

Circuit Court for Baltimore County
Case No. 03-C-17-004427

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2734

September Term, 2018

EVEREST WEALTH MANAGEMENT, INC.,
ET AL.

v.

SARAH FLORA

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: February 14, 2020

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2017, Sarah Flora, the appellee, sued her former employers, Everest Wealth Management, Inc., Everest Investment Advisors, and Philip Rousseaux (collectively, “Everest”), the appellants, in the Circuit Court for Baltimore County. Ms. Flora brought many claims, but the court never resolved one of those, and the judgment that Everest seeks to appeal wasn’t final. We have no choice but to dismiss the appeal as premature, and remand the case to the circuit court for proceedings consistent with this opinion.

I. BACKGROUND

Ms. Flora was an employee of Everest who was paid primarily by commissions. She alleged in her complaint that “[Everest] failed to pay [her] all commissions earned prior to her separation of employment but payable after her separation of employment,” and that it “failed to pay [her] any wage at all for a period of almost three [] years.” Among her claims, Ms. Flora also sought a declaratory judgment stating that the restrictive covenants in her employment agreement were null and void. This claim appeared first in her amended complaint after Everest, in its answer, asserted counterclaims that, among other things, alleged she breached her covenant not to compete when she started a new business, Flora & DiPaula Wealth Partners.

On September 11, 2018, the court entered summary judgment in favor of Ms. Flora on Everest’s counterclaims, but that ruling didn’t include Ms. Flora’s declaratory judgment count. During trial, at the close of Ms. Flora’s case, Everest’s counsel made a motion for judgment in its favor on all counts. The court dismissed some claims, but the declaratory judgment count survived:

THE COURT: [] what we're left with is Count 1, which is the wage claim. Count 3. Count 2 has already been disposed of prior to today. Count 3, Breach of Contract is dismissed. [] Counts 4 and 5, the Fraudulent Misrepresentation and Misrepresentation by Concealment are still viable as amended orally. But removing that whole component of what Mr. Rousseaux did or didn't know when he spoke to Ms. Flora prior to her coming to work for him. The Wrongful Discharge Count, which is Count 6 is dismissed. And then, the following, the final counts of Quantum Meruit, Count 7, Unjust Enrichment, Count 8, and **Declaratory Judgment, Count 9 are still liable [sic] at this point.**

(emphasis added). Before submitting the case to the jury, the court heard arguments and reviewed which of the remaining claims to submit, and ruled that all remaining claims would be submitted to the jury. The record reflects that the court never dismissed, granted, or otherwise disposed of the declaratory judgment count. The jury found Everest liable on all remaining claims and awarded Ms. Flora a total of \$400,240.93. Everest's counsel moved for judgment notwithstanding the verdict, which the court denied, and Everest filed a notice of appeal.

After argument, we entered an order *sua sponte* directing the parties to file supplemental memoranda addressing whether the appeal had been taken from a final judgment. Ms. Flora submitted a timely supplemental brief; Everest opted not to respond.

II. DISCUSSION

Everest sought to raise seven appellate issues,¹ but the dispositive question at this

¹ EWM stated the Questions Presented in its brief as follows:

1. Did the trial court err in submitting the case to the Jury on the issue of whether a single company consisting of two entities owned by the same person, doing the same work, at

the same physical location, with the same tools must be paid by each entity separately in order to comply with Maryland wage laws.

2. Did the court err in submitting the case to the jury on the issue of whether an employer may change terms and conditions of employment prospectively without written permission from its employees.
3. Did the court err in submitting the case to the jury on the issue of fraud where the alleged promise was made two years earlier and was dependent on the success of the business and where the plaintiff testified that the alleged promises were vague and the Plaintiff made assumptions as to the nature of the promises without asking for any details during that two-year period.
4. Did the court err in submitting the case to the jury on the issue of quasi-contract issues where the work was paid for?
5. Should the remaining claims be remanded for new trial or for reconsideration of the attorneys' fees award on the remaining issue of wages alleged owed by EWM which comprised 2.8% of the total award.
6. Did the trial court err by not granting Defendants' Motion for Judgment at the close of all the evidence? And/or,
7. Did the trial court err in not granting Defendants' Motion Notwithstanding the Verdict?

Ms. Flora rephrased these questions presented in her brief as follows:

1. Did the Circuit Court err in submitting this case to the jury to decide whether Appellants failed to pay Flora the wages she earned from her employment in violation of the MWPCCL?
2. Did the Circuit Court err in submitting this case to the jury to decide whether Rousseaux fraudulently induced Flora to continue to work for reduced compensation by promising to pay her the Delta?
3. Did the Circuit Court err in submitting this case to the jury to decide whether Appellants unjustly enriched themselves by retaining the benefit of Flora's work without paying her

point is one nobody raised and that we discovered on our own: whether, in light of the unresolved declaratory judgment count, this Court has jurisdiction to hear this appeal. Ms. Flora argues in her supplemental brief that because the circuit court granted summary judgment in her favor on Everest’s counterclaims, the court “also resolved [her] competing claim for declaratory judgment, the summary judgment together with the judgment entered on jury verdict constituted a final judgment.” We disagree, and see no alternative but to dismiss the appeal.

Under Maryland Code (1973, 2013 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article, “a party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” We lack jurisdiction to consider an appeal if the circuit court has not adjudicated a party’s request for declaratory judgment. *Forward v. McNeily*, 148 Md. App. 290, 308 (2002) (no final judgment where, following a jury verdict on certain factual issues, the trial court “simply ignored” the pending request for declaratory judgment). After Everest’s motion for judgment in its favor at the close of Ms. Flora’s case, the declaratory judgment count was still pending, and neither we nor the parties can identify any written or oral ruling purporting to resolve it. Ms. Flora argues in her supplemental brief that in deciding that she hadn’t violated her obligations under the non-competition clause of the employment agreement, the circuit court necessarily found that clause unenforceable or invalid. That could be true, but we have no way of knowing or discerning the reason why the court found in her favor. Whatever the reason, Count 9 slipped through

the agreed upon commissions for her work?

the cracks, remains adjudicated, and the judgment on the other counts is not a final judgment. After the circuit court has an opportunity to resolve Count 9, we invite the parties to contact the Clerk to coordinate and, hopefully, to expedite, briefing and resolution of the issues that we all thought this opinion would be addressing.

**APPEAL DISMISSED AND CASE
REMANDED TO THE CIRCUIT COURT
FOR BALTIMORE COUNTY FOR
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLANT.**