

Circuit Court for Prince George's County
Case No. CAL19-19779

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2537

September Term, 2019

NICO BANQUET HALL

v.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

Nazarian,
Gould,
Albright, Anne K.
(Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: June 15, 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.

This appeal started with the Prince George’s County Planning Board’s disapproval of an application for the Certification of a Nonconforming Use (“CNU”).¹ The County Council of Prince George’s County, sitting as the District Council,² affirmed the disapproval, as did the Circuit Court for Prince George’s County. “Nico Banquet Hall” then appealed to this court. Here, the County Council moves to dismiss the appeal, arguing that “Nico Banquet Hall” is merely an unregistered trade name for a now-defunct corporation. We agree and dismiss.

On July 3, 2018, NICO Enterprises, Inc. applied to the Prince George’s County Planning Board (“the Planning Board”) for a CNU. In its Statement of Justification, NICO Enterprises, Inc. represented that it was requesting the certification “. . . for an eating and drinking establishment with adult entertainment . . .[.]” and that it did business as “Nico Banquet Hall” and “Club Exstasy.” The accompanying Application Form is a document with fill-in blanks. In one space, the Application Form identifies “NICO

¹ With regard to land use, a “nonconforming use” is “. . . a use that either: (1) had existed either prior to original comprehensive zoning affecting the property; or (2) had been permitted by the zoning regulations in the past, but is no longer permitted because of an intervening change in the law—[and] may continue, subject to amortization in certain circumstances.” *County Council of Prince George’s County v. Convenience & Dollar Market/Eagle Management Co.*, 238 Md. App. 613, 619 (2018)(citing *Prince George’s County v. Zimmer Development Co.*, 444 Md. 490, 571 (2015)).

² In Prince George’s County, the County Council is referred to as the District Council when, as here, it “. . . exercises powers granted it in the [Maryland-Washington Regional District Act.]” *County Council of Prince George’s County v. Convenience & Dollar Market/Eagle Management Co.*, 238 Md. App. at 620 (cleaned up).

Banquet Hall” as the applicant. At another, the Application Form identifies Doguy Kamara as the applicant.

NICO Enterprises, Inc.’s CNU application was not the first time the corporation had used “Nico Banquet Hall” or “Club Exstasy” as tradenames. As early as 2000, the State of Maryland and Prince George’s County appear to have issued various trader’s licenses and food service permits to “Nico Enterprises, Inc. and Nico Enterprises Banquet Hall,” “Nico Enterprises, Inc. to operate a food service facility trading as Nico Enterprise Banquet Hall,” and “Nico Enterprise Inc. to operate a food service facility trading as Nico Banquet Hall.”³ In 2016, Prince George’s County appears to have told Nico Enterprises, Inc. and Roozen Enterprises, LLC to cease and desist adult entertainment “. . . at the premises known as Club Exstasy and Nico Banquet Hall.” Sometime thereafter, “NICO ENTERPRISES, INC., d/b/a Nico Banquet Hall” appeared as a litigant against Prince George’s County in the United States District Court for the District of Maryland and then as an appellant in the United States Court of Appeals for the Fourth Circuit.

On January 10, 2019, after two public hearings, the Planning Board disapproved the CNU application. As to the identity of the applicant, the Planning Board’s Resolution

³ The food service permit expiring on March 31, 2004 was granted to “Nico Enterprise Inc.,” not Nico Enterprises, Inc. We assume this was an error as there is nothing in the record to suggest the existence of two separate corporations.

said, “. . . [p]er the applicant’s statement of justification (SOJ) dated June 28, 2018, the Nico Banquet Hall is an established business owned by NICO Enterprises, LLC, . . .”⁴

On January 29, 2019, “Nico Banquet Hall” appealed the decision to the County Council.

On June 10, 2019, the County Council affirmed the Planning Board’s disapproval of the application for a CNU. The County Council identified the applicant as “NICO Banquet Hall.”

On June 18, 2019, “Nico Banquet Hall” filed a Petition for Judicial Review in the Circuit Court for Prince George's County. On January 22, 2020, the circuit court affirmed the decision of the County Council. This timely appeal followed.

On February 9, 2021,⁵ the County Council moved to dismiss this appeal. On February 10, 2021, at oral argument on the appeal, we heard this Motion but permitted the filing of opposition and reply memoranda thereafter.

In support of dismissal, the County Council contends that NICO Enterprises, Inc. forfeited its corporate charter on October 16, 2020, and that as a result, NICO Enterprises, Inc. is unable to maintain this appeal. Appellant does not dispute the status

⁴ We assume that the reference to “LLC” was also an error. Nothing in the record suggests that NICO Enterprises, Inc. changed its business format from an incorporated entity to a limited liability company.

⁵ On February 4, 2021, the Clerk’s Office received a letter purporting to be from Doguy Kamara, who identified himself as the owner of NICO Enterprises, Inc. In the letter, Mr. Kamara indicated he wished to dismiss this appeal. After providing counsel a copy of the letter, the Clerk’s Office returned it to Mr. Kamara and suggested that he speak to counsel.

of NICO Enterprises, Inc.’s corporate charter. Instead, “Nico Banquet Hall” contends that it may maintain the appeal because it was the applicant for the CNU.

A Maryland corporation that forfeits its corporate charter may not pursue affirmative litigation in this State during the period of forfeiture. Md. Code Ann., Corps. & Ass’ns (“CA”) §§ 2-103 and 3-503 (2014 Repl. Vol.) See also *Stein v. Smith*, 358 Md. 670, 675-76 (2000) and *Hill Const. v. Sunrise Beach, LLC*, 180 Md. App. 626, 635 (2008).⁶ Accordingly, with the forfeiture of its corporate charter, NICO Enterprises Inc. lost its ability maintain this appeal.

That “Nico Banquet Hall” was listed as the applicant on NICO Enterprises, Inc.’s CNU application, or as the Petitioner in the circuit court, does not change this result. Whether one is a municipal corporation, homeowners association, property owner, or an applicant, in order seek judicial review in the circuit court of the final decision of the district council, one must also be a “. . . person or entity that is aggrieved by the decision. . . .” Md. Code Ann., Land Use (“LU”) § 22-407(a)(2012). While an applicant may then appeal the final judgment of the circuit court to this court, LU § 22-407(f), there is nothing in the statute that eliminates for us the fundamental “person or entity” requirement that got the applicant in the circuit court’s door in the first place.

⁶ After forfeiture, the directors of a defunct corporation can manage its assets in order to liquidate. CA § 3-515(a). Here, however, no one contends that the CNU application was an asset or that NICO Enterprises, Inc. was liquidating.

At this point, “Nico Banquet Hall” appears to be nothing more than a tradename tethered to an entity that used to be able to maintain litigation in Maryland. “Nico Banquet Hall” may have been listed as an applicant and petitioner below, but counsel has not demonstrated that “Nico Banquet Hall” is a person or entity. Without this, dismissal is required.

**APPEAL DISMISSED.
COSTS TO BE PAID BY
NICO ENTERPRISES, INC.**