Circuit Court for Baltimore County
Case No. C-03-CV-21-001350

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2090

September Term, 2022

RUSSELL MIRABILE

v.

JOHN ROBINSON

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: June 20, 2024

*Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of stare decisis. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Russell Mirabile filed a legal malpractice lawsuit against his former lawyer, Appellee John Robinson, in the Circuit Court for Baltimore County. Mr. Robinson moved to dismiss the complaint. After a hearing, the Circuit Court dismissed the complaint with prejudice. As explained below, we affirm the Circuit Court's judgment.

I

Background

This case arises out of Mr. Robinson's representation of Mr. Mirabile during a portion of Mr. Mirabile's litigation with his sister, Nancy Leiter.[1] For our purposes, the

[1] The facts recited here are derived from Mr. Mirabile's complaint, which included exhibits, and from the exhibits that both parties attached to their filings in the proceedings on Mr. Robinson's motion to dismiss, which did not contain any disputed facts material to our analysis. Additionally, as explained below, we take notice of, and incorporate here, the history of, and judgment in, the siblings' litigation as set forth by this Court in *Mirabile v. Leiter*, No. 149, Sept. Term 2023, 2024 WL 1431259 (App. Ct. of Md., Apr. 3, 2024) (unreported), *cert. denied*, Case No. SCM-PET-0071-2024 (June 18, 2024) ("*Mirabile No. 149*"). *See* Maryland Rule 5-201 (permitting this Court to take notice, "whether requested or not," of a fact that is "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

This Court has also described various aspects of the underlying litigation in the following unreported cases:

Leiter v. Liberty Mobile Home Park, No. 1310, Sept. Term, 2019, 2020 WL 5946143 (Md. Ct. Spec. App. Oct. 7, 2020), *cert. denied sub nom Mirabile v. Leiter*, 472 Md. 15 (2021) ("*Mirabile No. 1310*");

Mirabile v. Leiter, No. 2905, Sept. Term, 2018, 2020 WL 1671682 (Md. Ct. Spec. App. Apr. 6, 2020) *cert. denied*, 470 Md. 217 (2020) ("*Mirabile No. 2905*");

Mirabile v. Swanson, No. 372, Sept. Term 2015, 2016 WL 1228246 (Md. Ct. Spec. App. Mar. 29, 2016) ("*Mirabile No. 372*"); and

Mirabile v. Leiter, No. 513 Sept. Term 2015, 2016 WL 1033313 (Md. Ct. Spec. App. Mar. 15, 2016) ("*Mirabile No. 513*").

story began in 2010 when Mr. Mirabile and Ms. Leiter entered into a "Settlement and General Release Agreement" to dissolve their partnership in the family business, which held numerous rental properties. Their agreement provided that Ms. Leiter would buy most of the properties at a set purchase price, that she would remit the rental income on 12 listed "ancillary" properties to Mr. Mirabile until she closed on her purchase of those properties, and that the agreement fully released each sibling of claims "of any nature" that they might have against each other, whether "asserted or unasserted," "foreseen or unforeseen," or "known or unknown[.]" The Circuit Court for Baltimore County entered the agreement as an order of the court in December 2010 and retained jurisdiction for purposes of enforcing it.

Mr. Mirabile's efforts to skirt the agreement began in 2011. Among many other things, those efforts included motions in the Circuit Court for Baltimore County to reopen or revise the judgment and motions to rescind it. At times, Mr. Mirabile was represented by counsel; at other times, he apparently was not.[2] At any rate, Mr. Mirabile retained Mr. Robinson in February 2016 to represent him in his litigation against his sister.[3] In 2017, Mr. Robinson filed on Mr. Mirabile's behalf a renewed motion to rescind the agreement on the grounds that Ms. Leiter had taken so long to close on the purchase of the properties that "equity require[d] the rescission of [the agreement]." Ms. Leiter filed a counter-motion

[2] *See, e.g.*, *Mirabile No. 513*, 2016 WL 1033313, at *2.

[3] At the time, Mr. Mirabile was also litigating against his prior counsel. *See Mirabile No. 372*, 2016 WL 1228246.

for breach of contract and a petition for contempt and argued that Mr. Mirabile had thwarted her efforts to purchase the properties. The Circuit Court conducted an evidentiary hearing in early May 2018. On November 2, 2018, the court denied Mr. Mirabile's motion to rescind the agreement and found him in contempt of the consent order for "failing to cooperate in bringing this matter to a conclusion."

On June 17, 2019, Mr. Mirabile moved for an order requiring Ms. Leiter to remit to him the rent she had received for the ancillary properties, as provided in the agreement. The Circuit Court heard argument on that motion, and, on August 12, 2019, ordered Ms. Leiter to remit the rents to Mr. Mirabile.[4] Meanwhile, Mr. Mirabile and Ms. Leiter had closed on the sale of the dissolved partnership's properties to Ms. Leiter on July 19, 2019, and the Circuit Court had ratified that sale on August 6, 2019.

Mr. Mirabile initiated the case now before us in April 2021, when he sued Mr. Robinson in the Circuit Court for Baltimore County for allegedly committing legal malpractice in connection with the proceedings on Mr. Mirabile's recission motion. In all, five complaints were filed:

- *April 30, 2021 – the first complaint*: With the assistance of new counsel, Mr. Mirabile alleged that Mr. Robinson had breached the applicable standard of care by not calling certain witnesses to testify at the May 2018 hearing and not properly cross-examining others. Mr. Mirabile further alleged that two

[4] Those proceedings are described in *Mirabile No. 1310*, 2020 WL 5946143. Affirming the Circuit Court's judgment in that case, this Court stated: "Once the trial court denied Mirabile's motions to rescind the Agreement, the Agreement was ratified as to both parties and the duties must be carried out as laid out by the terms of the agreement." *Id.* at *6.

properties on Pulaski Street ("Pulaski properties") were "ancillary properties," that Ms. Leiter was required to remit the rental income from them "as per" the agreement, and that Mr. Robinson had caused Mr. Mirabile to lose that income by not asserting Mr. Mirabile's claim for it.

- *August 12, 2021 – "Amended Complaint"*: The complaint, again through counsel, omitted the earlier allegations about the witnesses called or not called to testify at the 2018 hearing. Mr. Mirabile again alleged that Mr. Robinson refused to assert the rent claim and that the refusal caused Mr. Mirabile to suffer damages.
- *June 17, 2022 – "Plaintiff's Amended Complaint"*: Mr. Mirabile, now *pro se*, alleged that Mr. Robinson breached the standard of care by advising Mr. Mirabile to seek recission of the agreement. This complaint alleged that Mr. Robinson should have instead sued Ms. Leiter for breach of contract, sought judgment in the amount of $1.5 million, and "liened with interest, all properties held in partnership … and filed for sale of all such properties." This complaint omitted the rent claim.
- *August 30, 2022 – "Verified Third Amended Complaint"*: By new counsel, Mr. Mirabile alleged two causes of action against Mr. Robinson. Count 1 cited two statutes – Maryland Code, Courts and Judicial Proceedings Article ("CJ"), §11-107 and Corporations & Associations Article ("CA"), §9A-701 – in support of a claim for "Time Value of Money Interest" in the form of post judgment interest and statutory partnership dissolution interest on the purchase price stated in the agreement (collectively, "statutory interest claims"). Count 2 alleged that Mr. Robinson failed to assert the rent claim. As to that, Mr. Mirabile now alleged that Mr. Mirabile and Ms. Leiter had an oral partnership regarding the Pulaski properties under which he was to receive the rents in return as compensation for construction work he performed there.

- *September 2, 2022 – "Verified Fourth Amended Complaint"*: This final amended complaint, also by counsel, contained the two counts that Mr. Mirabile had alleged in his August 30, 2022 amended complaint: a claim for interest under CJ §11-107 and CA §9A-701, and a renewed claim for the unclaimed rental income. Attached to the complaint were eight exhibits, including the agreement and computations of the interest and rents allegedly due.

Mr. Robinson moved to dismiss both counts of the Fourth Amended Complaint on various grounds, including timeliness, judicial estoppel, and the terms of the agreement. Attached to the motion were the docket entries for the litigation between Mr. Mirabile and Ms. Leiter from August 2008 to February 2021 and the October 31, 2018 Memorandum Opinion in which the Circuit Court had denied Mr. Mirabile's renewed motion to rescind the agreement.

By counsel, Mr. Mirabile filed an opposition to the motion to dismiss. The exhibits attached to his memorandum included his own affidavit. In it, he stated that he had never been apprised of the "economic benefits of being a [CJ] §11-107 Judgment Creditor or a [CA §9A-107] partner," that Mr. Robinson had failed to press his claim for the rental income from the Pulaski properties, and that, if called to testify, Mr. Mirabile would testify to all of the facts stated in his reply memorandum. Mr. Robinson filed a reply. Mr. Mirabile then filed a sur-reply. The sur-reply included four more exhibits and a footnote citing cases for the proposition that it was permissible for the court to consider documents attached to a complaint and motion to dismiss, "so long as they are integral to the complaint, referenced or relied upon in the complaint, and their authenticity is not

disputed." The Circuit Court heard argument on the motion and Mr. Mirabile's opposition filings and issued its opinion from the bench.

As to the timeliness of Count 1, the Circuit Court referred to the August 30, 2022 complaint as the operative complaint for limitations purposes and found that Mr. Mirabile's cause of action began to accrue in May 2018, when the court had held an evidentiary hearing on Mr. Mirabile's rescission motion, or at the closing date in July 2019. The court then applied a three-year limitations period and dismissed Count 1 as time-barred. The court also found that Mr. Mirabile's claim for interest under the agreement was estopped by his position throughout eight years of litigation that the agreement was unenforceable.

The court held that Count 2 did not state a claim. The court found that the agreement was "plain and unambiguous" and that it did not entitle Mr. Mirabile to rent or other income from the Pulaski properties. The court dismissed both counts with prejudice.

We take notice of this Court's unreported opinion in *Mirabile No.* 149. That case concerned the Circuit Court's dismissal of a complaint that Mr. Mirabile had filed against his sister on October 30, 2022, slightly over a month after he filed the Fourth Amended Complaint in this case. There, as in this case, the complaint cited CJ §11-107 and CA §9A-701 in support of Mr. Mirabile's claim for post judgment interest and statutory partnership dissolution interest.[5] This Court held that those statutory interest claims were barred by

[5] As relevant here, this Court summarized Mr. Mirabile's October 30, 2022 complaint against his sister as follows:

> Mirabile's complaint contains six counts that dispute the amount he was paid at the closing sale of his partnership interest to Leiter, as recorded

Mr. Mirabile's consent in the 2010 agreement to waive all claims, known or unknown, against his sister, concerning the dissolution of their partnership. The Court stated: "Each of the six counts in Mirabile's complaint challenge[s] payments made to him at closing in 2019 when Leiter bought Mirabile's partnership interest …. Because these claims relate to or arise out of the … partnership assets, Mirabile's right to bring these claims is waived pursuant to the Settlement Agreement." *Id*., 2024 WL 1431259, at *7.

II

Questions Presented

Mr. Mirabile has presented three questions, all of which go to whether the Circuit Court erred in dismissing his complaint. We will fold those questions into our discussion of the following three issues:

1. Did the Circuit Court err by dismissing Mr. Mirabile's Count 1?

> in the HUD-1 Settlement Statement attached to his complaint. Mirabile's complaint contends he is a "dissociated partner" and was entitled to be treated as such pursuant to C&A § 9A-701. He also asserts that he is a "judgment creditor" under Md. Code (2006, Repl. Vol. 2020) § 11-107 of the Courts and Judicial Proceedings Article ("CJ"). In total, Mirabile asserts he is entitled to more than $2 million in "addition HUD-1 gross amounts."
>
> Count 1 asserts that Mirabile is entitled to post-judgment "time value of money" interest for the "installment deferred payment principal" of $1,440,000 for the period from December 1, 2010 (the date of the court order incorporating the Settlement Agreement) to July 12, 2019 (the date of closing), totaling $1,876,300 with additional accrued interest.

Mirabile No. 149, 2024 WL 1431259, at *4.

2. Has Mr. Mirabile appealed the Circuit Court's dismissal of Count 2, and, in any event, did the Circuit Court err by dismissing that count?

3. Did the Circuit Court err, variously, by referring to the years of litigation between the parties, by purportedly not treating Mr. Robinson's motion to dismiss as a motion for summary judgment, or by issuing its opinion on the defense motion orally?

III

Discussion

A. Standard of Review

In reviewing the grant of a motion to dismiss, we apply the standard of review set forth in *Mirabile No. 149*, as follows:

> We review the grant of a motion to dismiss to determine whether the trial court was legally correct. Accordingly, our review of a circuit court's grant of a motion to dismiss is de novo. In doing so, we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party. We will affirm the circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.

Mirabile No. 149, 2024 WL 1431259, at *5 (internal citations and quotation marks omitted).

In this case, Mr. Mirabile argues that the Circuit Court erred by effectively treating Mr. Robinson's motion to dismiss as a motion for summary judgment without explicitly converting it to one. When reviewing the grant of a motion for summary judgment, the appellate court reviews the judgment without deference and "undertakes an independent

review of the record to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 637 (2024) (internal quotation marks and citation omitted).

In this case, we will take judicial notice of the decision in *Mirabile No. 149* and address the question of whether the disposition of Mr. Mirabile's claims in that case estop him from relitigating claims that underlie the cause of action that he has alleged in this case. The applicability of the doctrine of collateral estoppel is a legal issue. *Elec. Gen. Corp. v. Labonte*, 229 Md. App. 187, 202 (2016), *aff'd*, 454 Md. 113 (2017).

B. The Circuit Court Did Not Err When it Dismissed Count 1 because the Claims Asserted There are Collaterally Estopped by the Judgment in Mirabile No. 149.

Under the doctrine of collateral estoppel, an issue decided in a prior adjudication may not be re-litigated if that issue was "(1) identical to the issue to be decided in the present action; (2) there was a final judgment on the merits in the prior adjudication; (3) the party against whom the doctrine is asserted was a party to the prior adjudication or was in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is asserted had a fair opportunity to be heard on the issue in the prior adjudication." *Cunningham v. Baltimore Cnty*., 246 Md. App. 630, 669 (2020) (internal citations omitted). "[I]n the interests of judicial economy," the court may find it appropriate to invoke the doctrine despite the failure of the parties to do so. *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 529 (2004) (discussing *Johnston v. Johnston*, 297 Md. 48, 59-60 (1983). For example, the *Campbell* Court found it appropriate to raise the issue of collateral estoppel *sua sponte* and then affirm the circuit court's grant of summary

judgment because to remand the case "would constitute an unacceptable waste of the parties' and the circuit court's resources … ." 187 Md. App. at 529.

Here, too, we find it appropriate to raise the question of whether the claims Mr. Mirabile alleged in Count 1 against Mr. Robinson are collaterally estopped by the Circuit Court's judgment on the claims he alleged against Ms. Leiter in *Mirabile No. 149*, as affirmed by this Court.

The first element of the doctrine is whether the issue in the present case is identical to the issue litigated in the prior case. In the present case, Mr. Mirabile alleges in Count 1 that Mr. Robinson committed malpractice by failing to assert claims on his behalf against Ms. Leiter for interest under two Maryland statutes: post-judgment interest under CJ §11-107 and partnership statutory dissolution interest under CA §9A-701. This Court's opinion in *Mirabile No. 149* establishes that Mr. Mirabile sued Ms. Leiter on the same two theories there. The issue of his entitlement to those two types of interest in *Mirabile No. 149* was thus identical to his claim for those damages here.

The second element of the doctrine is whether the particular issue was finally adjudicated in the prior case. It was. The Circuit Court in *Mirabile No. 149* issued a final judgment, which this Court affirmed on April 3, 2024.

The third element requires that the party against whom the doctrine is asserted have been a party to, or in privity with a party to, the prior case. Mr. Mirabile was the plaintiff in both cases.

The fourth element is whether the potentially-estopped party had a fair opportunity to be heard in the prior case. The procedural history of the prior case establishes that he did.[6] This Court's decision in *Mirabile No. 149* thus resolves the issue of whether Mr. Mirabile was entitled to either of the types of interest he claimed. In short, he was not.

The final judgment in *Mirabile No. 149* as to Mr. Mirabile's statutory interest claims in that case is fatal to Mr. Mirabile's identical claims against Mr. Robinson in this case. To prevail on his malpractice claim in this case, Mr. Mirabile had to prove that Mr. Robinson's conduct proximately caused Mr. Mirabile's loss of his damages claims in the underlying case against Ms. Leiter. *See Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 239 (2010) (listing "loss to the client proximately caused by [the attorney's] neglect of duty" as an element of a legal malpractice claim) (quotation marks and citation omitted); *see also id*. at 233 (stating that the plaintiff must prove a "trial within a trial" when suing the lawyer for negligently litigating a case). The judgment in *Mirabile No. 149* established that Mr. Mirabile waived his claims against Ms. Leiter in 2010 by signing an agreement in which he expressly agreed to release past and future claims against her. When

[6] As recited in Mr. Mirabile's Fourth Amended Complaint and in a memorandum opinion issued by the Circuit Court on April 18, 2022, Mr. Mirabile and Ms. Leiter began their litigation over the partnership property in 2008 and entered into the settlement agreement in December 2010. In its December 2010 Consent Order, the Circuit Court incorporated the agreement and retained jurisdiction. In April 2011, the siblings' litigation began again. The court appointed a trustee in 2018, and continued to address the parties' disputes up to Mr. Mirabile's appeal on January 31, 2023. As to *Mirabile No. 149* in particular, Mr. Mirabile moved for summary judgment and thereby represented that there was no dispute as to material fact and that he was entitled to judgment as a matter of law. Nothing suggests that he was deprived of a fair opportunity to be heard.

we assume the truth of Mr. Mirabile's allegation that he first retained Mr. Robinson in 2016, and note the lack of any allegation that Mr. Robinson represented Mr. Mirabile in 2010, it becomes apparent that Mr. Mirabile cannot establish that any act by Mr. Robinson caused the loss of Mr. Mirabile's litigation against Ms. Leiter.

In sum, we affirm the Circuit Court's dismissal of Mr. Mirabile's claims against Ms. Leiter because this Court's mandate in *Mirabile No. 149* conclusively establishes that the alleged conduct of Mr. Robinson did not cause the damages that Mr. Mirabile claims. We do so because remanding the case to the Circuit Court on this issue would waste the court's and the parties' resources.

C. The Circuit Court Did Not Err When it Dismissed Count 2, in which Mr. Mirabile Alleged that Mr. Robinson Caused Him to Lose Rental Income, Because, as a Matter of Law, Mr. Mirabile was not Entitled to that Income.

Mr. Mirabile asserts arguments regarding his causes of action generally without differentiating between the Count 1 claims for statutory interest and the Count 2 claims for rental income. However, all of his arguments on the merits of the Circuit Court's rulings go to its application of the statute of limitations and waiver doctrines to the Count 1 claims. His brief does not contest, or even mention, the Circuit Court's conclusion that the agreement did not entitle him to the rental income that he claimed. It appears that Mr. Mirabile abandoned his appeal of the dismissal of Count 2.

In any event, in the interest of finality, we hold as a matter of law that the Circuit Court construed the agreement correctly when it held that the agreement did not entitle Mr. Mirabile to rental income from the Pulaski properties. That is so for two reasons.

First, the agreement did not include those properties on the list of properties for which Ms. Leiter was required to remit the rental income to Mr. Mirabile. Second, Mr. Mirabile waived his claim to that income as compensation for construction services when he signed the agreement, which contained an integration clause by which he expressly waived all future claims not addressed in the agreement. *See Mirabile No. 149*, 2024 WL 1431259, at *7 (holding that Mr. Mirabile was bound by the integration clause). An appeal on this issue thus would have lacked merit.

As with Count 1, no act by Mr. Robinson caused the damages that Mr. Mirabile alleged.

D. The Circuit Court Neither Erred nor Abused its Discretion in its Conduct of the Motions Proceedings, Whether by Taking Notice of the Parties' Years of Litigation, Purportedly Treating the Motion to Dismiss as a Motion for Summary Judgment, or Ruling Orally on the Motion to Dismiss From the Bench.

Mr. Mirabile asserts several arguments concerning the Circuit Court's conduct of the proceedings on Mr. Robinson's motion to dismiss. None establishes grounds for reversal under any standard of review.

First, Mr. Mirabile protests that the Circuit Court "committed legal error by allowing the ten years of litigation between [Mr. Mirabile] and [Ms.] Leiter to function as prejudice to the application of law to the facts" in Mr. Mirabile's lawsuit against Mr. Robinson. As evidence of that "prejudice," Mr. Mirabile states that the court referred twice to the fact that the litigation between the siblings had gone on for years and that the court had "allowed" Mr. Robinson's counsel to "spend a considerable amount of time [at the motions hearing] rehashing the ten years of litigation between brother and sister…." Mr.

Mirabile's Fourth Amended Complaint contains a section entitled "Background Facts." In turn, that section contains numerous allegations about the litigation that began in 2008 and led to the agreement; the litigation initiated in 2016; Mr. Robinson's representation of Mr. Mirabile in beginning in 2016, when, the complaint alleges, "the dispute had been going on for approximately seven years"; and the litigation initiated by Mr. Mirabile's motion to rescind the agreement. Presumably, those allegations were put in the complaint for the court to read, and, further, to accept as true for purposes of a motion to dismiss. Mr. Mirabile's first protest lacks any basis in law or fact.

Second, as he argued in *Mirabile No. 149*, Mr. Mirabile asserts that the Circuit Court erred in treating Mr. Robinson's motion as a motion to dismiss, as opposed to a motion for summary judgment, by considering facts "outside the four corners" of his complaint. The principles that this Court explained in *Mirabile No. 149* apply here also, and we incorporate that explanation. *See id*., *5-6. We also reach the same result: The Circuit Court did not err in its treatment of Mr. Robinson's motion. Specifically, with regard to the principle that a court may consider documents attached to a motion to dismiss relating to the claimant's right to bring a claim without converting the motion to a motion for summary judgment, *see Tomran, Inc. v. Passano*, 391 Md. 1, 10 n.8 (2006), we note that the two exhibits attached to Mr. Robinson's motion to dismiss—docket entries from Mr. Mirabile's protracted litigation with his sister and a memorandum opinion that the Circuit Court issued during that litigation—went to Mr. Mirabile's right to bring his claim, not to the merits of that claim.

In any event, we note that, in opposing the motion, Mr. Mirabile himself treated the motion as a summary judgment motion under Maryland Rule 2-501 by attaching to his opposition numerous exhibits, including his own affidavit on the merits of his claim. While seeming to proceed under the summary judgment rule, however, Mr. Mirabile did not file an affidavit that identified any facts in Mr. Robinson's exhibits that he wished to refute but could not without more time in which to conduct discovery or gather admissible facts. *See* Maryland Rule 2-501(d) (providing that if the non-moving party files an affidavit showing the party's inability to set forth facts "essential to justify the opposition," the court may deny a motion for summary judgment or continue it to "permit affidavits to be obtained or discovery to be conducted[.]"). In this Court, Mr. Mirabile has neither identified the facts he would have liked to dispute nor explained how the standard of review applicable to summary judgment would have changed the result below. Either way, we would have reviewed the Circuit Court's conclusions of law *de novo* had we not resolved the case on the basis of collateral estoppel.

Finally, Mr. Mirabile protests that the Circuit Court erred by issuing its ruling from the bench and, in his view, by failing to articulate its reasoning. Mr. Mirabile cites no authority for the proposition that a Circuit Court lacks the power to grant a motion to dismiss orally. As for the articulation of that decision, the Circuit Court's reasoning, especially when read in the context of the hearing as a whole, was sufficiently clear for this Court's review. These protests, too, are baseless.

IV

Conclusion

For the reasons discussed above, we affirm the judgment of the Circuit Court for Baltimore County.

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