

Circuit Court for Montgomery County
Case No.: 487031V

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1796

September Term, 2021

SAUL ELBAUM

v.

GOOGLE, INC.

Wells, C.J.,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 1, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

In 2017, Saul Elbaum, appellant, sued Google, Inc., appellee, in the Superior Court for the District of Columbia alleging “deception boarding [sic] on fraud” and breach of the company’s duty to act in good faith when it “withdrew [\$8,500] from [his] bank account . . . without notice.” The D.C. court dismissed that complaint because Google’s Advertising Program Terms, to which Elbaum admittedly agreed, contained a valid forum-selection clause requiring disputes be brought in Santa Clara, California. Then, in 2019, Elbaum filed a “nearly identical” complaint in the Circuit Court for Montgomery County. The circuit court dismissed that complaint under the collateral-estoppel doctrine because the jurisdictional issue had already been litigated in D.C. We affirmed that ruling. *Elbaum v. Google, Inc.*, No. 920, Sept. Term, 2019, 2020 WL 5362116, at *3 (App. Ct. Md. Sept. 8, 2020).

While that appeal was pending, Elbaum again contracted with Google for advertising services. He again agreed to the company’s Advertising Programs Terms. Google again withdrew money—this time \$2,000—from his bank account as payment under the contract. And Elbaum again sued the company in the Circuit Court for Montgomery County. This complaint sought compensatory and punitive damages totaling over \$2 billion. It is “substantially identical” to the one Elbaum filed in the same court in 2019, which was itself “nearly identical” to the one he filed in D.C. in 2017. Consequently, the circuit court again dismissed the complaint. Elbaum again timely appealed.

On appeal, Elbaum raises four issues, which we restate verbatim:

1. Whether Google should be permitted to run an ad while it is in draft-incomplete mode, and to repeatedly withdraw funds from [Elbaum’s] bank account, without providing notice of each ad and each withdrawal[;]

2. Whether Google should be permitted to repeat the same ad multiple times, and withdraw money from a customer’s bank multiple times, without providing notice of each withdrawal[;]
3. Whether Google’s actions should be adjudicated in Maryland despite Google’s contract limiting jurisdiction to California[;]
4. Whether Google’s actions justify punitive damages[.]

Similar to Elbaum’s prior appeal, because three of the four issues posed address the underlying merits of the complaint and not the basis of the circuit court’s dismissal, we will consider only whether the circuit court erred in dismissing Elbaum’s complaint. *See Robinson v. State*, 404 Md. 208, 216 (2008) (Under Maryland Rule 8-131(a), “an appellate court ordinarily will not consider any point or question unless it plainly appears by the record to have been raised in or decided by the trial court.” (quotation marks omitted)).

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.” *Scarborough v. Transplant Res. Ctr. of Md.*, 242 Md. App. 453, 472 (2019) (cleaned up). But, if the court considers materials outside of the pleadings in ruling on the motion, it “shall be treated as one for summary judgment[.]” Md. Rule 2-322(c). Granting such a motion is proper where “there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.” Md. Rule 2-501.

The doctrine on collateral estoppel triggers “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment[.]” *John Crane Inc. v. Puller*, 169 Md. App. 1, 26 (2006) (cleaned up). Under these circumstances, “the determination is conclusive in a subsequent action

between the parties, whether on the same *or a different claim.*” *Id.* (emphasis added). Our decision in Elbaum’s prior appeal held that the D.C. Superior Court’s jurisdictional decision collaterally estopped him from filing suit against Google in the circuit court. *Elbaum*, 2020 WL 5362116, at *1–3. Elbaum offers no argument distinguishing this appeal from his previous one, or any as to why collateral estoppel no longer applies. We see no reason to depart from the rationale of our prior opinion. Therefore, we again hold that the Circuit Court for Montgomery County did not err in dismissing the complaint because Elbaum was collaterally estopped from filing suit against Google in that court.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**