

Circuit Court for Baltimore City
Case No.: 24C21001635

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 922

September Term, 2021

PRESIDENTIAL TITLE, LLC

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE, ET AL.

Arthur,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: August 5, 2022

*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.

Appellant, Presidential Title LLC (“Presidential”), appeals the Circuit Court for Baltimore City’s order granting appellees’, Mayor and City Council of Baltimore (“Baltimore City”), motion to dismiss its amended complaint. On appeal, Presidential’s case presents the following question: Whether Presidential’s action for declaratory and injunctive relief was subject to dismissal on ripeness or standing grounds or for failure to exhaust administrative remedies?¹ For the reasons we shall discuss, we hold that Presidential’s action was properly dismissed only on exhaustion grounds. Thus, we affirm.

BACKGROUND

Presidential is a title insurance company that regularly handles real estate closings in Baltimore City. In April of 2021, Presidential filed this action against Baltimore City challenging its alleged construction holdback policy – i.e., its practice of “charging a recordation tax on any ‘construction holdback’ identified in purchase money deeds of trust[.]” Although Maryland Code Ann., Tax-Property (“TP”) § 12-108(i)(3) provides that “[a] purchase money mortgage or a purchase money deed of trust is not subject to recordation tax[.]” Presidential asserted that the alleged construction holdback policy resulted in recordation taxes wrongfully assessed on purchase money deeds of trust.

¹ Presidential’s brief has framed the issue in the following terms:

Whether the Circuit Court erred in granting [Baltimore] City’s Motion to Dismiss due to Presidential’s purported failure to exhaust administrative remedies, given that this Court’s holding in *Abington Center Associates Ltd. Partnership v. Baltimore County*, 115 Md. App. 580 (1997) that the statutory refund remedy was not an exclusive remedy and that an adequate remedy otherwise does not exist for Presidential?

Specifically, Presidential alleged that Baltimore City “charges recordation taxes against any amounts over and above the amount stated on the face of the deed, to include amounts that appear to be related to construction funding.” Presidential maintained that Baltimore City “will not record a purchase money deed of trust without payment of recordation taxes on any ‘construction holdback[,]’” a policy it contends “is unlawful and not supported by the language of” TP § 12-108(i).²

In its initial complaint, Presidential provided two examples of real estate closings it handled in Baltimore City which were subject to the alleged construction holdback policy.

Specifically, the complaint asserted that:

4. On or about August 11, 2020, Presidential handled a closing with respect to a property at 3405 Rosedale Road, Baltimore, MD 21215 (“Rosedale Property”).
5. As part of the closing of the Rosedale Property, a “Purchase Money Deed of Trust” was executed by the purchaser in the amount of \$160,000 (“Rosedale Purchase Money Deed of Trust”). A true and complete copy of the recorded Purchase Money Deed of Trust is attached hereto and marked for identification as Exhibit A.
6. The Rosedale Purchase Money Deed of Trust incorporated a purchase price of \$120,000, as well as construction funds in the amount of \$40,000[.]
7. [Presidential] did not collect recordation taxes on the Rosedale Purchase Money Deed of Trust because it is a “purchase money deed of trust” and therefore exempt from recordation taxes under Maryland Code, Tax-Property §12-108(i).

² By way of example, Presidential asserts that “in a situation where a deed stated consideration of \$100,000, and the mortgage held a face value of \$120,000 with \$30,000 ‘earmarked’ for construction costs, the \$30,000 would not be eligible for exemption” from recordation taxes under the alleged construction holdback policy.

8. [Baltimore City] rejected the Rosedale Purchase Money Deed of Trust and demanded additional sums.

9. The demand for recordation taxes was based on a faulty interpretation of the Maryland Code.

10. Specifically, [Baltimore] City has a policy of charging recordation tax on any “construction holdback” in clear contravention of the explicit language of the Code (“Construction Holdback Policy”).

11. In order to fulfill [Presidential]’s fiduciary duty to close the Rosedale transaction and ensure that the Rosedale Purchase Money Deed of Trust was recorded in accordance with the lender’s instructions, [Presidential] was forced to pay additional unlawful sums of money.

12. Since that time, [Presidential] has provided a written request for return of these funds, and, to date, [Presidential] has not received the same.

13. On or about February 18, 2021, Presidential handled a closing with respect to a property at 4008 Wilsby Ave., Baltimore, MD 21218 (“Wilsby Property”).

14. As part of the closing of the Wilsby Property, a “Purchase Money Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing” was submitted to the City for recordation (“Wilsby Purchase Money Deed of Trust”). A true and complete copy of the Wilsby Purchase Money Deed of Trust is attached hereto and marked for identification as Exhibit B.

15. The Wilsby Purchase Money Deed of Trust identified a face value of \$106,000, which incorporated a purchase price of \$61,600, as well as construction funds in the amount of \$44,400.

16. [Presidential] did not collect recordation taxes on the Wilsby Purchase Money Deed of Trust in excess of the purchase price because it is a “purchase money deed of trust” and therefore exempt from recordation taxes under Maryland Code, Tax-Property §12-108(i).

17. Presidential also submitted a copy of the “Settlement Statement”, a “Lien Cert”, a “Special Warranty Deed” and several checks to the City with respect to the Wilsby Property. A true and complete copy of the foregoing documents are attached hereto and marked for identification as Exhibit C.

18. [Baltimore] City, operating through its “Recordation Tax Office”, issued a rejection notice and refused to accept the Wilsby Purchase Money Deed of

Trust for recordation without payment of an additional sum totaling Six Hundred Forty-Five Dollars (\$645.00). A true and complete copy of the rejection is attached hereto and marked for identification as Exhibit D.

19. In order to fulfill [Presidential]’s fiduciary duty to close the Wilsby transaction and ensure that the Wilsby Purchase Money Deed of Trust was recorded in accordance with the lender’s instructions, [Presidential] was forced to pay the \$645.00 recordation tax under protest. Since that time, [Presidential] has provided a written request for return of the \$645.00 on the basis that [Baltimore] City is not entitled to collect the tax. [Presidential] has not received any refunded monies.^[3]

Presidential’s complaint requested a declaratory judgment, injunctive relief, and money damages. Baltimore City filed a motion to dismiss, asserting that Presidential had failed to exhaust administrative remedies; namely, that for both properties, Presidential had failed to file a request for a refund with the Baltimore City Director of Finance, and if denied, pursue its claim to the Maryland Tax Court. In May of 2021, Presidential filed a first amended complaint removing its claim for money damages, explaining that it would “pursue a refund of the unlawfully charged amounts through a separate proceeding.”⁴

In June of 2021, Baltimore City filed its second motion to dismiss, asserting that the refund provisions in TP § 14-907 provide “[t]he exclusive statutory administrative remedy to resolve tax disputes[,]” and accordingly, because Presidential did not seek a refund under those provisions, its claims were not properly before the court.⁵ Presidential opposed that motion, asserting that because it “does not seek a refund of any taxes through this

³ The complaint did not specify whether Presidential filed its request for a refund.

⁴ The amended claim also eliminated the Baltimore City Recordation Tax Office as a defendant.

⁵ Later, Baltimore City also raised ripeness and standing objections.

proceeding[,]” the statutory remedy that “deals solely and exclusively with refund requests[,]” is inapplicable, relying upon *Abington Center Associates Ltd. Partnership v. Baltimore County*, 115 Md. App. 580 (1997).

In July of 2021, the court held a hearing and granted Baltimore City’s motion to dismiss. The court determined that *Abington* was not applicable where, as here, the tax has already been paid:

The administrative remedies that had been created for refund actions weren’t applicable to Abington. In sum, the Court found the refund scheme didn’t bar Abington’s right to pursue appropriate relief in the Circuit Court so long as it has not paid the disputed transfer tax; accordingly, ... dismissing Abington’s action.

In this case, there’s no dispute that the taxes were paid and so the application – Abington is distinguishable from this case, not only distinguishable, as I said, the Court specifically states that this case wouldn’t – Abington wouldn’t apply to the circumstances, having been paid the Tax Property Article and the tax General Article and the appeal process throughout, are applicable to this case and the Plaintiffs have[] failed to exhaust those remedies and ... that statute scheme for review is otherwise barred from this dispute. So, the motion to dismiss is granted.^[6]

The court held that Presidential had “failed to [exhaust] their administrative remedies[,]” explaining that “the law is well-settled that without the exhaustion of administrative remedies where they are available, a party may not seek a declaratory judgment.” The court also said that “this matter is not ripe for a declaratory judgment[,]” but did not address the standing issue. Presidential timely appealed.

⁶ It is not clear whether the court relied on a common law exhaustion rule, or on Md. Code Ann., Cts. & Jud. Proc. § 3-409(b), which provides: “If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle.”

STANDARD OF REVIEW

We review the grant of a motion to dismiss *de novo*. *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012). “In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” *Fioretti v. Maryland State Bd. of Dental Exam’rs*, 351 Md. 66, 72 (1998). In so doing, this Court will “accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.” *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004). Accordingly, “[w]e will only find that dismissal was proper ‘if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.’” *Sprenger v. Pub. Serv. Comm’n of Maryland*, 400 Md. 1, 21 (2007) (quoting *Pendleton v. State*, 398 Md. 447 (2007)) (quotation marks and further citation omitted).

DISCUSSION

Baltimore City asserts that the judgment should be affirmed because “[t]he circuit court was correct that [Presidential] must exhaust administrative remedies to challenge paid recordation taxes[.]” Baltimore City further contends that Presidential’s “claims are not ripe because it is not challenging any current paid or unpaid recordation tax obligation[.]” and additionally, that Presidential lacks standing because it is “not a party to the real estate transactions it services.”

Presidential maintains that the court erred in granting Baltimore City’s motion to dismiss because it does not seek a refund and accordingly, TP § 14-907 is inapplicable under *Abington*. Further, Presidential states that its claims are ripe because it is “routinely

... forced to pay” the taxes alleged, and that it has standing because “unlike members of the general public, Presidential is a title company that is forced to knowingly collect recordation tax from its customers due to the City’s unlawful [alleged construction holdback policy.]”

We first reject Baltimore City’s ripeness and standing arguments.⁷ The purpose of the ripeness doctrine is to ensure that adjudication will conclusively dispose of “an actual controversy[.]” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 592 (2014) (quotation marks and citation omitted). A question of ripeness “arises if parties, entitled to invoke the judicial process, ask the court to declare their rights upon a state of facts which has not yet arisen, [or] upon a matter which is future, contingent and uncertain.” *State v. G & C Gulf, Inc.*, 442 Md. 716, 720 n.2 (2015) (quotation marks and citations omitted). If “an issue is not ripe, the issue is not justiciable and, thus, a court will not entertain the claim.” *State Ctr.*, 438 Md. at 592.

It follows that “an action for declaratory relief lacks ripeness if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen, [or] upon a matter which is future, contingent and uncertain.” *Boyd’s Civic Ass’n v. Montgomery Cnty. Council*, 309 Md. 683, 690 (1987) (quotation marks and citations omitted); *see also Anne Arundel Cnty. v. Ebersberger*, 62 Md. App. 360, 371 (1985) (declining declaratory relief regarding a special benefit tax for a community pool where it

⁷ We address these issues because ripeness is a jurisdictional contention and the lack of standing here is in the nature of a jurisdictional argument, that can be raised *sua sponte*. *Johnson v. Johnson*, 423 Md. 602, 606 (2011).

was uncertain “that a budget containing an appropriation for the pool will ever be approved or that a special benefit tax to support such an appropriation will ever be levied”); *Hatt v. Anderson*, 297 Md. 42, 47 (1983) (declining declaratory relief regarding a regulation prohibiting criticism of superiors where the employee had not been “ordered to do, or not do, anything under the regulation,” but instead merely “speculate[d] as to what might happen under the regulation if he criticizes his superior officers”).

Here, we do not agree that Presidential’s challenge to Baltimore City’s assessment of taxes is grounded upon a “state of facts which has not yet arisen[.]” *G & C Gulf*, 442 Md. at 720 n.2 (quotation marks and citation omitted). As alleged in Presidential’s complaint, the tax had been both assessed and paid by Presidential on at least two occasions. There is thus no dispute that the tax assessment “actually [took] place[.]” *Tanner v. McKeldin*, 202 Md. 569, 579 (1953) (“In a declaratory judgment proceeding, the court will not decide future rights in anticipation of an event which may never happen, but will wait until the event actually takes place, unless special circumstances appear which warrant an immediate decision.”).

We also reject Baltimore City’s claim that Presidential does not have standing because it is “not a party” to the transactions, or because it “does not allege that it has any agreement to pay recordation taxes” for the properties. “Standing refers to whether the plaintiff has shown that he or she is entitled to invoke the judicial process in a particular instance[.]” *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343 (2020) (quotation marks and citation omitted). It mandates that “the injury they suffered [i]s ‘concrete and particularized,’ as opposed to an injury based on an ‘abstract, generalized interest’ shared

by all members of the general public.” *Paula v. Mayor of Baltimore*, 253 Md. App. 566, 581 (2022) (citation omitted).

Here, unlike members of the general public, Presidential is a title company that, in its words, “owes a duty to close transactions timely in accordance with the instructions of lenders while also owing a duty not to collect and pay recordation taxes that are not supported by law.” Its interest in this action is not “abstract” or “generalized” but particular to its responsibility to properly close real estate transactions in Baltimore City. *Id.* at 581.

Nor are we persuaded by Baltimore City’s assertion that Presidential must be a party to the transaction to request a refund. TP § 14-907 broadly provides that “[a] person who submits a written refund claim” is “eligible for a refund[.]” Contrary to Baltimore City’s suggestion, the statute does not limit its reach to “a party” to a transaction, or those who “allege that [they] ha[ve] any agreement to pay recordation taxes[.]” We disagree that Presidential has not “shown that [it] is entitled to invoke the judicial process” under the facts before us. *Pizza di Joey*, 470 Md. at 343 (quotation marks and citation omitted).

Nonetheless, we agree that Presidential has failed to exhaust its administrative remedies. “It is a longstanding principle that a party ordinarily may not pursue a declaratory or injunctive action in circuit court until it has exhausted any available administrative remedies created by the Legislature.” *Abington*, 115 Md. App. at 590-91. Thus, “when there is a primary or exclusive administrative remedy available to the complaining party, that remedy must be exhausted before the party can resort to the courts.” *Falls Rd. Cmty. Ass’n, Inc. v. Baltimore Cnty.*, 437 Md. 115, 136 (2014).

Here, administrative remedies are provided under the Tax-Property Article. Specifically, TP § 14-907 permits persons to submit written refund claims where taxes have been improperly paid:

A person who submits a written refund claim for recordation tax that has been erroneously or mistakenly paid to or illegally or erroneously assessed or wrongfully collected by the clerk of a circuit court, the Director of Finance in Prince George’s County, or the Department, or paid on property exempt wholly or partly from the recordation tax is eligible for a refund from the Department, clerk, or the Director of Finance that collected the recordation tax.

Once a refund claim is made, TP § 14-911 provides procedural requirements for consideration of the claim:

(c) If a refund claim is made under § 14-907 or § 14-908 of this subtitle, the Department, clerk, or Director of Finance considering the refund claim shall:

- (1) investigate the claim;
- (2) notify the claimant of an opportunity for a hearing on the claim;
and
- (3) if the claimant requests a hearing on the claim, conduct a hearing.

Lastly, persons wishing to appeal the outcome of a refund request may do so under TP § 14-512(d):

The person who submitted a tax refund claim under § 14-907 or § 14-908 of this title may appeal any final action taken under § 14-911 of this title to the Maryland Tax Court on or before 30 days from the date that the notice of disallowance is received by the person.

Here, Baltimore City asserts that Presidential has failed to “invoke and exhaust” its administrative remedies because it has not submitted “a refund claim to the Baltimore City Director of Finance[.]” Presidential does not dispute that it has not sought a refund from the Baltimore City Director of Finance. Instead, Presidential contends that *Abington*

supports the position that the administrative remedies are not applicable when, as here, a refund is not sought.

We agree with the circuit court that this assertion misreads our holding in *Abington*. There, we considered whether an unpaid transfer tax may be challenged in court before exhausting administrative remedies, not whether administrative remedies must be exhausted where the tax had been paid. *Abington*, 115 Md. App. 580. Critically, our decision turned not merely on whether a refund was sought, but whether the tax had been paid, explaining that TP “§§ 14-512(d) and 14-908 only apply when transfer taxes have been paid and a refund is sought. As [Abington] has not paid the disputed taxes, and does not seek a refund, these provisions are inapplicable in any event.” *Abington*, 115 Md. App. at 600. It was because the tax had not been paid that we held that Abington “did not have an available administrative remedy, and therefore was entitled to litigate its claim in circuit court.” *Id.* at 583. Here, because it is undisputed that the taxes have been paid, the exception to the exhaustion doctrine set out in *Abington* is inapplicable to the facts before us.

Lastly, although Presidential states that the relief it seeks is “100% prospective[.]” several factors draw this assertion into question. Although later dropped by amendment, Presidential’s original complaint sought a tax refund, and its amended complaint retained the exhibits that supported the refund claim. Moreover, although Presidential dropped its refund request from the initial complaint, if successful in a declaratory judgment action, it may still have been able to obtain a refund by filing a petition for supplementary relief under Md. Code Ann., Courts and Judicial Proceedings, § 3-412. *See CR-RSC Tower I*,

LLC v. RSC Tower I, LLC, 202 Md. App. 307, 328 (2011), *aff'd*, 429 Md. 387 (2012) (indicating that in an appropriate case, monetary relief could be awarded after a declaratory judgment is obtained).⁸ Further, in its amended complaint, Presidential indicated that in at least one instance, it “has sought” a refund in a separate administrative proceeding.⁹ Each of these facts belies Presidential’s assertion that it should be excused from exhausting administrative remedies on asserted prospectivity grounds.

For these reasons, the judgment shall be affirmed.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁸ The *CR-RSC Tower I* case points out a major problem a plaintiff may face when seeking post-declaratory judgment supplemental relief for damages. There is substantial authority for the proposition that a litigant who successfully seeks declaratory and injunctive relief is barred by *res judicata* from later seeking damages. 202 Md. App. at 329-30. Of course, that is what Presidential sought here, even after it amended its complaint. However, it did not obtain a favorable judgment, and the court never reached the merits. Thus, no *res judicata* issue could have been presented in this case.

⁹ Presidential also disclosed this fact in its brief and at oral argument.