

Circuit Court for Baltimore County  
Case No.: C-03-CV-22-004363

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1414

September Term, 2023

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DALJACO, INC., *et al.*

v.

D'ALAN BAUGH

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Wells, C.J.,  
Leahy,  
Woodward, Patrick L.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: October 25, 2024

\*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 Rule 1-104(a)(2)(B).

On October 27, 2022, D’Alan Baugh, appellee, filed suit in the Circuit Court for Baltimore County against appellant Daljaco, Inc. and appellant Martin Burns (collectively, “Appellants”), seeking declaratory and injunctive relief in regard to his alleged share of certain tax credits issued to Daljaco by the Internal Revenue Service for the tax year 2020. Baugh later obtained a writ of attachment before judgment on assets held by Daljaco. Appellants moved to dissolve the attachment before judgment, and the circuit court promptly denied the motion. Pending Appellants’ motion for reconsideration, the parties entered into a consent order in which they agreed that, in exchange for the release of the writ of the attachment before judgment and the attachment bond, Appellants would deposit \$735,958.74 into an interest-bearing escrow account where the funds will be held until the “satisfaction of any judgment that may be recovered.” The consent order was signed by a circuit court judge and entered on October 12, 2023. On October 16, 2023, the circuit court denied Appellants’ motion for reconsideration as moot based on the consent order. Appellants filed an interlocutory appeal and present one question for our review:

Did the Circuit Court for Baltimore County err, as a matter of law, in denying Appellants’ Ex Parte Motion to Dissolve Attachment Before Judgment?

Baugh, in response, moves to dismiss this appeal as moot.<sup>1</sup> For the reasons stated in our discussion below, we shall grant his motion and dismiss the appeal.

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<sup>1</sup> In his brief, Baugh frames the issues as:

- I. Does the Consent Order, agreed to by the parties on October 6, 2023, and entered by the Circuit Court for
- (continued)

## BACKGROUND

Daljaco is a Maryland corporation that operates several senior home-care franchises throughout the state. The company was formed as an LLC but was later converted to an “S” corporation. Commonly referred to as a “pass-through entity,” an S corporation “does not pay tax at the corporate level[.]” *Walker v. Grow*, 170 Md. App. 255, 277 (2006) (quoting *Att’y Grievance Comm’n v. O’Toole*, 379 Md. 595, 605 (2004)). Instead, its income, losses, deductions, and credits “‘pass through’ to the shareholders who must report profits or losses on their federal and state individual income tax returns.” *Id.* at 277–78 (quoting *O’Toole*, 379 Md. at 605); *see also* 26 U.S.C. §§ 1363, 1366.

For many years, Burns and Baugh each owned 50% of Daljaco’s issued and outstanding stock. Then, in December 2020, Baugh contracted with Burns and Daljaco to sell his shares back to the company. The purchase became effective at 11:59 PM on December 31, 2020.

Earlier that year, Congress enacted the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. Pub. L. 116-136, 134 Stat. 281 (2020), codified at 15 U.S.C. § 9001, *et seq.* As part of the CARES Act, the Small Business Administration

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Baltimore County on October 12, 2023, render this appeal moot?

- II. Did the Circuit Court for Baltimore County err in its findings that the Appellee met the requirements of Md. Ann. Code, Courts and Judicial Proceedings Article §§ 3-303, 304?
- III. Did the Circuit Court for Baltimore County err in its exercise of its equitable powers when granting Attachment Before Judgment?

implemented the Payroll Protection Program (“PPP”), “a temporary program targeted at providing small businesses with the funds necessary to meet their payroll and operating expenses and therefore keep workers employed.” *Springfield Hospital, Inc. v. Guzman*, 28 F.4th 403, 409 (2d Cir. 2022). “The PPP provide[d] potentially forgivable loans to eligible small businesses, allowing the recipient to seek loan forgiveness if at least 60% of the loaned funds [were] used for specified expenses, such as payroll.” *Id.* Daljaco obtained one of these loans in 2020.

The CARES Act also established an Employee Retention Tax Credit (“ERTC”), “a broad based refundable tax credit designed to encourage employees to keep employees on their payroll.”<sup>2</sup> At first, employers like Daljaco that received PPP loans were not eligible for an ERTC. CARES Act Sec. 2301(j), Pub. L. No. 116-135, § 2301(j), 134 Stat. 281, 350 (2020). This restriction was later removed, however, by the Consolidated Appropriations Act, 2021. Sec. 206(c)(2)(A), Pub. L. No. 116-260, § 206(c)(2)(A), 134 Stat. 1182, 3060–61 (2020).

Burns first discovered that Daljaco was eligible for an ERTC in December 2021, nearly a year after the company had bought back Baugh’s shares. Upon learning this information, Burns filed a Form 941-X with the IRS to correct Daljaco’s previously filed quarterly tax return and claim a refund for Tax Year 2020. Although the refund applied to the period when Baugh still owned 50% of Daljaco, Burns did not discuss filing the amended returns with him. The day after he filed the amended returns, Burns—through

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<sup>2</sup> Department of the Treasury, *Employee Retention Tax Credit: What You Need to Know*, <https://home.treasury.gov/system/files/136/Employee-Retention-Tax-Credit.pdf>.

Daljaco—contracted to sell the ERTC receivables to an out-of-state third party for over \$1.3 million.

In Baugh’s view, because the ERTC refund applied to the period when he still owned 50% of Daljaco—and because of the company’s status as an S corporation—he was entitled to 50% of the refund. Consequently, on October 27, 2022, before the IRS issued any refund, Baugh sued Appellants in the Circuit Court for Baltimore County seeking declaratory and injunctive relief. He also contemporaneously moved for a temporary restraining order. After a hearing, the court issued a TRO the next day enjoining Appellants “from transferring 50% of any ERTCs received by Daljaco from the IRS until an adjudication ha[d] been made on the merits of [Baugh’s] claims[.]” The TRO was originally set to expire at 11:59 PM on November 7, 2022, but was later extended to 11:59 PM on January 17, 2023. The court scheduled a preliminary-injunction hearing for the same day.

Meanwhile, Daljaco received the ERTC refund on January 9, 2023. As a result, the day before the hearing, Baugh filed an amended complaint that alleged Daljaco had, in fact, received the refund.<sup>3</sup> The amended complaint also added, in its claims for relief, a request that the refund be held in a constructive trust for Baugh’s benefit.

At the January 17 hearing, the circuit court determined that the amended complaint rendered the pending request for a preliminary injunction moot and suggested that Baugh would need to file a new TRO. He filed a new motion the same day.

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<sup>3</sup> The original complaint alleged that payment was still pending.

Hours later, a law clerk contacted counsel for the parties to schedule a hearing for the next morning at 11:00 AM. Baugh’s attorney signaled that the current TRO was set to expire at midnight and asked whether “the Judge [was] going to preserve the status quo through tomorrow’s hearing[.]” The law clerk replied, “[Y]es, he is extending it until 11 am tomorrow.”

Despite the court’s instruction “to preserve the status quo” until the hearing, Appellants seized the opportunity created by the TRO’s lapse. On the morning of January 18—less than 20 minutes after the bank opened and less than 3 hours before the scheduled hearing—Daljaco wired the ERTC refund to the out-of-state third-party purchaser. Two hours before the hearing, counsel for Appellants emailed Baugh’s attorney and the court to inform them of the wire transfer. The court thus denied the new TRO as moot at the hearing.

Minutes after the hearing, Baugh moved for a writ of attachment before judgment. The court held another hearing the next day and granted the motion. The following day, the court issued an order<sup>4</sup> stating “that all properties and credits presently owned” by Appellants were “attached and [] subject to each and every post-judgment execution procedure permitted by the Maryland Rules . . . up to an amount not exceeding \$735,958.74,” which represented 50% of the ERTC refund. The court found that Appellants had “actively engaged or participated in the assignment, disposal of, concealment or removal of [their] assets from the State of Maryland with the intent to

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<sup>4</sup> The order was signed on January 20, 2023, but the court did not docket it until January 26.

defraud [their] creditors, including [Baugh], or there [was] a substantial likelihood that [they] w[ould] act in concert to do such acts, pending a hearing on the merits of [Baugh’s] action.”

Two days later, on January 22, Appellants removed the case to the United States District Court for the District of Maryland. The case was eventually remanded to the circuit court on September 11, 2023, after the federal court determined that, despite the federal question presented, it lacked jurisdiction because the removal was untimely.

The day after remand, September 12, the circuit court issued writs of attachment before judgment against Appellants. Later that same day, they moved to dissolve the attachment. The court denied their motion shortly before close of business, and Appellants moved for reconsideration the next morning. Then, on September 19—before the court ruled on their revisory motion—Appellants noted this appeal.

Finally, on October 6, 2023—still before the court ruled on the pending revisory motion—the parties reached an agreement, which was memorialized in a consent order. Appellants agreed to deposit \$735,958.74—*i.e.*, 50% of the ERTC refund—into an escrow account where it would be held until “released toward the satisfaction of any judgment that may be recovered[.]” In exchange, once the funds were deposited, “all of the property attached pursuant to the January 20, 2023 Order, entered on January 26, 2023, and any writs of attachment before judgment” would be released. The funds were deposited into the escrow account on October 6. As a result, on October 16, the circuit court denied Appellants’ revisory motion as moot.

## MOTION TO DISMISS

In his brief, Baugh moves to dismiss the appeal as moot. “The test for mootness is whether a case presents a controversy between the parties for which the court can fashion an effective remedy.” *Tempel v. Murphy*, 202 Md. App. 1, 16 (2011). Baugh contends that, since this is an appeal from the denial of Appellants’ motion to dissolve the writs of attachment before judgment, the October 6 consent order accomplished the same thing that vacating the September 12 order would—dissolving the writs and releasing the attached property. Thus, in his view, there is no longer any effective remedy we could fashion.

Appellants counter that there is still a remedy available: “namely, creating an avenue for the release of [the] escrowed funds[.]” They claim that, were we to vacate the September 12 order, they would be able to unwind the succeeding orders by “mov[ing] to dissolve the attachment before judgment and, subsequently, the Consent Order [to] regain control over their funds[.]”

Even if we might have been persuaded by Appellants’ argument, the landscape of this case continued to develop after briefing was done. On July 16, 2024, the circuit court granted summary judgment to Baugh.<sup>5</sup> Appellants timely appealed from that final judgment, and their appeal has been docketed in this Court as Case No. 1041, September Term, 2024. But still, in accordance with that judgment, on August 30, the escrowed funds were released to Baugh. As a result, at least with respect to the attachment before

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<sup>5</sup> We take judicial notice of the docket and certain filings in the circuit court and Case No. 1041, Sept. Term, 2024. See *Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 9 n.5 (2017).



judgment, there is no longer any remedy we can fashion. We shall thus grant Baugh’s motion and dismiss this appeal as moot in accordance with Maryland Rule 8-602(c)(8).

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

**APPELLATE COURT OF MARYLAND  
CORRECTION NOTICE**

October 28, 2024

**Case No. 1414, September Term, 2023  
Unreported Opinion filed October 25, 2024**

**Daljaco, Inc., *et al.* v. D'Alan Baugh  
Authoring Judge: Leahy**

**On page 7, the 12th and 17th lines from the top of the page, NOW READS:**

the September 18 order

**SHOULD READ:**

the September 12 order

A corrected opinion has been posted on the Court's webpage: [www.mdcourts.gov/cosappeals](http://www.mdcourts.gov/cosappeals).

/S/

**Rachel Dombrowski  
Clerk of the Appellate Court of Maryland**