties agreed that appellants would not depose Angela, but they would receive access to the requested documents within 30 days. Appellants also noted the deposition of Mr. Wooschlager, which took place, as scheduled, on May 8, 2019.

On April 2, 2019, John, Antonio, Janet, Glenn Jr., and Christian, i.e., the beneficiary defendants, filed a Motion to Appoint Interim Trustee. Appellants filed an opposition motion requesting that the court deny this motion on the ground that Jimmy was still the rightful Trustee under the Trust Agreement because he had not appointed a successor when he attempted to resign in March 2017.

The court held a hearing on May 6, 2019. At the conclusion of the hearing, the court inquired of Jimmy's counsel what the appellants' "intentions [were] for the claims against Wells Fargo" because Wells Fargo had indicated its intention to reimburse the Trust for its commissions on the allegedly unauthorized trades. Jimmy's counsel stated as follows:

Your Honor with respect to the damage claims against Glenn Wooschlager and Wells Fargo, I've discussed this with [Wells Fargo's counsel]. My client's only concern is that every morsel and drop of fees, commissions, bonuses, what have you that were paid during that trade period from January of 2017 to October 2018 have been put back into the trust account.

[Wells Fargo's counsel] has graciously agreed to provide me with a statement to that [e]ffect. Upon receipt of that written statement, I will file the appropriate line with the Court limiting it to those claims by dismissing those claims.^[4]

After the hearing, the court granted the beneficiary defendants' motion to appoint an Interim Trustee, and it appointed John Monahan, Esq. The court subsequently vacated that order and filed a new order on June 11, 2019, which appointed Brian Carlin, Esq. as Interim Trustee.

⁴ As indicated, that transfer was completed, but the claims were not dismissed. Jimmy subsequently stated that his attorney made this conditional commitment to dismiss the claims against his wishes.

On May 20, 2019, the court consolidated the beneficiary defendants' case against appellants and Mr. Woloshin (Case No. 459466-V) with appellants' case against Wells Fargo and Mr. Wooschlager (Case No. 456709-V). The court set a discovery deadline of August 29, 2019.

In early May 2019, Wells Fargo, without admitting liability, reimbursed the Trust account \$9,242.27. In an affidavit executed on September 11, 2019, a Vice President at Wells Fargo stated that this reimbursement constituted the total of all commissions earned on the account between January 2017 and October 2018. In August 2019, Brian Carlin, the court-appointed Interim Trustee, transferred all assets held in the Wells Fargo Trust account to another financial institution.

On August 27, 2019, Jimmy was deposed by counsel representing the beneficiary defendants and counsel for Wells Fargo.⁵ Jimmy stated that he was pursuing the claims against Wells Fargo because it was the employer of Mr. Wooschlager and the "depository of the [T]rust fund account." He acknowledged that the Trust account had been reimbursed \$9,242.27 in commissions that Wells Fargo had received from the Trust account, but he stated that he did not know if that represented all the commissions, fees, and bonuses he had requested. He conceded, however, that he did not have any reason to believe there were additional, unaccounted for commissions. Jimmy also acknowledged that he took no

⁵ Jimmy appeared as an unrepresented litigant because, on July 18, 2019, the court had granted his previous counsel's request to withdraw.

action to put his name on the Trust account after he was appointed Trustee by Mr. Woloshin.

Jimmy further testified that, although the Trust assets had been transferred to a different financial institution, and the Court had appointed an Interim Trustee, he had claims against Mr. Wooschlager regarding additional commissions, fees, bonuses, and losses, and he was still trying to discover whether these amounts existed, and if so, the details of them. Specifically, he asserted that Mr. Wooschlager was responsible for “[o]ver \$79,000” in losses in 2009 or 2010, which “carried over until 2018.” Jimmy stated that he suspected that the transaction that caused this loss was unauthorized by Mr. Woloshin (i.e., the Trustee at the time) based on his parents’ comments that Mr. Woloshin was untrustworthy. He testified that the \$79,000 loss was the only loss for which he held Mr. Wooschlager accountable.

III.

Summary Judgment

On September 13, 2019, Wells Fargo filed a motion for summary judgment. Mr. Wooschlager subsequently filed a motion joining Wells Fargo’s motion. Mr. Wooschlager attached to his motion a self-authored affidavit stating:

I received no compensation, in any form whatsoever, relating to the Trust’s account at Wells Fargo, except the compensation paid to me by Wells Fargo, for any trade or reinvestment of the Trust’s funds during the period of January 2017 through October 2018. Specifically, I received no compensation from any third-party, person or entity relating to or arising from any activity on the Trust’s account.

Wells Fargo also attached to its motion an affidavit by Charles Ferssizidis, a Regional Support Center Manager and Vice President at Wells Fargo. Mr. Ferssizidis reiterated that, after appellants filed their lawsuit in October 2018, the Trust account was frozen and Mr. Wooschlager had been removed from it. He further stated that, in May 2019, Wells Fargo had deposited \$9,242.27 into the Trust account, “constituting reimbursement of all commission earned on the Trust Account between January 2017 and November 2018.” He attached a spreadsheet labeled “Commission Report,” which showed 19 trades on the account, and Wells Fargo’s commissions on those trades, from April 2017 to June 2018.⁶ Mr. Ferssizidis stated that, in August 2019, Mr. Carlin transferred all the asserts held in the Wells Fargo Trust account to another financial institution. As a result, Wells Fargo no longer held any assets of the Trust.

In their memorandum in support of summary judgment, Wells Fargo and Mr. Wooschlager argued that appellants’ claims were moot, and they lacked standing to assert them. They argued the claims were moot because it was undisputed that the court had appointed an Interim Trustee, Wells Fargo had reimbursed the Trust account for all commissions earned during the period in question, and both Wells Fargo and Mr. Wooschlager had no further involvement with the Trust account. Moreover, appellants lacked standing to assert their claims because only Mr. Carlin could do so as the Interim Trustee. Similarly, to the extent that appellants sought certain documentation regarding

⁶ Appellants note in their opposition to summary judgment that 7 of the 19 trades have nothing listed in the commission column on the spreadsheet.

the Trust account, Wells Fargo and Mr. Wooschlager asserted that only Mr. Carlin could provide those documents.

Wells Fargo and Mr. Wooschlager further argued that, even if the claims were properly before the court, appellants' monetary claims were subject to binding arbitration pursuant to the Client Agreement. Although they acknowledged that the scope of the arbitration provision would not cover Jimmy's claim that he was the rightful Trustee, it "clearly extend[ed] to claims brought on behalf of the Trust for losses allegedly incurred on the Trust Account in 2009 and 2010." Accordingly, Wells Fargo and Mr. Wooschlager requested summary judgment in their favor.

On October 1, 2019, appellants filed a motion in opposition. They argued that summary judgment was inappropriate because there were genuine disputes of material fact regarding: the rightful Trustee; whether there were outstanding fees, bonuses, and losses owed to the Trust account by Wells Fargo and Mr. Wooschlager; whether their claims were subject to the Client Agreement's arbitration provision; and whether the alleged losses to the Trust account were authorized by the Trustee.

With respect to their claims for the return of commissions, they argued that their claim was "still unsatisfied and not moot because Wells Fargo may have returned \$9,200 in commissions but [it] has not returned the fees, bonuses, compensation and losses," and Mr. Wooschlager had not returned anything. As a result, they sought "accounting of all compensation related to [the] account," including compensation that "does not appear on monthly statements." In particular, they noted that there were "seven empty fields" on

Wells Fargo's Commission Report, and they argued that the Trust was still owed money for those commissions. They further argued that there was "questionable brokerage activity" on the account, including a "\$79,000 loss carry-over into 2011."⁷

Appellants disputed the beneficiary defendants' claim that Jimmy was not the Trustee of the Trust. They asserted that Mr. Woloshin's resignation letter and subsequent e-mails between Jimmy and Mr. Woloshin showed that Jimmy accepted the trusteeship. As a result, they argued that Jimmy actively served as Trustee from January 2017 through March 2017, and despite his attempt to resign in March 2017, he remained the lawful Trustee pursuant to the Trust terms because he did not appoint a successor.

Finally, appellants argued that they had standing, asserting that Jimmy brought his claims "as the Trustee," and they both had standing as "interested parties" pursuant to Md. Code Ann., Courts & Jud. Pro. ("CJ") § 3-406 (2013 Repl. Vol.).⁸ With respect to mootness, they asserted that, although Wells Fargo and Mr. Wooschlager "currently [had]

⁷ In support of this assertion, appellants attached the Trust's 2011 federal tax return, showing a capital loss of \$79,374.

⁸ Md. Code Ann., Courts & Jud. Pro. ("CJ") § 3-406 (2013 Repl. Vol.) provides as follows:

Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

no authority over the Trust Fund, [their] claims relate[d] to a time that they did have complete control over the Trust Fund and committed their transgressions.”

The beneficiary defendants filed their own motion for summary judgment on September 13, 2019. They argued that summary judgment in their favor was appropriate because, as a matter of law, Mr. Woloshin never properly resigned as Trustee, and “Jimmy rejected and renounced the trusteeship without ever accepting it.” Specifically, they asserted that Mr. Woloshin’s resignation was ineffective because he did not provide 60 days’ notice of his intent to resign pursuant to Section 7.04 of the Trust, and the provision was not waived. They further argued that, even if Mr. Woloshin had effectively resigned, Jimmy did not accept the trusteeship pursuant to Maryland law or properly take control of the Trust account. He then attempted to resign from a position that he did not hold.

Alternatively, they asserted that Jimmy’s resignation was effective under Section 7.04 “because there was a Co-Trustee in place, Douglas Woloshin, because Mr. Woloshin’s resignation was ineffective.” Finally, the beneficiary defendants argued that Jimmy was unfit to serve as Trustee, and that they (including Antonio) were each entitled to immediate distribution of their respective shares of the Trust assets.

On November 21 and December 13, 2019, after the time for discovery to be completed had passed, the circuit court held a hearing on these motions. The court began with the motions for summary judgment filed by Wells Fargo and Mr. Wooschlager.

Counsel for Wells Fargo argued that appellants lacked standing to assert their claims because Mr. Carlin was the only recognized Trustee. She further argued that appellants’

claims were moot because Wells Fargo no longer held any of the assets in question, and therefore, there was no relief left to provide.

With respect to the requests for documentation, counsel proffered that Wells Fargo had already provided all the documentation relevant to the claims, including the Trust statements for January 2017 to October 2018. In response to appellants' assertion that Wells Fargo and Mr. Wooschlager were liable for alleged losses as evidenced by the Trust's 2011 tax return, counsel asserted that the three-year statute of limitations had expired on that claim. Moreover, even if appellants' monetary claims were properly before the court, they were subject to the Client Agreement's broad arbitration provision because the Trust itself was bound by it, not just the individual account holders or signatories.

Appellants argued that Jimmy remained the Trustee at the time he filed his complaint, and their claims were not subject to the Client Agreement's arbitration provision because that agreement was between Mr. Woloshin and Wachovia Bank. They asserted that their claim was not moot because there were seven trades with blank commission amounts on the spreadsheet provided by Wells Fargo, and they "still need[ed] to find out what other compensation is out there" for those trades. Moreover, they sought evidence of any additional "bonuses, fees, incentives, and losses." Appellants further asserted that there was an \$11,000 loss on two unauthorized trades in 2017, as evidenced by the Trust's 2017 tax return that was attached to the opposition motion.⁹

⁹ As indicated, in his deposition, Jimmy testified that the only loss for which he held Mr. Wooschlager accountable was a loss of \$79,000 in 2009 or 2010, which carried over until 2018.

Appellants next argued that summary judgment should not be granted because they still needed to take a deposition from Wells Fargo and further depose Mr. Wooschlager. When Jimmy attempted to provide the court with specific questions that he intended to ask Mr. Wooschlager, the court denied his request, stating that “everything needed to be filed before the hearing.”

Counsel for the beneficiary defendants reiterated Wells Fargo’s argument that appellants did not have standing to bring their claims, and they highlighted that Jimmy had conceded in his deposition that he had no evidence regarding any additional commissions, bonuses, or fees earned by Wells Fargo or Mr. Wooschlager. In particular, counsel noted that appellants’ claims of carry-over losses were speculative, and in any event, time-barred. Moreover, because Wells Fargo already had reimbursed the Trust account, appellants’ claims were moot.

The court granted the motions for summary judgment filed by Wells Fargo and Mr. Wooschlager “for the reasons set out in the moving party’s legal memorandum and attached Exhibits and affidavits.” It asked counsel to submit a proposed order and declaratory judgment “saying no rights.”

Counsel for the beneficiary defendants then addressed their motion for summary judgment. He stated that the dispute stemmed from a lawsuit that Angela filed against Jimmy for misappropriating her money and obtaining her property unfairly. Jimmy then resigned as Trustee.

Counsel argued that the beneficiaries, including Antonio, were entitled to immediate distribution of the Trust according to the plain language of the Trust terms. In the event that the court disagreed with their position regarding distribution, counsel argued that Jimmy should not be Trustee for several reasons. First, Mr. Woloshin did not effectively resign as Trustee because he did not comply with the Trust Agreement's requirement of 60 days' notice. Moreover, Jimmy never accepted the trusteeship because he failed to take any action to assume that role beyond responding to Mr. Woloshin's e-mails. Jimmy then "rejected and abandoned the trust before he did anything to accept it." Finally, counsel argued that Jimmy was unfit to serve as Trustee because he had stated that his sole purpose in serving as Trustee was to investigate Mr. Wooschlager, he had a conflict of interest regarding Antonio's share, and his "demonstrated abuse of his fiduciary duty with respect to his mother's funds," which indicated that he should not be entrusted with family money.¹⁰

Jimmy argued that summary judgment was inappropriate because there were disputes of fact regarding Mr. Woloshin's resignation. When the court asked how that affected its decision whether the Trust, as a matter of law, required distribution at that time, Jimmy said he could not answer that question. He argued, however, that no distribution could be made at that point, and in any event, pursuant to the Trust terms, the only way for Antonio to receive a distribution was for someone to make a separate, voluntary

¹⁰ The beneficiary defendants accused Jimmy of trying to deny Antonio his share to increase his and Romeo's shares.

contribution. Jimmy asked the court to deny the beneficiary defendants' motion for summary judgment.

The court subsequently granted the beneficiary defendants' motion. It stated that it "largely agreed" with their counsel's position, and the one area that gave the court pause was the "afterborn grandchild," but Jimmy previously had admitted in an e-mail that there were seven equal heirs.

On December 6, 2019, the circuit court entered a written order granting the motions for summary judgment filed by Wells Fargo and Mr. Wooschlager and entering judgment in their favor. The order stated that, "for the reasons argued by the Movants and stated by the Court during [the November 21, 2019] hearing," there was "no genuine dispute as to any material fact relating to the claims asserted by the [appellants]," and that Wells Fargo and Mr. Wooschlager were entitled to judgment as a matter of law.

On December 18, 2019, the circuit court entered a written order granting the beneficiary defendants' motion for summary judgment. Jimmy did not appeal this order, but we will set forth portions of the court's factual findings because they are relevant to this appeal. Notably, the court found as follows:

3. Douglas Woloshin did not effectively resign as Trustee of the Trust on January 23, 2017 because he did not give, and Jimmy Traettino did not waive, the 60-day notice required under section 7.04 of the subject Trust Agreement;
4. Jimmy W. Traettino was not appointed Co-Trustee of the Trust on January 23, 2017. He did not accept the trusteeship of the Trust on January 23, 2017, or thereafter, pursuant to Md. Code, Trusts & Estates § 14.5-701(a);
5. Jimmy W. Traettino did not accept the trusteeship of the Trust pursuant to Md. Code, Trusts & Estates § 14.5-701(b) and/or (c);

6. In any event, Jimmy W. Traettino knowingly and intentionally resigned as Trustee, creating a vacancy in the trusteeship pursuant to Md. Code, Trusts & Estates § 14.5-704;

Jimmy W. Traettino is unfit to be a trustee and, pursuant to Md. Code, Trusts & Estates § 14.5-706(2)(iii), is disqualified from being the Trustee of the Trust;

7. C. Brian Carlin is hereby appointed as the permanent Trustee of the Trust[.]

The court ordered that the beneficiaries receive “immediate distribution of their proportionate shares of the Trust (with the share for Antonio Traettino to be distributed to John Traettino in a trust for Antonio Traettino),” and it ordered Mr. Carlin to make these distributions.¹¹ It further dismissed appellants’ amended complaint in case No. 456709-V, with prejudice.

On January 3, 2020, appellants noted an appeal of the court’s December 6, 2019 Order granting summary judgment in favor of Mr. Wooschlager.

¹¹ In order to comply with the requirement that declaratory judgments be set forth in a separate writing from other orders concerning the judgment, *see Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009), the court issued a separate, written order on December 19, 2019, granting the beneficiary defendants’ requests for declaratory judgment. The declarations in that order were identical to the relief provided in the order granting summary judgment, as described *supra*. Appellants did not appeal either order to this Court.

DISCUSSION

I.

Motion to Dismiss

As indicated, Mr. Wooschlager argues that this Court should dismiss this appeal. He raises two grounds in support of this argument: (1) the questions presented by appellants are moot; and (2) appellants are not proper persons to pursue a claim on behalf of the Trust.

Md. Rule 8-603(c) provides that “[a] motion to dismiss based on subsection (b)(1), (b)(2), (c)(1), (c)(7), or (c)(8) of Rule 8-602 may be included in the appellee’s brief.” Rule 8-602(c)(7) and (8) provide, respectively, that this Court may dismiss an appeal if “the proper person was not substituted for the appellant pursuant to [Md.] Rule 8-401,” or “the case has become moot.” We begin with the argument that the appeal should be dismissed because the claims presented are moot.

Mr. Wooschlager notes that the Amended Complaint sought five items of relief, and he argues that this relief is now moot. Specifically, he asserts that, with respect to the relief sought in items A, B, C, and E of the amended complaint, Jimmy sought (A) a declaratory judgment that he remain Trustee; (B) an injunction requiring Wells Fargo and Mr. Wooschlager to give him information; (C) to be named as the responsible person on the Trust account at Wells Fargo; and (E) that no investment decisions be made without his authorization as Trustee. Mr. Wooschlager contends that the circuit court’s orders appointing Mr. Carlin as Interim, and later permanent, Trustee, as well as Mr. Carlin’s

actions in moving the account to a different financial institution, rendered appellants' requests moot.

With respect to item D, which sought the return of all commissions, fees, bonuses, and compensations earned by Mr. Wooschlager and liability for any losses, Mr. Wooschlager argues that he provided un rebutted evidence that he did not receive any such compensation for trades from January 2017 through October 2018, except compensation paid to him by Wells Fargo. He notes that Jimmy conceded at his deposition that he had no knowledge of any additional compensation. Mr. Wooschlager further argues that Jimmy failed to produce admissible evidence to dispute that all commissions earned by Wells Fargo and Mr. Wooschlager during the relevant time period had been returned to the Trust. With respect to appellants' assertion of alleged losses in the Trust account, Mr. Wooschlager argues that this claim is time-barred because the only potential losses identified in the Amended Complaint occurred in 2013, more than three years prior to the filing of the complaint.

In response to the motion to dismiss, appellants do not challenge the contention that the relief requested in items A, B, C, and E are moot. The decision not to challenge this contention is appropriate. The relief requested in A, C, and E of the amended complaint, which related to Jimmy's status as Trustee, was rendered moot by the circuit court's December 18, 2019 order finding that Jimmy was not, and never had been, a lawful Trustee. Appellants did not appeal that order, and therefore, it is a final judgment that is not subject to review by this Court. *See Harrison v. Harrison*, 109 Md. App. 652, 674-75 (Where

only a part of a decision is appealed, review is ordinarily limited to that part, and the “unaffected” and non-appealed findings “must be deemed a final judgment” for all purposes.), *cert. denied*, 343 Md. 564 (1996).

With respect to item B, requesting an injunction requiring Wells Fargo and Mr. Wooschlager to provide information regarding the account, this request was rendered moot after Wells Fargo removed Mr. Wooschlager from the account in October 2018, and Mr. Carlin transferred the Trust account to a different financial institution. Given these circumstances, an injunction requiring Wells Fargo and Mr. Wooschlager to provide Trust information is not a remedy that a court can provide.¹²

With respect to item D, the relief requested was that Wells Fargo and Mr. Wooschlager be ordered to return all Trust commissions, fees, bonuses, and compensation that were received without proper authorization and be held liable for all losses in the account. Appellants contend that the claim for relief in this regard is not moot. They dispute Mr. Wooschlager’s assertion that this claim was resolved by Wells Fargo’s \$9,242.27 reimbursement, which Wells Fargo stated was all the commission earned during the relevant period, i.e., January 2017 to October 2018. Appellants contend that they sought to resolve whether Mr. Wooschlager received any financial benefits “above and beyond” the reimbursement amount, but no documents were produced. Appellants also

¹² Moreover, we note that a beneficiary generally must request Trust documents from the Trustee (i.e., Mr. Carlin). See G. Bogert, *The Law of Trusts and Trustees*, § 962 *Duty to Furnish Information and Permit Inspection* (2020).

assert that item D requested that Mr. Wooschlager be held legally liable for all losses in the Trust account and the tax records reflected losses during 2017.

Because appellants challenge the mootness argument only with regard to item D of the amended complaint, i.e., the return of Trust commissions, fees, bonuses, and compensation received, or losses incurred, by Mr. Wooschlager, we will limit our analysis to this issue. *See Catler v. Arent Fox, LLP*, 212 Md. App. 685, 712 (Party waived claim of error on appeal because they failed to raise the issue in their briefs.), *cert. denied*, 435 Md. 502 (2013); Md. Rule 8-504(a). “A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.” *Suter v. Stuckey*, 402 Md. 211, 219 (2007). An appellate court rarely will rule on a moot issue, and instead, we usually dismiss the appeal. *Powell v. Maryland Dep’t of Health*, 455 Md. 520, 539–40 (2017). Only in “rare instances” will the reviewing court address the merits of a moot case. *Suter*, 402 Md. at 220 (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996)). Rare exceptions include a situation where “a case implicates a matter of important public policy and is likely to recur but evade review.” *Id.* at 220. Appellants do not argue, and we do not find, that there are any circumstances here that would warrant review of this case if the issue is moot.

In item D of the amended complaint, appellants requested reimbursement for any commissions, fees, bonuses, and compensations received on “trades and investments [made] without proper authorization.” Mr. Wooschlager argues that the issue is moot because appellants failed to produce evidence to dispute his contention that all

compensation earned by him and Wells Fargo relating to the Trust account during the relevant time period was repaid to the Trust. At first blush, this appears to be an argument to affirm the trial court’s decision, as opposed to one showing that the claim is moot. Given the state of this case, however, we are persuaded that Mr. Wooschlager is correct that the issue is moot. Even assuming, *arguendo*, that Jimmy had an argument at one point that he was entitled to an accounting from Mr. Wooschlager, that remedy is no longer available to him. At this point, there is a final judgment determining that Jimmy is not, and never was, the Trustee, Mr. Wooschlager has been removed from the account, and the account (to the extent it still exists and the proceeds have not been distributed) is no longer at Wells Fargo.¹³

Based on the record here, appellants do not have the ability to sue Mr. Wooschlager on behalf of the Trust. *See Doermer v. Oxford Fin. Group, Ltd.*, 884 F.3d 643, 648 (7th Cir. 2018) (“In general, a trust beneficiary may not sue a third party on behalf of the trust.”); G. Bogert, *The Law of Trusts and Trustees*, § 869 *Remedies Against Third Persons for Other Wrongs* (2020) (“If a third person without justification causes harm to trust property, normally only the trustee can sue for damages in an action . . . framed to recover the loss

¹³ As indicated, the claim for an injunction to require Mr. Wooschlager to provide an accounting was included in item B, and appellants do not contest that this claim was moot given that Mr. Wooschlager has been removed from the account and the account had been moved to another institution.

occasioned.”).¹⁴ Accordingly, there is no remedy a court could provide, except to deny the claim, *see La Valle v. La Valle*, 432 Md. 343, 352 (2013) (“A case is considered moot when ‘past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.’”) (quoting *Hayman v. St. Martin’s Evangelical Lutheran Church*, 227 Md. 338, 343 (1962)), and the request for the return of compensation is moot.

Even if the claim was not moot, and we were to address the merits of the appeal, we would be inclined to affirm the circuit court’s ruling. As the party with the burden of production, appellants were required to produce some admissible evidence to generate the issue to defeat summary judgment. *See Reiter v. Pneumo Abex, LLC*, 417 Md. 57, 76 (2010) (Plaintiffs’ summary judgment evidence was insufficient to generate a jury question.); *Laing v. Volkswagen of America, Inc.*, 180 Md. App. 136, 163–64 (2008) (Summary judgment was appropriate where plaintiffs failed to produce evidence on which a jury could find in their favor.).

Appellants failed to present evidence in this case rebutting the following affidavits:

(1) Mr. Wooschlager’s affidavit stating that he received no compensation relating to the

¹⁴ Although there are exceptions to the general rule, appellants have not produced any facts to support an argument that any such exception applies in this case. Instead, they cite to *Grueff v. Vito*, 229 Md. App. 353, 375 (2016), for the proposition that they have standing as beneficiaries to sue Mr. Wooschlager. That case, however, involved the issue whether a beneficiary was a “current income beneficiary” of an irrevocable trust, and therefore, an “interested party” entitled to remove the trustee and receive an accounting pursuant to Md. Rules 10-712 and 10-103(f). *Id.* at 375–78. Appellants do not explain how the reasoning in that case applies to the relief requested in this case.

Trust account during the relevant period from anyone other than Wells Fargo; and (2) the affidavit from Wells Fargo stating that any commissions they received had been returned. Indeed, Jimmy conceded at his deposition that he had no evidence of any additional payments made to Mr. Wooschlager. Moreover, counsel for appellants implicitly conceded at the May 6, 2019 hearing that, once the commissions were repaid to the Trust, there was no claim of damages against Mr. Wooschlager and Wells Fargo, stating that once he received a written statement advising that had been done, he would dismiss those claims. If not moot, appellants' claim would be deemed without merit.¹⁵

We turn to the request that Mr. Wooschlager be held "legally liable for all losses" in the Trust account. In appellants' amended complaint, the only loss asserted was an "unexplained 2013 loss carry-over of \$65,000." In Wells Fargo's motion for summary judgment, which Mr. Wooschlager joined, it noted that the only losses identified in the amended complaint occurred at a time when Mr. Woloshin was the Trustee with authority to make all investment decisions for the Trust, and claims for such losses would be time-barred. Additionally, it argued that any claim for losses was subject to binding arbitration pursuant to the Client Agreement. Mr. Wooschlager also argued that appellants had failed

¹⁵ With respect to appellants' argument that the court should have postponed its summary judgment ruling to allow them to conduct further discovery, this argument was not preserved for this Court's review because appellants did not make a request for a postponement below. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court.").

to proffer any evidence that the Trust “suffered any damage or incurred any commission or expense that ha[d] not already been reimbursed by Wells Fargo.”

In appellants’ motion in opposition to the motion for summary judgment, they did not raise a 2013 loss, but instead, they cited a 2011 “loss carry-over” of approximately \$79,000. The opposition motion acknowledged Jimmy’s deposition testimony that he did not know if these losses were authorized. Appellants further argued, for the first time, that the 2017 tax return showed a loss of \$11,795, resulting from unauthorized trades. Appellants attached a 2017 Capital Gains and Loss tax form from the Trust account evidencing two losses (\$3,532 and \$8,233) and a 2011 Capital Gains and Loss tax form evidencing a loss of \$79,374. He argued that these documents showed recent additional losses, and his claims for reimbursement were not moot or time-barred.

At the motion for summary judgment hearing, counsel for Wells Fargo proffered that the 2011 losses were barred by the three-year statute of limitations, and in any event, any claims regarding the alleged losses were subject to the arbitration provision. In response, Jimmy highlighted that the 2017 loss of “a little over \$11,000” would not be barred by the statute of limitations.

Counsel for Mr. Woolschlager and the beneficiary defendants adopted the arguments made by Wells Fargo. He further argued that there was no damage to the Trust, and the speculative allegations of carry-over losses were “just that, speculation.” With respect to the assertion regarding the 2017 return, counsel stated that this was the first time he heard that, and Jimmy did not identify any such losses in his deposition. He further

noted that appellants did not provide evidence, such as expert testimony, to show that the losses were related to misconduct.

The court subsequently granted the motion for summary judgment. As indicated, the order stated that for the “reasons argued by the Movants and stated by the Court during [the] hearing, . . . there is no genuine dispute as to any material fact relating to the claims.”

On this record, where there has been a finding that Jimmy is not, and never has been, a Trustee, and appellants have not set forth any facts to support an argument that there is an exception to the general rule that a trust beneficiary can sue a third-party for losses to a trust, there is no remedy to which appellants would be entitled, and the claim in this regard is moot.

Again, as we concluded with the compensation issue, even if the issue was not moot, we would conclude that the claim was without merit. By the time of the summary judgment hearing, at the point where the time for discovery was concluded, appellants had produced no evidence of losses that were wrongfully incurred.

II.

Costs

Finally, Mr. Wooschlager asks this Court to award him “the costs of this appeal” and remand the case to the circuit court for consideration of an award for the attorney’s fees incurred in this appeal as a supplement to his motion for attorney’s fees and sanctions filed in the circuit court. We will allocate the costs of the appeal to appellant. With respect to the attorney’s fees, Md. Rule 2-706 provides that a party seeking “an award of attorney’s

fees in connection with an appeal . . . shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation” within 30 days “after the entry of a final order disposing of the appeal[.]” Accordingly, Mr. Wooschlager should file this request in the circuit court.

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**