Circuit Court for Baltimore County
Case No. C-03-CV-20-003902

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 528

September Term, 2021

VINCENT P. MONA, *et al.*

v.

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., *et al.*

Fader, C.J.,**
Friedman,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 9, 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.

** Chief Judge Matthew J. Fader, now Chief Judge of the Court of Appeals of Maryland, was a member of the panel assigned to consider this appeal prior to his elevation to the Court of Appeals. Chief Judge Fader did not participate in the drafting of this opinion or its adoption.

In this case we are asked to review the grant of a motion to dismiss filed on behalf of Appellees, Arthur J. Gallagher Risk Management Services, Inc. and its employee, Dennis C. Ourand. In such a case, we accept as true the facts as pleaded by the Appellants, Vincent Patrick "Cap" Mona,[1] Three Palms, LLC, and Clinton Investment Group, LLC, and must evaluate if they state a cause of action. *See Heavenly Days Crematorium, LLC v. Harris, Smariga and Assocs., Inc.*, 433 Md. 558, 568 (2013). Because we shall hold that they do in part and with respect to certain plaintiffs, we shall reverse the decision of the circuit court in part and remand the case for trial.

BACKGROUND

Cap Mona was the sole owner of three businesses: Mona Electric Group, Inc.; Three Palms Design Build, LLC; and Clinton Investment Group, LLC.[2] Beginning in 2016 (and renewed in 2018), Mona Electric hired Arthur J. Gallagher Risk Management Services, Inc. and its chief operating officer, Dennis C. Ourand, as an insurance broker. The Compensation Agreement between Mona Electric and Gallagher, in exchange for $135,000 per year, required Gallagher to provide "ongoing advice, coverage analysis, and critique of policy language," as well as "negotiation and placement of all insurance as per … direction." Mona Electric was the only "client" listed on the Compensation Agreement, but

[1] In this opinion, we will refer to Mr. Mona by his nickname, "Cap," to avoid confusion with the company that bears his surname and because that is consistent with this Court's past practice regarding Mr. Mona. *See Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 686 (2007).

[2] As we shall explain later in this opinion, on or around November 13, 2020, Cap sold his interest in Mona Electric, only, to ArchKey Intermediate Holdings, LLC. He retained his sole ownership of Three Palms and Clinton Investment Group.

Gallagher also presented Cap Mona, as representative of Mona Electric, with a Final Insurance Proposal identifying Three Palms and Clinton Investment Group as "additional insureds" for which it would obtain "all lines" of insurance during the relevant period. Although Gallagher obtained insurance for Mona Electric from Travelers Property Casualty Company of America ("Travelers"), it failed to obtain coverage for Three Palms and Clinton Investment Group.

During the period of insurance coverage, an employee of Three Palms and Clinton Investment Group stole money belonging to the companies. Cap Mona, on behalf of Three Palms and Clinton Investment Group, filed a claim with Travelers for $999,119.02 under the crime coverage portion of the insurance policy. Travelers declined to pay because the entities that suffered the loss, Three Palms and Clinton Investment Group, were not insured under the policy.

After the theft and the rejection of the insurance claim, Cap Mona sold Mona Electric to ArchKey Intermediate Holdings, Inc. As part of the purchase and sale of Mona Electric, ArchKey and Cap Mona entered a letter agreement assigning the proceeds of this insurance claim to Cap Mona, Three Palms, and Clinton Investment Group. *See infra* § I.

In October 2020, Cap Mona instituted a lawsuit in the Circuit Court for Baltimore County against Gallagher and Ourand (collectively "Gallagher"), asserting causes of action for negligence; negligent misrepresentation; breach of fiduciary duty; and breach of contract. After Gallagher moved to dismiss the Complaint, Cap Mona filed an Amended Complaint naming Three Palms and Clinton Investment Group as additional plaintiffs, correcting the named defendants, including additional factual allegations that explained the

relationship between the parties, and attaching the letter agreement with ArchKey, which had been executed in the meantime. Gallagher again filed a motion to dismiss, this time for lack of standing and failure to state a claim. After a hearing, the circuit court found that because these plaintiffs were not parties to the Compensation Agreement between Mona Electric and Gallagher, they were not proper parties to bring an action. Consequently, the circuit court dismissed all counts of the Amended Complaint. A timely appeal followed requiring us to determine whether the decision to dismiss the Amended Complaint was legally correct. *See Heavenly Days Crematorium*, 433 Md. at 568 (describing appellate standard of review).

ANALYSIS

We begin by noting that, in the context of the provision of insurance, "[i]t is generally accepted … that, when an insurance broker is employed to obtain a policy that covers certain risks and the broker fails (1) to obtain a policy that covers those risks, and (2) to inform the employer that the policy does not cover the risks sought to be covered, an action may lie against the broker, *either* in contract *or* in tort." *Int'l Brotherhood of Teamsters v. Willis Corroon Corp.*, 369 Md. 724, 737 (2002) (emphasis added). Here, Cap Mona, Three Palms, and Clinton Investment Group brought actions both in contract (breach of contract) and in tort (negligence, negligent misrepresentation, and breach of fiduciary duty). The circuit court dismissed each of these claims. As we will explain, we affirm the circuit court's dismissal of the breach of contract and fiduciary duty claims but reverse the circuit court's dismissal of the negligence and negligent misrepresentation claims brought by Three Palms and Clinton Investment Group.

I. BREACH OF CONTRACT

We begin by addressing the breach of contract claim. To state a claim for breach of contract, a plaintiff must allege (1) the existence of a contractual obligation owed by the defendant to the plaintiff; and (2) a material breach of that obligation by the defendant. *RRC N.E., LLC v. BAA Md., Inc.*, 413 Md. 638, 655 (2010). Here, the Amended Complaint alleges that the Compensation Agreement between Mona Electric and Gallagher created a contractual duty for Gallagher to counsel Cap Mona and Mona Electric on their specialized insurance needs and to procure adequate insurance coverage for Mona Electric. The Amended Complaint further alleges that "[Gallagher] breached these contractual duties by failing to properly secure theft coverage for [Cap Mona] and his companies," resulting in a loss of $999,119.02. The problem here, however, is that Mona Electric is the sole named client on the Compensation Agreement with Gallagher, and Mona Electric is not a party to this lawsuit. In fact, there doesn't seem to be much question that none of the plaintiffs—Cap Mona, Three Palms, or Clinton Investment Group—is in a contractual relationship with Gallagher.[3] Rather, the basis for the circuit court's dismissal and the question before us on appeal seems to be only whether ArchKey and Mona Electric have effectively assigned their rights to sue Gallagher to Cap Mona, Three Palms, and Clinton Investment Group.

[3] Cap Mona, Three Palms, and Clinton Investment Group have not pleaded a theory that Three Palms and Clinton Investment Group were third party beneficiaries of the contract between Mona Electric and Gallagher, so we need not consider that potential theory of contractual liability. *See generally Dickerson v. Longoria*, 414 Md. 419, 452 (2010) (regarding third-party beneficiary status).

The contract governing this assignment is the letter agreement, which we have reproduced below:

Vincent P. Mona
Southern Pines Drive
Naples, FL 34103-2813
capmona@aol.com

November 13, 2020

Mona Electric Group, Inc.
7915 Malcom Road, Suite 102
Clinton, MD 20735
Attn: David McKay

ArchKey Intermediate Holdings Inc.
1527 Larkin Williams Road
St. Louis, MO 63026
Attn: Patrick A. Kriegshauser

Re: Travelers Claim Number 083-FA1-T1908563-NR; CAN Claim Number E2F07226

Dear Sirs:

Reference is made to (i) those certain insurance claims with the reference numbers set forth above (the "Insurance Claims") and (ii) that certain Stock Purchase Agreement dated the date hereof (the "Purchase Agreement") among ArchKey Intermediate Holdings inc. ("ArchKey"), Mona Electric Group, Inc. ("MEG") and Vincent P. Mona ("Cap Mona").

The Insurance Claims were filed with (i) Travelers Insurance ("Travelers") and CNA Commercial Liability ("CNA"), respectively on behalf of Three Palms Design Build, LLC and Clinton Investment Group, LLC (the "Cap Real Estate Entities") under Travelers insurance policy number 098-LB-106832549 and CNA insurance policy number 6075713931, each held in the name of MEG. The Insurance Claims are claims for loss to the Cap Real Estate Entities in an amount totaling $999,119.02 (as of October 21, 2019) resulting from employee theft. Claims have also been filed against Arthur J. Gallagher & Co. and Dennis C. Ourand.

Immediately prior to the closing of the transactions contemplated by the Purchase Agreement (the "Closing"), Cap Mona owned 100% of the equity in the Cap Real Estate Entities and MEG. Immediately following the Closing, Cap Mona will no longer own any equity or other interests in MEG, but will retain his 100% ownership interest in the Cap Real Estate Entities.

MEG and ArchKey hereby (i) acknowledge and agree that any ***protocols***[4] paid by or on behalf of Travelers or its affiliates, and/or CNA, and/or Arthur J. Gallagher & Co. and Dennis Ourand, in respect of the Insurance Claim ("Proceeds") are the property of the Cap Real Estate Entities and Cap Mona and (ii) assign any and all right, title and interest ether of them may have in or to the Proceeds to the Cap Real Estate Entities and Cap Mona. Within three (3) business days of the receipt of any Proceeds, MEG agrees to, and ArchKey agrees to cause MEG to, pay to the Cap Real Estate Entities by wire transfer of immediately available funds to an account previously designated in writing by Cap Mona the amount of such received Proceeds.

If you are in agreement with the foregoing, please sign below and return to me via email a PDF copy your executed signature, whereupon this letter agreement shall become a binding agreement among the parties hereto.

Sincerely,

Vincent P. Mona

ACCEPTED AND AGREED BY:

MONA ELECTRIC GROUP, INC.

By: David E. Howell
David E. Howell, President

[4] We note that the meaning intended by the parties by use of the word "protocols," which we have italicized and emboldened above, is unclear. The ordinary dictionary meaning of "protocol" is gibberish in this context. *Protocol*, MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (11th ed.). Specialized legal dictionaries provide no guidance. *See e.g. Protocol*, BLACK'S LAW DICTIONARY (11th ed. 2019). "Protocol" is not readily apparent as a term of art in the insurance context, and the parties offer no help. We think it possible that the use of the word "protocols" is a typographical error and that the parties intended it to mean "proceeds." Regardless, we have uncovered no reason to believe that it is intended to mean anything other than "proceeds" and shall proceed as if that is the case.

ARCHKEY INTERMEDIATE HOLDINGS, INC.

By: Patrick A. Krieghauser
Patrick A. Krieghauser, EVP & CFO

Gallagher argues that this letter agreement assigned only the right to proceeds from the insurance claims and not the right to any legal claims. Three Palms and Clinton Investment Group argue that this is an unreasonably narrow reading of the letter agreement and that it is "much more reasonable" to interpret it as also assigning the right to pursue a legal claim.

Maryland follows the objective theory of contracts and interprets them as a reasonable person would have interpreted the contract at the time it was entered into, regardless of the parties' subjective intent. *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 506-07 (2021). Here, we think the language is plain that ArchKey and Mona Electric assigned the proceeds of their insurance claim to Cap Mona, Three Palms, and Clinton Investment Group but did not assign to them the right to institute and conduct litigation on their behalf. Although there are no magic words necessary to effectuate a valid assignment of litigation, we hold that this letter agreement is insufficient.[5]

Because Mona Electric is the only entity to whom Gallagher owed a contractual duty, and because Mona Electric did not validly assign its legal rights to Cap Mona, Three Palms, and Clinton Investment Group, we affirm the circuit court's dismissal of the breach of contract count as to all plaintiffs.

[5] We do not speculate as to whether, after issuance of this opinion, ArchKey and Mona Electric will choose to enter a broader assignment agreement with Cap Mona, nor do we purport to decide whether Cap Mona may, upon receipt of such an assignment, amend his complaint to allege the broader assignment.

II. NEGLIGENCE

We turn next to the negligence claim. To state a claim for the tort of negligence, a plaintiff is required to allege four elements: (1) the existence of a duty owed by a defendant to the plaintiff (or to a class of which the plaintiff is a part); (2) a breach of that duty; (3) a legally cognizable causal relationship between breach of duty and the harm suffered; and (4) damages. *Andrea J. Hancock, et al. v. Mayor & City Council of Baltimore, et al.*, __ Md. __, No. 57, Sept. Term, 2021, slip op. at 9 (Aug. 15, 2022). In this case, and at this stage in the proceedings, the parties disagree only as to the first element, whether Gallagher owed a tort duty to Cap Mona, Three Palms, and Clinton Investment Group.[6]

The question of the existence of a tort duty is a question of law to be decided by the court. *Sadler v. Loomis Co.*, 139 Md. App. 374, 396 (2001) (citing *Valentine v. On Target, Inc.*, 353 Md. 544, 549 (1999)). Whether one party owes another party a tort duty "represents a policy question of whether the specific plaintiff is entitled to protection from the acts of defendant." *Hancock*, slip op. at 10 (quoting *Gourdine v. Crews*, 405 Md. 722, 745 (2008)). As the Court of Appeals recently reiterated, two major considerations guide our determination of whether to recognize a tort duty:

> [1] The nature of the harm likely to result from a failure to exercise due care, and [2] the relationship that exists between the parties. Which of those considerations receives more weight depends on whether the failure to exercise due care creates a risk of economic loss only—in which case courts have generally required an intimate nexus between the parties for

[6] Gallagher also contends that Cap Mona, individually, has suffered no damages. For the reasons that follow, however, we need not address the damages element of his claim.

> there to be tort liability—or whether the risk is one of personal injury—in which case the principal determinant of duty becomes foreseeability.

Id. at 11 (cleaned up). Here, the failure to exercise due care created a risk of economic loss only. We are, therefore, concerned with the relationship ("intimate nexus") between the parties over the foreseeability of the harm likely to result from a failure to exercise due care.

In the context of insurance, "the tort duty of an agent or broker stems from a relationship of 'confidence and trust' that an insured has placed in an 'experienced and knowledgeable' insurance agent or broker." *Sadler*, 139 Md. App. at 395 (citing *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 657 (1999)). An agent or broker owes a duty to exercise reasonable care and skill in performing their duties. *Id.* And if an insurance agent or broker fails to do so they may become liable to those who are caused a loss by the failure. *Id.* As noted above, the duty of a broker "employed to obtain a policy that covers certain risks" includes obtaining a policy that covers those risks, or at least, informing the employer that the policy does not cover the risks sought to be covered. *See Teamsters*, 369 Md. at 737. Moreover, "when an insurance agent or broker holds themselves out as a highly skilled insurance expert, and the insured relies to [their] detriment on that expertise," this may create a "special relationship" that gives rise to a heightened duty to affirmatively advise the insured regarding their insurance coverage. *Sadler*, 139 Md. App. at 392. "A special relationship may also be demonstrated by a long[-]term relationship of confidence, in which the agent or broker assumes the duty to render advice, or has been asked by the

insured to provide advice, and the adviser is compensated accordingly, above and beyond the premiums customarily earned." *Id.*

Here, the Amended Complaint alleges sufficient facts to plead the existence of a tort duty. According to the Amended Complaint, Gallagher was employed to obtain insurance coverage to protect Cap Mona "from the risks associated with his various business entities, including Mona Electric Group, Three Palms, and [Clinton Investment Group]." Gallagher represented that Three Palms and Clinton Investment Group would be insured under "all lines" of coverage, but then failed to actually procure the promised insurance for these entities. These facts alone would be sufficient to plead a duty. The Amended Complaint, however, goes further by alleging additional facts sufficient to plead the existence of a "special relationship" giving rise to a heightened duty of care. According to the Amended Complaint, Gallagher "held themselves out to Plaintiffs as having expertise in insurance brokerage and advisory services, … represented that they were capable of tailoring a specialized insurance program to Plaintiffs' needs, and undertook to obtain the necessary coverages for such an insurance program." In exchange for these advisory services, Gallagher was compensated $135,000 per year in addition to commissions customarily earned. Assuming the truth of these factual allegations, the Amended Complaint also sufficiently pleaded the existence of a heightened duty of care.

The more difficult question in this case is *to whom* Gallagher owed this duty. Here, as noted above, the only contractual relationship was between Gallagher and Mona Electric. As such, Gallagher argues that it owed no tort duty to Cap Mona, Three Palms, or Clinton Investment Group. This argument, however, ignores the fact that the "intimate

nexus" giving rise to a duty to guard against economic loss can, *but need not*, be satisfied by contractual privity. *Sadler*, 139 Md. App. at 397 (quoting *Jones*, 356 Md. at 658) (explaining that "intimate nexus is satisfied by contractual privity *or its equivalent*") (emphasis added). The Amended Complaint here alleges the existence of a relationship between the parties that is more extensive and more long-term than the 2-year contractual relationship represented in the Compensation Agreement. Specifically, the Amended Complaint alleges that beginning in 2016—two years before the 2018 Compensation Agreement was signed—Cap Mona retained Gallagher "as the insurance broker and 'licensed advisor' for the placement of his companies' insurance coverage." According to the Amended Complaint, "[Gallagher] undertook to counsel [Cap Mona] on his and his companies' specialized insurance coverage for [Cap Mona] and his companies, including Three Palms and [Clinton Investment Group.]" The Amended Complaint alleges that Three Palms and Clinton Investment Group were listed on a Final Insurance Proposal Gallagher presented to Cap Mona as "additional insureds" for which Gallagher represented that it would obtain "all lines" of insurance during the relevant period. The truth of these factual allegations will be tested and resolved at trial. At this stage in the proceeding, however, we assume the truth of the facts as pleaded and view any reasonable inferences that may be drawn from those facts in the light most favorable to the plaintiffs. *Heavenly Days Crematorium*, 433 Md. at 568.[7] In so doing, we conclude that Three Palms and Clinton

[7] At several points in its brief, Gallagher argues that we should not assume the truth of the facts as pleaded because they contradict the plain language of the Compensation Agreement. For example, Gallagher argues that any allegation that there was a relationship between Gallagher and any entity other than Mona Electric should not be credited because

Investment Group have sufficiently pleaded the existence of an "intimate nexus" sufficient for Gallagher to owe them a tort duty.[8] As a result, the circuit court erred by granting Gallagher's motion to dismiss their negligence claims, and we reverse the dismissal of this count.

By contrast, we hold that Gallagher did not owe a tort duty to Cap Mona, individually. Rather, the Amended Complaint reveals that Cap Mona dealt with Gallagher solely as a representative of the corporate entities. This is not an "intimate nexus," nor is it the equivalent of contractual privity. As a result, we affirm the dismissal of his individual negligence claim.[9]

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the Compensation Agreement identifies the relationship as being only between those two entities. Gallagher further argues that because the relationship was limited to these two parties, any representations that Gallagher made were only to Mona Electric, and not Cap Mona, Three Palms, or Clinton Investment Group. We disagree that there is any contradiction. While the Compensation Agreement identifies only Mona Electric as a "client," the Amended Complaint alleges that the relationship began two years before the Compensation Agreement was signed and involved Cap Mona, in his capacity as sole owner and representative of multiple businesses. The facts alleged in the Amended Complaint simply plead the existence of a relationship that was more extensive, and more long-term, than the relationship memorialized in the Compensation Agreement. The precise nature of the relationship between Gallagher, on the one hand, and Cap Mona and his various companies on the other, and the context in which any representations were made are factual issues to be resolved by the factfinder at trial.

[8] It was only because of Gallagher's failure to obtain the promised coverage that there was not a contractual relationship between the parties. Had Gallagher properly performed its duties, there can be no doubt that Three Palms and Clinton Investment Group would have been "additional insureds" and therefore in contractual privity with Gallagher. In our view, this fact cements the idea that the relationship was the equivalent of contractual privity.

[9] Because we hold that Gallagher owed him no tort duty, we need not reach the separate question of whether Cap Mona, individually, suffered damages. *See supra* n.6. We

III. NEGLIGENT MISREPRESENTATION

The elements of a cause of action for negligent misrepresentation are well-understood. A plaintiff must allege that: (1) a defendant, owing a duty of care to the plaintiff, negligently asserts a false statement; (2) the defendant intends that the statement will be acted upon by the plaintiff; (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which if erroneous, will cause loss or injury; (4) the plaintiff, justifiably, takes action in reliance on the statement; and (5) the plaintiff suffers damages that are proximately caused by the defendant's negligence. *Lloyd v. General Motors Corp.*, 397 Md. 108, 135-36 (2007) (quoting *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 336-37 (1982)).

Here, the parties primarily disagree about whether Gallagher owed a tort duty to any of the plaintiffs. As with the negligence claim, Gallagher argues that its duty is defined solely by the Compensation Agreement. For the reasons discussed above, however, we hold that even in the absence of contractual privity, Gallagher owed a tort duty to Three Palms and Clinton Investment Group but not Cap Mona.

As to the other elements of negligent misrepresentation, assuming the truth of the facts as pleaded and viewing the reasonable inferences that may be drawn from those facts in the light most favorable to Three Palms and Clinton Investment Group, the other elements of negligent misrepresentation have also been sufficiently pleaded to survive a

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see no reason, however, why Three Palms and Clinton Investment Group cannot recover for the expenditures made on their respective behalf by their representative, Cap Mona.

motion to dismiss. The Amended Complaint alleges that Gallagher made several false statements on which Three Palms and Clinton Investment Group relied, including that Gallagher "professed an understanding of Plaintiff's business and his insurance needs and claimed that they could design an insurance program tailored to Mona's specific needs;" that Gallagher would "provide ongoing advice, coverage analysis, and critique of policy language;" and, most importantly, that "Three Palms and Clinton Investment Group would be listed as insureds for 'all lines' of coverage" (element 1). The Amended Complaint also alleges that Gallagher held itself out as an expert in brokerage and advisory services, from which we can reasonably infer that Gallagher intended for its representations to be acted upon by Three Palms and Clinton Investment Group and that it had knowledge that the companies would probably rely on those representations, which if erroneous, would cause loss or injury (elements 2 and 3). The Amended Complaint further alleges that because Gallagher did not review the terms of the policy with Cap Mona or advise him that neither company was insured, the companies "did not know that they were uninsured and, therefore, did not seek additional insurance coverage." This was sufficient to plead reliance (element 4).[10] And finally, the Amended Complaint alleges that Three Palms and Clinton

[10] Gallagher disagrees, arguing that reliance on any purported representations made in the insurance proposal was not justified as a matter of law because Cap Mona, on behalf of his companies, had a duty to read the terms of the insurance policy and notify Gallagher immediately of any defect. *Twelve Knotts Ltd. Partnership v. Fireman's Fund Ins. Co.*, 87 Md. App. 88, 104-05 (1991). "[T]he issue[, however,] is not whether the insured read the policy but rather is the reasonableness of [their] reliance on the agent's representation that the policy as worded actually covered the risk for which insurance was requested." *Teamsters*, 369 Md. at 739. The reasonableness of Three Palms and Clinton Investment Group's reliance on Gallagher's representations about its insurance coverage is a fact-specific inquiry that must be proven at trial. *See id.* at 740-41 (finding summary judgment

Investment Group suffered a theft loss in the amount of $999,119.02, which they could not recover "[a]s a direct and proximate result of [Gallagher's] negligent acts and omissions." (element 5). Because all the elements of negligent misrepresentation have been sufficiently pleaded, the circuit court erred by dismissing this count as it relates to Three Palms and Clinton Investment Group.

IV. BREACH OF FIDUCIARY DUTY

The Amended Complaint contained a very skeletal count alleging breach of fiduciary duty. The circuit court dismissed this count. We affirm that dismissal.

Recently, the Court of Appeals clarified that breach of fiduciary duty is an independent cause of action and is not limited to situations in which only equitable relief is sought. *Plank v. Cherneski*, 469 Md. 548, 592-602 (2020) (rejecting "Interpretation Numbers 1 and 3" and adopting "Interpretation Number 2").

In the case before us, Cap Mona, Three Palms, and Clinton Investment Group argue that they needed only to plead the three essential elements of a breach of fiduciary duty claim: "(1) the existence of a fiduciary relationship; (2) breach of the duty owed by the fiduciary to the beneficiary; and (3) harm to the beneficiary." *Plank v. Cherneski*, 469 Md. 548, 559, 625 (2020). We disagree. We read *Plank* as creating an obligation for plaintiffs to both plead and ultimately prove not just the *prima facie* elements, but the "*essential characteristics* … of the [specific] fiduciary relationship in question and the remedies that

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inappropriate because the question of reasonableness was for the trier of fact to determine). At this point, however, the allegations of the Amended Complaint are sufficient to survive a motion to dismiss.

historically have been available to address a breach of that [specific] fiduciary relationship." *Plank*, 469 Md. at 598 (emphasis added) (quoting with approval Kevin F. Arthur, *Breach of Fiduciary Duty: a Cause of Action in Maryland?*, Federal Bar Association Maryland Chapter Newsletter (March 2013)); *see also Plank*, 469 Md. at 625 (describing the "court … permit[ting] the [breach of fiduciary duty] count to proceed" and that it may be "*pleaded* without limitation as to whether there is another viable cause of action to address the same conduct") (emphasis added). Although the Maryland Rules dictate that "a pleading shall be simple, concise, and direct," they also require that a pleading set forth the facts necessary to establish a cause of action and entitlement to relief. MD. R. 2-303(b); *see also* MD. R. 2-305. The complaint "must set forth a cause of action with sufficient specificity—bald assertions and conclusory statements by the pleader will not suffice." *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284-85 (2018) (cleaned up). Here, the plaintiffs failed to plead any of the "essential characteristics" of this specific fiduciary duty. *See, e.g.* Amended Complaint at ¶70 (describing Gallagher's obligation to use "reasonable skill and care," "good faith and fair dealing," and "properly advise," each of which describe ordinary tort, not fiduciary, duties). Nor did they plead any

of the statutory, contractual, or common law remedies for such a breach.[11] We, therefore, affirm the circuit court's decision to grant the motion to dismiss this count.[12]

CONCLUSION

In summary, we hold that the circuit court correctly granted Gallagher's motion to dismiss all claims brought by Cap Mona, in his individual capacity. We affirm that aspect of the circuit court's ruling. We also agree that Mona Electric and ArchKey did not validly assign their rights to pursue legal action to Cap Mona, Three Palms, and Clinton Investment

[11] In this connection, we note that Cap Mona, Three Palms, and Clinton Investment Group have pleaded the same damages on the breach of fiduciary duty claim—$999,119.02—that they did in connection with the ordinary tort and contract claims. That is not an absolute bar, *see Plank* 469 Md. at 625-26 (holding no prohibition on redundant monetary damages in breach of fiduciary duty claims), but causes us to question whether they have grappled with the difficult question of what remedies might be historically available for a breach of this specific fiduciary duty and whether these duties are limited by the contract here.

[12] In reaching this conclusion, we need not reach whether and to what extent the contract between Gallagher and Mona Electric disclaims the creation of a fiduciary relationship between Gallagher and the Cap Mona, Three Palms, and Clinton Investment Group here. We note, however, that the contractual disclaimer is not as broad as Gallagher would have us believe. It provides:

> Gallagher will not be operating in a fiduciary capacity, but only as Client's broker, obtaining a variety of coverage terms and conditions to protect the risks of Client's enterprise. Gallagher will seek to bind those coverages based upon Client's authorization; however, Gallagher can make no warranties in respect to policy limits or coverage considerations of the carrier. Actual coverage is determined by policy language, so read all policies carefully. Contact Gallagher with questions on these or any other issues of concern."

We read this as a disclaimer of fiduciary duties with respect to terms and conditions of clients' policies, i.e., "policy limits and coverage considerations." Gallagher thus disclaims fiduciary responsibility for policy language but does not seem to disclaim fiduciary liability for failing to obtain *any* insurance coverage at all. We need, however, not decide the matter as we affirm the dismissal of the count for breach of fiduciary duty.

Group, and that the circuit court was, therefore, correct to dismiss the breach of contract claim as well. We further hold that the circuit court correctly granted Gallagher's motion to dismiss the breach of fiduciary duty claim. We affirm those aspects of the circuit court's ruling, as well. We hold, however, that the circuit court erred in granting Gallagher's motion to dismiss the negligence and negligent misrepresentation counts brought by Three Palms and Clinton Investment Group. As to those counts only and with respect to those parties only, we reverse the circuit court's ruling and remand this matter to the circuit court for further proceedings.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND REVERSED IN PART AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY.