UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1673

September Term, 2015

KHARYN RAMSAY, *et al.*

v.

SAWYER PROPERTY MANAGEMENT OF MARYLAND, LLC, *et al.*

Arthur,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 4, 2016

*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.

Three groups of residential tenants brought three, separate class-action complaints against the management companies that manage their apartment buildings, as well as the attorney for the management companies.

The Circuit Court for Baltimore County consolidated the three actions and granted the defendants' motions to dismiss. The tenants appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves two related sets of allegations. First, the tenants allege that the management companies have acted as unlicensed debt collectors in violation of Maryland law by collecting consumer claims for another person. Second, the tenants allege that the management companies and their attorney engaged in unfair and deceptive trade practices by placing a stamp on district court forms stating that the documents were communications from a debt collector.

A. Collection Actions under Sawyer Property Leases

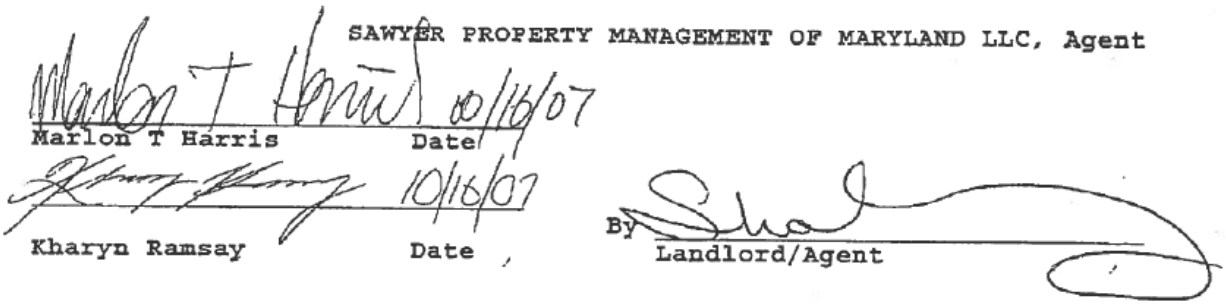
Sawyer Property Management of Maryland, LLC ("Sawyer Property"), is alleged to be a "rental agent" for various property owners. Acting in that role, Sawyer Property regularly executed leases with Maryland residents. A standard Sawyer Property lease begins with the following language:

> . . . SAWYER PROPERTY MANAGEMENT OF MARYLAND LLC agent for [name of property owner], hereinafter referred to as Landlord, does hereby lease unto [name of tenant] hereinafter referred to as Tenant, the premises known as [address of premises] . . . .

One such agreement states that "SAWYER PROPERTY MANAGEMENT OF MARYLAND LLC agent for SRH Woodmoor, hereinafter referred to as Landlord, does

hereby lease" to Kharyn Ramsay the premises known as "6715 F TOWNBROOK DRIVE, Gwynn Oak, MD 21207[.]" For the other plaintiffs, the Sawyer Property leases follow the same format, substituting the names of the tenants, the address of the premises, and the names of the property owner.

The words "SAWYER PROPERTY MANAGEMENT OF MARYLAND LLC, Agent" appear just above signature lines at the bottom of the first page of the leases. An employee of Sawyer Property signed each lease on a signature line above the words "Landlord/Agent":



The remainder of the document sets forth the terms and conditions of the lease. The document refers to the parties only as "Landlord" and "Tenant," but Sawyer Property's name appears on the top of the first two pages:

SAWYER PROPERTY MANAGEMENT OF MARYLAND LLC

LANDLORD AND TENANT AGREE THAT:

1. SECURITY DEPOSIT: Landlord hereby acknowledges receipt from Tenant of the Security Deposit specified on Page 1 of this Lease Agreement, to be held as security for the faithful performance by the Tenant of the covenants, conditions, rules and regulations contained herein. The Security Deposit, or

Sawyer Property collected rent from each of the tenants during the lease terms. Near the end of those terms, a manager for Sawyer Property sent letters to tenants offering to renew the leases.

When tenants defaulted on their rent payments, Sawyer Property retained Jeffrey Tapper, a Maryland attorney and licensed Maryland collection agent, to collect amounts owed under the leases. Tapper commenced a number of actions against tenants in the District Court of Maryland for Baltimore County.

In 2010 and 2011, Tapper filed suits on behalf of Sawyer Property against Kharyn Ramsay, Bryan Bookman, and Andrei Tarasov.[1] On the district court complaint forms, Tapper named Sawyer Property as the plaintiff, and on the lines below he wrote "Agent for" the respective property owner, followed by Sawyer Property's address. For instance, in the action against Ramsay, Tapper described Sawyer Property as "Agent for SRH Woodmoor, LLC[.]" The district court docket identified Sawyer Property as the only plaintiff in each case. Each of those actions resulted in judgments by affidavit in favor of Sawyer Property.

In 2013, Tapper filed a collection complaint against two other tenants, Cheryl Bell and Mia Robinson. Although that complaint sought to recover under a Sawyer Property lease, it identified the plaintiff as "JK2 WESTMINSTER, LLC, CURRENT MANAGING AGENT FOR CARRIAGE HILL APARTMENTS[,]" with an address

[1] The record does not include copies of most of the documents relating to Mr. Tarasov (such as the lease or the district court complaint against him). To establish facts relating to Mr. Tarasov, we have relied on docket entries and on the allegations in his complaint.

identical to that of Sawyer Property. JK2 Westminster obtained an affidavit judgment against Bell and a judgment against Robinson after a trial on the merits.

The record includes little information about the relationship between JK2 Westminster and the other parties. According to pleadings from Bell and Robinson, "[a]t some point during the term of th[eir] lease," JK2 Westminster succeeded Sawyer Property as the managing agent for the property owner. JK2 Westminster collected rent during the remainder of the lease period. JK2 Westminster describes itself as a "successor in interest" of Sawyer Property.

B. Efforts to Enforce the Judgments from the Collection Actions

The second set of allegations in this case concerns statements made by Tapper in his efforts to collect judgments on behalf of Sawyer Property and JK2 Westminster.

Maryland Rule 3-633(b) allows a judgment-creditor to request an order requiring a judgment-debtor to appear for an examination under oath concerning the debtor's assets. To make such a request, a judgment-creditor may fill out a standard district court form, DC/CV 32. Tapper used that form.

The upper portion of the DC/CV 32 form displays the district court seal, the words "District Court of Maryland for Baltimore County," and the court's address. Immediately below, the form contains spaces for the case number and caption. On the forms directed to Ramsay, Bookman, and Tarasov, Tapper identified the "Plaintiff/Judgment Creditor" as Sawyer Property. On the forms directed to Bell and Robinson, Tapper identified the judgment-creditor as "JK2 Westminster, LLC, Current Managing Agent, et al[.]"

In an empty area below the name of the judgment debtor, Tapper added the following language:

> THIS COMMUNICATION IS FROM A DEBT COLLECTOR. IT IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

This language is based on 15 U.S.C. § 1692e(11), a provision of the federal Fair Debt Collection Practices Act. In "initial communication[s]" with a consumer, § 1692e(11) requires debt collectors to disclose "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose." "[I]n subsequent communications," § 1692e(11) requires debt collectors to disclose only "that the communication is from a debt collector." The first of these statements is sometimes referred to as a "mini-*Miranda* warning," *see, e.g.*, *Garfield v. Ocwen Loan Servicing, LLC*, 811 F.3d 86, 92 (2d Cir. 2016), because like a *Miranda* warning in a criminal case, it informs recipients that anything they say may be used against them.[2]

The middle portion of the DC/CV 32 form is the applicant's "Request for Order Directing Defendant to Appear for Examination in Aid of Enforcement of Judgment." That part of the document includes an affidavit stating that the creditor has obtained a judgment against the debtor on a particular date in a particular amount.

The lower portion of the DC/CV 32 form is the actual "Order of Court," which requires the debtor to appear in court for an examination under oath. The order informs

[2] Tapper had put similar language on the district court complaints. Those statements are not the subject of any claim.

the debtor: "If you refuse or without sufficient excuse neglect to obey this Order, you may be punished for contempt." At the bottom, the order reiterates: "YOU ARE ORDERED TO APPEAR IN PERSON." Once the court signs this portion of the document, it becomes an enforceable order that the creditor may serve on the debtor to compel the debtor's appearance. *See* Md. Rule 3-633(b).[3]

Tapper served the orders on the tenants against whom he had obtained judgments. Robinson appeared for an oral examination. Bookman appeared for an initial oral examination, but failed to appear in response to an order for a subsequent examination. Ramsay, Tarasov, and Bell did not appear for oral examinations.

When a debtor fails to appear for an oral examination, the creditor can seek a contempt order through another district court form, DC/CV 33. This form consists of a "Request for Show Cause Order for Contempt," which is filled out by the creditor, and a "Show Cause Order for Contempt," which is signed by the court. The order requires the debtor to appear in court to show cause why he or she should not be held in contempt for failing to appear for the court-ordered examination. A notice at the bottom states: "If you fail to appear, an order may be issued resulting in your arrest and you may be found in contempt of court." The reverse side of the form explains that the debtor will be subject to arrest if the debtor does not appear for the scheduled hearing, and it gives instructions for seeking legal representation and avoiding an arrest.

[3] A copy of the DC/CV 32 form that Tapper served on Ramsay appears in Appendix A to this opinion.

Tapper submitted DC/CV 33 forms on behalf of Sawyer Property and JK2 Westminster. On the upper portion of the forms, he stamped or typed the same mini-*Miranda* language that he had used on the other forms. Once the court signed each form, Tapper served the orders on the tenants who had failed to appear for oral examinations.[4]

When Ramsay, Bookman, Tarasov, and Bell failed to attend their respective show-cause hearings, the court issued body attachments against them. Each (except Bell) was arrested and released shortly thereafter.

C. Ramsay's Action against Sawyer Property in Federal Court

A few months after her arrest, Ramsay commenced a class action lawsuit against Sawyer Property and Tapper in the United States District Court for the District of Maryland. Ramsay claimed that Tapper and his clients had violated the federal Fair Debt Collection Practices Act and the Maryland Consumer Debt Collection Act, Md. Code (1975, 2013 Repl. Vol.), §§ 14-201 to -203 of the Commercial Law (CL) Article, by collecting the amounts due under her lease even though Sawyer Property was not a licensed collection agency. She also claimed that the mini-*Miranda* warning on the DC/CV 32 and 33 forms contained false and misleading representations in violation of both the federal Fair Debt Collection Practices Act and the Maryland Consumer Protection Act, CL §§ 13-301 to -501.

The federal district court dismissed Ramsay's complaint. *Ramsay v. Sawyer Prop. Mgmt. of Maryland, LLC*, 948 F. Supp. 2d 525 (D. Md. 2013) ("*Ramsay I*"). Among

[4] A copy of the DC/CV 33 form that Tapper served on Ramsay appears in Appendix B to this opinion.

other things, the court determined that Ramsay's allegations failed to establish that Sawyer Property was a "debt collector" under a provision of the federal Fair Debt Collection Practices Act that defines that term as a person "'who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due *another*.'" *Id.* at 531 (quoting 15 U.S.C. § 1692a(6)) (emphasis added). The court relied on the documents attached to the complaint, which showed that Tapper had filed the collection lawsuit in the name of Sawyer Property and that Tapper had named Sawyer Property as the judgment-creditor when he enforced the judgments. *Ramsay I*, 948 F. Supp. 2d at 532. The court concluded that the pleadings and exhibits failed to "show that Sawyer Property is an entity that regularly collects debts on behalf of *another*." *Id.* at 531 (emphasis in original).

Ramsay contended that Sawyer had violated a provision of the Fair Debt Collection Practices Act that bars "us[ing] unfair or unconscionable means to collect or attempt to collect any debt" (15 U.S.C. § 1692(f)), because, she said, Sawyer Property was functioning as an unlicensed collection agency in violation of a Maryland Collection Agency Licensing Act, which requires a person to obtain a license if he or she engages in the business of collecting a consumer claim "for . . . another." Md. Code (1992, 2015 Repl. Vol.), § 7-301(a) of the Business Regulation Article ("BR"); BR § 7-101(c)(1). In rejecting that contention, the court reiterated that Sawyer Property had attempted to collect the debt "in its own name." *Ramsay I*, 948 F. Supp. 2d at 536. "Accordingly," the court concluded, "there [wa]s no plausible claim that Sawyer Property required a collection agency license under Maryland law." *Id*.

The court also concluded that Ramsay failed to state a claim under the Fair Debt Collection Practices Act for false or misleading representations. *Id.* at 533-34. The court rejected Ramsay's assertion that Tapper's statements on the DC/CV forms were misleading. According to the court: "Even with the disclosure stamp added by Tapper, [Ramsay] present[ed] no facts illustrating that a person with 'a basic level or understanding and willingness to read with care' would have failed to see that the documents are court orders." *Id.* at 534 (quoting *United States v. Nat'l Fin. Servs.*, 98 F.3d 131, 136 (4th Cir. 1996)).

Although the court dismissed Ramsay's federal claims with prejudice, the court declined to exercise supplemental jurisdiction over Ramsay's related claims under Maryland law. *Id.* at 536-37. Accordingly, the court dismissed Ramsay's state Consumer Debt Collection Act and Consumer Protection Act claims without prejudice. *Id.* at 537.

Ramsay appealed, and the Fourth Circuit affirmed. *Ramsay v. Sawyer Prop. Mgmt. of Maryland, LLC*, 593 Fed. App'x 204 (4th Cir. 2014) ("*Ramsay II*"). The Supreme Court denied Ramsay's petition for certiorari. *Ramsay v. Tapper*, ___ U.S. ___, 135 S. Ct. 2838 (2015).

D. Class Action Complaints in the Circuit Court for Baltimore County

In the aftermath of the federal district court's decision, the tenants (represented by a common attorney) filed three, separate class-action lawsuits in the Circuit Court for Baltimore County. The circuit court dismissed all three complaints after a consolidated

hearing, relying on grounds that were largely common to the three actions. That ruling is under review in this appeal.

Ramsay filed the first complaint in June 2013, a few weeks after the federal court dismissed her federal complaint. Ramsay reasserted the same state-law claims that the federal court had dismissed without prejudice. She claimed that Sawyer Property had violated the Consumer Debt Collection Act by attempting to collect debts "for . . . another" without a Maryland collection agency license. She also claimed that Tapper had engaged in an "unfair or deceptive" trade practice under the Consumer Protection Act by adding the mini-*Miranda* warnings to court forms. As exhibits to the complaint, Ramsay included copies of her lease, the district court complaint against her, and the DC/CV forms that Tapper had served on her.

Tapper and Sawyer Property moved for dismissal on grounds of collateral estoppel, which prompted Ramsay to amend her complaint. Her amended complaint included a new allegation that Sawyer Property had no right to bring lawsuits against tenants because it "was not the real party in interest, but rather an ordinary agent for owners such as SRH Woodmoor, LLC."

A few months later, Bookman and Tarasov, who had been listed as putative class members in the Ramsay complaint, commenced a separate class action against Sawyer Property and Tapper. The Bookman-Tarasov complaint, as amended, raised claims that

were substantially identical to those in Ramsay's amended complaint, except that it included additional factual allegations about individual leases and collection actions.[5]

In August 2014, Bell and Robinson commenced the third class action, naming JK2 Westminster and Tapper as defendants. Bell and Robinson alleged that JK2 Westminster had replaced Sawyer Property as the owner's agent at some point during their lease and that JK2 Westminster was not licensed as a Maryland collection agency. Aside from individual details about the tenants, the Bell-Robinson complaint included counts that were substantially equivalent to those in the other complaints.

E. Motions to Dismiss

The three defendants, Sawyer Property, JK2 Westminster, and Tapper, all filed motions to dismiss or in the alternative for summary judgment. Collectively, they contended: (1) that neither Sawyer Property nor JK2 Westminster was collecting "for . . . another" and, hence, did not need to maintain a collection agency license; and (2) that Tapper's mini-*Miranda* warnings were neither false nor misleading. In addition, Sawyer Property and Tapper continued to contend that collateral estoppel barred Ramsay's claims on issues that the federal court had already decided against her.[6]

[5] At oral argument before this Court, the tenants' attorney candidly explained that the purpose of filing a separate action on behalf of Bookman and Tarasov was to avoid the potentially preclusive effect of the federal judgment against Ramsay.

[6] Although the federal court had declined to exercise supplemental jurisdiction over Ramsay's state-law claims and had dismissed them without prejudice, she had alleged that Sawyer Property had violated federal law by collecting debts without obtaining a license that it was allegedly required to have under Maryland law. In dismissing that federal claim with prejudice, the federal court, in a kind of demi-holding, had rejected the premise that Maryland law required Sawyer to be licensed.

The circuit court dismissed Ramsay's Consumer Protection Act claims on the ground of collateral estoppel, but it initially declined to dismiss her Consumer Debt Collection Act claims. All parties to the Ramsay action requested reconsideration of the portions of the ruling that were adverse to their interests.

Before resolving those motions, the circuit court issued an order consolidating the three actions. After extensive briefing, the court heard arguments on the parties' motions to dismiss and motions for reconsideration on August 28, 2015. The court issued an oral ruling at the end of the hearing.

The court concluded that the federal judgment precluded both counts of Ramsay's complaint. The court reasoned that the issues of whether Sawyer Property needed to maintain a Maryland collection agency license and whether the disclosure stamp was deceptive had been fully litigated and resolved against Ramsay in federal court. The court also reasoned that, without giving any preclusive effect to the federal judgment, it would independently conclude that Sawyer Property did not need to be licensed because it was not operating as a collection agency. In addition, the court reasoned that the mini-*Miranda* warnings on the court forms were not deceptive. The court stated that its rulings extended to JK2 Westminster.

On September 8, 2015, the court entered three separate orders dismissing all claims in each of the three actions. The tenants filed three, timely notices of appeal. This Court later granted a joint motion to consolidate the three appeals.

QUESTIONS PRESENTED

The tenants' brief contains four questions, which we quote:

1. Are property management companies that collect from delinquent tenants on behalf of third parties required to be licensed under the Maryland Collection Agency Licensing Act?

2. Does the filing of collection lawsuits using the property management companies as the plaintiff when the debt is actually owed to a third party constitute a violation of § 14-202(8) of the Maryland Consumer Debt Collection Act and the Maryland Consumer Protection Act?

3. Does stamping "THIS COMMUNICATION IS FROM A DEBT COLLECTOR. IT IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE" on court orders constitute a violation of § 13-301(1) of the Maryland Consumer Protection Act?

4. Did the Circuit Court correctly determine that the Ramsay lawsuit must be dismissed based upon collateral estoppel?

For the reasons discussed below, we affirm the judgments of the circuit court.

STANDARD OF REVIEW

In each of the three class actions, the circuit court granted motions to dismiss for "failure to state a claim upon which relief can be granted." Md. Rule 2-322(b)(2). The function of such a motion is to test the sufficiency of an opposing party's pleadings. *See, e.g.*, *Walton v. Network Solutions*, 221 Md. App. 656, 665 (2015). In ruling on the motion, the court considers the facts alleged in the complaint and any supporting exhibits incorporated into the complaint. *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010) (citing *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). Dismissal is proper if, even after assuming the truth of all well-pleaded factual allegations and after drawing all reasonable inferences from those allegations in favor of the pleader,

the pleader would still not be entitled to relief. *See, e.g.*, *O'Brien & Gere Eng'rs, Inc. v. City of Salisbury*, 447 Md. 394, 403-04 (2016).

Every claim for relief in a pleading must be supported by "a clear statement of the facts necessary to constitute a cause of action[.]" Md. Rule 2-305. Consequently, "[a]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009) (citing *Alleco, Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 340 Md. 176, 193 (1995)). "[B]ald allegations and conclusory statements" will not suffice to state a claim for relief. *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 350-51 (2012) (citing *RRC Northeast, LLC*, 413 Md. at 644). Moreover, the court does not assume the truth of legal conclusions included in a party's pleadings. *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015).

On review of the grant of a motion to dismiss, the appellate court analyzes whether the trial court's ruling was legally correct, without any special deference to that court's legal conclusions. *Patton v. Wells Fargo Fin. Maryland, Inc.*, 437 Md. 83, 95 (2014). This Court may affirm the dismissal of a complaint on any ground adequately shown by the record, regardless of whether the trial court relied on that ground or whether the parties raised that ground. *Mostofi v. Midland Funding, LLC*, 223 Md. App. 687, 695-96 (2015) (citing *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009)).

DISCUSSION

I. Claims Based on Collection Agency Licensing Requirement

The tenants contend that the circuit court erred when it determined that the complaints did not adequately allege that Sawyer Property and JK2 Westminster were doing business as unlicensed collection agencies.

Under the Maryland Collection Agency Licensing Act, "a person must have a license whenever the person does business as a collection agency in the State." BR § 7-301(a). An unlicensed collection agency may not file an action to enforce a right related to its unlicensed activities. *See Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 757-59, *cert. denied*, 435 Md. 266 (2013). Any judgment in a collection action entered in favor of an unlicensed collection agency is void. *Id.* at 764.

The Collection Agency Licensing Act itself does not create any private right of action, but a coextensive statute, the Consumer Debt Collection Act, broadly prohibits certain methods of debt collection. CL § 14-202; *see Askew v. HRFC, LLC*, 810 F.3d 263, 272 (4th Cir. 2016) (explaining that "[t]he [Consumer Debt Collection Act] protects consumers against certain threatening and underhanded methods used by debt collectors in attempting to recover on delinquent accounts") (citation and quotation marks omitted). The Consumer Debt Collection Act creates a private action for damages, including damages for emotional distress or mental anguish, caused by prohibited debt-collection methods or by certain other statutory violations. CL § 14-203. Moreover, any violation of the Consumer Debt Collection Act is defined as an unfair or deceptive trade practice

(CL § 13-301(14)(iii)), which may give rise to an action for damages (CL § 13-408(a)) and reasonable attorneys' fees. CL § 13-408(b).

Among its other prohibitions, the Consumer Debt Collection Act provides that "[i]n collecting or attempting to collect an alleged debt a collector may not . . . [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist[.]" CL § 14-202(8). A party violates this subsection if the party knowingly files a collection action without a required collection-agency license. *See Finch*, 212 Md. App. at 760, 762 (citing *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719, 728, 732 (D. Md. 2011)). Therefore, a consumer who has been sued by an unlicensed debt collector may seek damages under the Consumer Debt Collection Act and the Consumer Protection Act. *See Finch*, 212 Md. App. at 763 n.10 (citing *Bradshaw*, 765 F. Supp. 2d at 728-32).

In the three class actions here, the tenants alleged that the property management companies pursued collection actions without a required collection agency license. There was no factual dispute that Sawyer Property and JK2 Westminster were unlicensed at the time of the collection actions against the tenants. The issue was whether Sawyer Property and JK2 Westminster were legally required to maintain such a license.[7]

Under the Collection Agency Licensing Act, the term "'[c]ollection agency'" includes "a person who engages directly or indirectly in the business of . . . collecting for,

[7] Even though Tapper, the attorney for the property management companies, was licensed as a Maryland collection agent, a collection agency is not exempt from the licensing requirement simply because the collection agency's attorney is separately licensed. *See Finch*, 212 Md. App. at 758 (citing Md. State Collection Agency Licensing Bd., Advisory Notice 05-10 (May 5, 2010)).

or soliciting from another, a consumer claim[.]" BR § 7-101(c)(1)(i). Generally, this definition includes only "businesses that collect[] debt owed to another person" and does not include "businesses that only collect their *own* consumer debts[.]" *Old Republic Ins. Co. v. Gordon*, 228 Md. App. 1, 16 (2016) (citations and quotation marks omitted) (emphasis in original).[8]

A 1980 attorney general opinion explains the circumstances under which rent collectors in Maryland must be licensed as collection agencies under the Collection Agency Licensing Act:

> Rent collectors may be divided into two categories: first, those who collect or attempt to collect rents that are owed to the collectors themselves (that is, persons who themselves are creditors or owners of claims); second, those who collect or attempt to collect rents that are owed to others. . . .
>
> Persons (such as landlords) who collect rent owed to themselves, as creditors or owners of the claims, do not fall within the requirement [of the Collection Agency Licensing Act] that a collection agency be 'directly or indirectly engaged in the business of soliciting from, or collecting for[,] *others*'. (Emphasis added.) Consequently, these collectors are not required by [the Collection Agency Licensing Act] to be licensed by the Collection Agency Licensing Board . . . .
>
> On the other hand, third party rent collectors – those who, on behalf of others, collect rent owed to those others – might well be covered by the statutory definition of 'collection agency'. They clearly are engaged in the

[8] In *Old Republic Ins. Co. v. Gordon*, 228 Md. App. at 17-18, this Court recognized that the phrase "in the business of . . . collecting" consumer claims describes businesses whose primary purpose is collecting those claims, but that the phrase might not apply to businesses whose collection activity is merely incidental to some other primary business purpose. Without resolving that issue of interpretation, the Court held that a credit insurance company was not a collection agency under the Collection Agency Licensing Act when it was pursuing its subrogation rights. *Id.* at 21.

> business of 'soliciting from, or collecting for[,] others' claims that are 'due or asserted to be owed or due to' those others. . . .

65 Md. Op. Att'y Gen. 316, 317-18 (1980).[9]

The tenants contend that the management companies were "collecting consumer claims for the property owners" when they pursued collection actions. The tenants rely on the following facts: (1) the lease described Sawyer Property as an "agent for" the property owner; (2) the words "[Sawyer Property], Agent" appear above the signature portions of the leases; (3) the words "Landlord/Agent" appear on the signature lines that were signed by Sawyer Property's representative; and (4) the district court complaints identified Sawyer Property and JK2 Westminster as "Agent[s] for" the respective property owners. According to the tenants, "[t]he language of the respective leases and the manner in which Mr. Tapper named the plaintiffs in the collection lawsuit clearly establish that [Sawyer Property] and [JK2 Westminster] were not the owners of the properties or the creditors owed the rent but instead were acting as an 'agent for' the property owners."

Citing the same exhibits as those on which Ramsay relies, Sawyer Property asserts that it pursued collection actions to recover amounts owed directly to itself under the leases. Sawyer Property states that it is not a collection agency, but "a property

[9] The 1980 attorney general opinion construed a prior version of the Collection Agency Licensing Act, in which the definition of collection agency was codified at section 323(b) of former Article 56 of the Maryland Code. The definition was reorganized without substantive change when it was recodified in the Business Regulation Article. *See* 1992 Md. Laws, ch. 4, Revisor's Notes to Section 7-101 of the Business Regulation Article.

management company whose business includes the collection of rent in its own name." According to Sawyer Property, the tenants' pleadings "undisputedly identify Sawyer Property as the judgment creditor, which was collecting the debts in its own behalf."[10]

As the centerpiece of their argument, the tenants rely on *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012). In that case, a homeowners' association had hired a management agent to handle parts of its business, including the collection of fees and enforcement of debts. *Id.* at 400. The management agent sent collection notices to a delinquent homeowner and recorded a lien on her property. *Id.* at 401. In addition, the association obtained a judgment against the homeowner in small claims court, but on a de novo appeal a circuit court reversed the judgment on limitations grounds. *Id.* Meanwhile, the homeowner brought a federal lawsuit against the association and its agent, asserting various claims, including violations of the Consumer Debt Collection Act. *Id.*

Initially, the federal district court determined that Maryland's collection-agency licensing requirement did not apply to either the association or the management agent. Upon reconsideration, however, the court reversed that ruling. *See id.* at 402; *id.* at 409. Applying the Collection Agency Licensing Act's definition of "collection agency" ("a person who engages directly or indirectly in the business of . . . collecting for, or

[10] For his part, Tapper argues that he filed all collection lawsuits in the name of the same party that was named in the lease. For instance, Tapper listed the plaintiff as "Sawyer Property Management of Maryland, LLC, [/] Agent of SRH Woodmoor, LLC" in the action to recover under a lease made by "Sawyer Property Management of Maryland, LLC agent for SRH Woodmoor LLC[.]" JK2 Westminster advances a similar argument in its brief.

soliciting from another, a consumer claim"), the court reasoned that there was "no question that the homeowner association was not acting as a collection agency when it took action to collect fees on its own behalf and under its own name[.]" *Id.* at 408-09. Similarly, the court reasoned that it was "not entirely obvious that the management agent was 'collecting for . . . another' when it collected the homeowner association debts, considering the interconnected nature of the homeowner association with its management agent on all matters of managing community affairs." *Id.* at 409. Commenting that it was "a close call," the court nonetheless concluded that the management agent qualified as a collection agency under BR § 7-101(c)(1)(i) when it attempted to collect debts owed to the homeowner association. *Id.* The court concluded that the management agent was attempting to enforce a right with knowledge that the right did not exist in violation of CL § 14-202(8) when it attempted to collect the association's debt without a collection-agency license. *Id.* at 410.

The tenants describe Sawyer Property and JK2 Westminster as "rental agents" for various residential property owners and assert that neither company is licensed as a collection agency. The tenants argue that Sawyer Property and JK2 Westminster "performed the same function with respect to the property owners that [the management agent] performed for the homeowner[] association in *Fontell*." In their view, the allegations here "fit squarely within the *Fontell* fact pattern."

The tenants do not, however, adequately address why the same court that reversed itself on an admittedly "close call" in *Fontell*, 870 F. Supp. 2d at 409, later concluded unequivocally that Sawyer Property's collection efforts fell outside of the *Fontell* fact

pattern. In *Ramsay I*, 948 F. Supp. 2d at 536, Ramsay had alleged that Sawyer Property and Tapper had violated the Fair Debt Collection Practices Act by collecting under Ramsay's lease even though Sawyer Property was not licensed as a collection agency. Ramsay cited *Fontell* as support for her premise that management companies such as Sawyer Property must be licensed as collection agencies.

In dismissing Ramsay's claim, the federal court explained:

> [Ramsay's] reliance on *Fontell* is unavailing. Contrary to [Ramsay's] assertion, the mere fact that Sawyer Property is a property management company does not mean it is required to have a collection agency license. Rather, this Court in *Fontell* considered the type of activity that the homeowner association and management agent engaged in to determine whether they required a debt collector's license . . . . *Sawyer Property attempted to collect [Ramsay's] debt in its own name*. . . . Thus, Sawyer Property is analogous to the homeowner association in *Fontell*, which this Court found was not a debt collector required to have a license under Maryland law. *See* 870 F. Supp. 2d at 409. Accordingly, *there is no plausible claim that Sawyer Property required a collection agency license under Maryland law*. . . .

Ramsay I, 948 F. Supp. 2d at 536 (emphasis added).

We agree with the *Ramsay I* court that Sawyer Property is not analogous to the management agent in *Fontell*. The management agent in *Fontell* took efforts to ensure that the debtor would pay a debt to the homeowner association even though the agent had no relationship with the underlying transaction other than its contract with the association. *Fontell*, 870 F. Supp. 2d at 409. By contrast, Sawyer Property prepared and executed the agreements that created the debts and used those agreements to obtain judgments payable directly to itself. Because of this crucial distinction, the tenants' allegations are insufficient to show that Sawyer Property engaged in the business of

collecting claims for any party other than itself. Therefore, the tenants failed to state a claim based on the premise that Sawyer Property was doing business as a collection agency.

II. Claims Based on the Real-Party-in-Interest Rule

After Ramsay lost in district federal court on her theory that Sawyer Property needed to have a collection agency license because it was "collecting for . . . another," she raised virtually identical allegations in Maryland circuit court. When Tapper and Sawyer Property moved to dismiss her claims based on collateral estoppel, Ramsay amended her complaint to reframe the issue. In addition to claiming that Sawyer Property had violated the Consumer Debt Collection Act by functioning as an unlicensed debt-collector, Ramsay alleged that Sawyer Property was "not the real party in interest entitled to bring" collection actions under the leases. The other tenants included the same "real party in interest" language in their respective pleadings.

The tenants employed the "real party in interest" allegation to allege that Sawyer Property and JK2 Westminster had violated the Consumer Debt Collection Act, which prohibits a person from "[c]laim[ing], attempt[ing], or threaten[ing] to enforce a right with knowledge that the right does not exist." CL § 14-202(8). The "real party in interest" argument appears to have been a kind of fallback position from the original position, rejected by the federal court, that Sawyer Property was "collecting for . . . another" and, thus, was functioning as an unlicensed debt collector. The "real party in interest" argument tacitly assumes that Sawyer Property and JK2 Westminster were collecting in their own names. The argument asserts, however, that Sawyer Property and

JK2 Westminster had no right to collect in their own names – that the only entity with the right to collect unpaid rent under the leases was the property owner.[11]

Maryland Rule 3-201 provides that every action in the Maryland district courts "shall be prosecuted in the name of the real party in interest, except that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought." *See also* Md. Rule 2-201 (same requirement for actions in Maryland circuit court). Generally, a real party in interest is a person entitled under the substantive law to enforce the right sued upon, and who generally, but not necessarily, benefits from the action's final outcome. *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 428 (2012) (citations and quotation marks omitted); *see also Morton v. Schlotzhauer*, 449 Md. 217, 242 (2016) (stating that "[o]ne is a 'real party in interest' with respect to a claim if that person has the right to assert the claim"); Paul V. Niemeyer, Linda M. Schuett, & Joyce E. Smithey, *Maryland Rules Commentary* 180 (4th

[11] Sawyer Property and JK2 Westminster incorrectly suggest that the tenants "admitted" that the management companies were the real parties in interest by not affirmatively demanding proof of their "capacity . . . to sue" (Md. Rule 3-308(2)) in the collection actions. The phrase "capacity . . . to sue" does not refer to being the real party in interest, but to having the right to pursue litigation – *e.g.*, because one is a competent adult and not a minor or a under some other disability. Rule 3-201 is the means for challenging a person's status as the real party in interest in the district court. An objection to the lack of capacity to sue under Rule 3-308(2) is analogous to a negative defense under Rule 2-323(f) in the circuit court.

ed. 2014) (explaining that the real-party-in-interest rule "requires that the party who has the interest in the relief sought bring the action and not someone on his or her behalf unless that other person is legally authorized to do so").

The tenants had cited ample authority for the established proposition that a person violates CL § 14-202(8) when the person attempts to collect a debt without a required collection agency license. *See Finch*, 212 Md. App. at 763 n.10 (citing *Bradshaw*, 765 F. Supp. 2d at 728-32); *see also Fontell*, 870 F. Supp. 2d at 410. By contrast, the tenants cited no authority for the proposition that a person violates the Consumer Debt Collection Act by filing a collection lawsuit when that person is not the real party in interest.[12]

It is not at all obvious that a violation of Md. Rule 3-201 would support a claim for violation of the Consumer Debt Collection Act. The ordinary consequences of prosecuting an action in the name of someone other than the real party in interest are not comparable to the consequences of illegally operating an unlicensed collection agency. The Maryland Rules prohibit dismissal of an action on the ground that it was not brought in the name of the real party in interest unless the court first grants a reasonable time to join or substitute the proper party. *See* Md. Rule 3-201; *Morton v. Schlotzhauer*, 449 Md. at 240 (citing Md. Rule 2-201).[13] Furthermore, contrary to the tenants' suggestions, a

[12] From the hearing transcript, it is unclear whether the circuit court treated the tenants' real-party-in-interest arguments as a separate theory of liability or as an additional reason to rule in their favor on the issue of whether Sawyer Property and JK2 Westminster were required to be licensed as collection agencies.

[13] Rules 2-201 and 3-201 are modeled after Rule 17 of the Federal Rules of Civil Procedure. The requirement that courts grant a reasonable opportunity to join or substitute the real party in interest "was added 'in the interests of justice' and (continued)

judgment is not void simply because it was entered in favor of a party who is not the real party in interest. *See Adams v. Manown*, 328 Md. 463, 480-81 (1992) (granting post-judgment stay to permit intervention of bankruptcy trustee as real party in interest). Moreover, an objection based on the real-party-in-interest rule is deemed to be waived on appeal if it is not raised in the trial court. *See Poteet v. Sauter*, 136 Md. App. 383, 398 n.4 (2001). Nonetheless, we shall assume for the sake of argument that a person can violate the Consumer Debt Collection Act by filing suit to collect a debt when he or she is not the real party in interest.

Each lease states that "Sawyer Property Management of Maryland, LLC agent for [the property owner], hereinafter referred to as Landlord, does hereby lease" the particular premises to the particular tenant. The parties dispute whether this language means that Sawyer Property is the "Landlord." If Sawyer Property is the "Landlord," then it would undoubtedly be a real party in interest.

When the lease refers to "Sawyer Property Management of Maryland, LLC agent for [the property owner], hereinafter referred to as Landlord," the phrase "hereinafter referred to as Landlord" could denote either the property owner, as the nearest preceding noun, or Sawyer Property, as the subject of the entire preceding clause. *See Stanbalt*

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is 'intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made.'" *Morton v. Schlotzhauer*, 449 Md. at 241 (quoting Advisory Committee notes to Fed. R. Civ. P. 17). Substitution of the real party in interest is permitted "'with a liberality not characteristic generally of amendments changing parties.'" *Morton v. Schlotzhauer*, 449 Md. at 240 n.15 (quoting John A. Lynch, Jr. & Richard W. Bourne, *Modern Maryland Civil Procedure*, § 4.2(b) (2d ed. 2004)).

Realty Co. v. Commercial Credit Corp., 42 Md. App. 538, 541 (1979) (reasoning that lease could be construed in two different ways where a critical clause could qualify either the immediately preceding phrase or an earlier phrase). In addition, the words "Landlord/Agent" could indicate that the signer, Sawyer Property, is either the landlord, or the agent, or both. *See* BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 734 (3d ed. 2011) (observing that writers use a virgule or "slash" to mean "per," "or," "and," or "to indicate a vague disjunction").

If the relevant clause is read in its entirety, however, it becomes apparent that Sawyer Property is the entity defined as the "Landlord" under the leases. As a grammatical matter, Sawyer Property is the subject of the clause – it is the actor that "does hereby lease" the premises to the tenant. Sawyer Property, in other words, is the "lessor," a common synonym for "landlord." *See* BLACK'S LAW DICTIONARY 1010 (10th ed. 2014). Indeed, in affirming the federal judgment against Ramsay in *Ramsay II*, the Fourth Circuit wrote that "Sawyer was listed on the lease as Ramsay's landlord[.]" *Ramsay II*, 593 Fed. App'x at 206. Accordingly, we conclude that, in the district court litigation against the tenants, Sawyer Property was a real party in interest because the leases, fairly read, define Sawyer Property as the "Landlord."[14]

[14] The complaints included no factual allegations to support the legal conclusion that any of the defendants somehow knew that the leases did not give Sawyer Property the right to collect rent in its own name. The absence of those factual allegations would have afforded another basis to dismiss the complaint. *See Bey v. Shapiro Brown & Alt, LLP*, 997 F. Supp. 2d 310, 318-19 (D. Md.) (dismissing Consumer Debt Collection Act claim based on absence of allegation that defendants knew that they did not possess right that defendants enforced), *aff'd*, 584 Fed. App'x 135 (4th Cir. 2014); *see also Peete-Bey v. Educ. Credit Mgmt. Corp.*, 131 F. Supp. 3d 422, 431 (D. Md. 2015); (continued)

JK2 Westminster, as the successor to Sawyer Property under one of the leases, is in a slightly different position with respect to its debt-collection efforts. The tenants' briefs, however, make no attempt to explain the legal significance, if any, of JK2 Westminster's status as a successor to Sawyer Property. As a result, there is no basis to disturb the circuit court's decision to treat JK2 Westminster as identically situated with Sawyer Property. *See Ochoa v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 315, 328 (2013) (declining to address argument that party's brief failed to "develop . . . in any meaningful way"); *Granados v. Nadel*, 220 Md. App. 482, 499 (2014) (declining to decide issue where appellants gave only a "cursory treatment" of the issue before the circuit court, in their appellate brief, and at oral argument). Finally, the Consumer Debt Collection Act claims against Tapper also fail to the extent that those claims derived from the allegation that his clients were doing business as illegal collection agencies.[15]

III. Claims for Unfair or Deceptive Trade Practices in Collection of Debts

In the second count of each of the complaints, the tenants alleged that the property management companies and their attorney had violated the Consumer Protection Act while attempting to enforce the judgments from the collection lawsuits. The court dismissed the Consumer Protection Act claims on the ground that none of the acts alleged

Stewart v. Bierman, 859 F. Supp. 2d 754, 769-70 (D. Md. 2012), *aff'd sub nom. Lembach v. Bierman*, 528 Fed. App'x 297 (4th Cir. 2013). Because none of the appellees advance that argument on appeal, however, we do not base the decision on that ground.

[15] Because the court properly dismissed the Consumer Debt Collection Act claims from Count I of each complaint, the court also correctly dismissed the portions of the Consumer Protection Act claims in Count II of each complaint that derived from the Consumer Debt Collection Act claims.

in the complaints were "unfair or deceptive trade practices." We agree with that conclusion.

Among other things, the Consumer Protection Act prohibits "any unfair or deceptive trade practice" in "[t]he collection of consumer debts[.]" CL § 13-303(5). "Unfair or deceptive trade practices include any . . . [f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers[.]" CL § 13-301(1).

"Maryland courts consider two components in analyzing whether a statement violates C.L. § 13-301(1)." *Sager v. Hous. Comm'n of Anne Arundel Cnty.*, 855 F. Supp. 2d 524, 558 (D. Md. 2012). A misrepresentation "falls within the scope of C.L. § 13-301(1) if it is 'false' or 'misleading' *and* it has 'the capacity, tendency, or effect of deceiving or misleading' consumers.'" *Id.* (quoting *McGraw v. Loyola Ford, Inc.*, 124 Md. App. 560, 577, *cert. denied*, 353 Md. 473 (1999)) (emphasis in *Sager*).

The question of "whether a statement is 'misleading'" under the Consumer Protection Act "is judged from the point of view of a reasonable, but unsophisticated consumer." *Sager v. Hous. Comm'n of Anne Arundel Cnty.*, 855 F. Supp. 2d 524, 558 (D. Md. 2012) (citing *Luskin's, Inc. v. Consumer Prot. Div.*, 353 Md. 335, 356-57 (1999)). In considering whether a statement is material enough to have "the 'capacity, tendency, or effect' . . . to deceive or mislead, courts consider whether 'a significant number of unsophisticated consumers would find [the] information [at issue] important in

determining a course of action.'" *Id.* (quoting *Green v. H & R Block, Inc.*, 355 Md. 488, 524 (1999)).

The tenants asserted that the property management companies and their attorney violated these provisions by adding the following language onto district court forms: "THIS COMMUNICATION IS FROM A DEBT COLLECTOR. IT IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE." Tapper, acting on behalf of Sawyer Property and JK2 Westminster, had added the language to DC/CV 32 forms seeking to compel the tenants to appear for oral examination and on DC/CV 33 forms seeking contempt orders when tenants failed to appear at the examinations. The district court signed the order at the bottom of the forms, and Tapper served those documents on the tenants.

The tenants assert the language added by Tapper was "demonstrably false because once the court order at the bottom of the page was completed the forms were *no longer* communications from a debt collector but rather were enforceable orders that were being communicated to the consumers by the District Court." (Emphasis added.) The very language of this assertion highlights a critical flaw. A DC/CV 32 or DC/CV 33 form may be printed on a single sheet of paper, but it is not just a single communication from one party to another party at a single point in time.

The forms contain both communications from the debt collector and communications from the court. The lower portion of the forms (the court order) communicates information from the court to the debtor. On the other hand, the middle

portion of the forms (the request for an order) does indeed communicate information from a debt collector for the purpose of collecting a debt.

Tapper's statement ("this communication is from a debt collector") can be viewed as false only if the phrase "this communication" refers to the court order under the separate heading at the bottom of the page, and if the phrase "from a debt collector" is mutually exclusive with the phrase "from the court." The entire document is still "from" the debt collector in the sense that it originated from the debt collector and was served by the debt collector. The tenants' arguments overlook the dual nature of the DC/CV forms.

Tapper asserts that his statements were not only truthful and permissible, but mandatory under federal law. Much like the Consumer Protection Act, the federal Fair Debt Collection Practices Act prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. A debt collector violates this provision if the debt collector fails "to disclose in the initial written communication with the consumer . . . that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose" or if the debt collector fails "to disclose in subsequent communications that the communication is from a debt collector[.]" 15 U.S.C. § 1692e(11). In *Ramsay I*, 948 F. Supp. 2d at 535, the court observed that the Fourth Circuit has left open the question of whether the types of documents that Tapper used to enforce the judgments qualify as "communications" with a consumer within the meaning of that provision. Because "[a] debt collector in Tapper's shoes would have been reasonably unsure of his disclosure obligations," the court in *Ramsay I* declined to apply the statute in a way that would force

"cautious debt collectors attempting to comply with the [Fair Debt Collection Practices Act] to confront a Hobson's choice, where they may face liability for either disclosing too much or not enough." *Id.* at 535-36.

The tenants' main argument focuses less on the truth or falsity of the statements and more on the potential to mislead. The tenants contend that "the statement 'THIS COMMUNICATION IS FROM A DEBT COLLECTOR' is both deceptive and unfair when placed on a document that eventually became a court's order." According to the tenants: "The added language creates confusion and ambiguity as to whether the document is a court order that required the debtor to take action or, instead, just another dunning communication from a debt collector that does not require the debtor to take action." The tenants characterize the statement as "the most conspicuous information set forth in the documents" because it was displayed near the top of the page. They theorize that unsophisticated consumers with little knowledge of the court system would focus on that statement so greatly that its meaning would "overshadow[]" the other language on the form directing the debtor to personally appear in court.[16]

Sawyer Property, JK2 Westminster, and Tapper each contend that the statements on the forms were not misleading from an objective standpoint. They argue that any consumer who read the entire document, regardless of the consumer's level of

[16] The tenants do not explain why a judgment-creditor would have any motivation to mislead a judgment-debtor about the necessity of appearing for an oral examination. The purpose of the oral examination is to allow the judgment-creditor to obtain information about the assets, if any, that a judgment-debtor may have to pay the judgment. It would not appear to be in the judgment-creditor's interest for the judgment-debtor not to show up.

sophistication, could not have been misled into believing that the document was something other than a court order. They point to the district court name and logo at the top of the forms, the bold-faced headings stating "ORDER OF COURT" and "SHOW CAUSE ORDER FOR CONTEMPT[,]" the language ordering the debtor to appear in court, the judge's signature below the order, and additional language specifying the consequences of failing to appear. Furthermore, the bottom of the DC/CV 32 forms stated "YOU ARE ORDERED TO APPEAR IN PERSON[,]" and the reverse side of the DC/CV 33 forms stated that "IF YOU DO NOT APPEAR FOR . . . A COURT HEARING BEFORE THE JUDGE, YOU WILL BE SUBJECT TO ARREST." According to the appellees, no consumer acting reasonably would ignore that language.

The federal district court in *Ramsay I* endorsed these arguments when it considered these same statements in the context of Ramsay's Fair Debt Collection Practices Act claims. There, Ramsay had claimed that the language added by Tapper amounted to a "false, deceptive, or misleading representation" in violation of 15 U.S.C. § 1692e. *Ramsay I*, 948 F. Supp. 2d at 533-34. The court evaluated the FDCPA claim under the "'least sophisticated consumer[]'" standard, a standard that "protects 'the gullible as well as the shrewd[,]'" even though "it also 'preserv[es] a quotient of reasonableness and presum[es] a basic level of understanding and willingness to read with care.'" *Id.* at 534 (quoting *United States v. Nat'l Fin. Servs.*, 98 F.3d at 136). Emphasizing the clear and conspicuous language throughout the documents, the court concluded that "even the least sophisticated consumer, reading the documents with care, would understand that they were court orders." *Ramsay I*, 948 F. Supp. 2d at 534. It is

difficult to see how statements could be misleading under the Consumer Protection Act's "reasonable, unsophisticated consumer" standard if the same statements would not be misleading to the "least sophisticated consumer" under the more lenient federal standard.

Seeking a more favorable outcome than the one they achieved in federal court, the tenants attempt to recast the issue of whether a statement qualifies as false or misleading under CL § 13-301(1) as a factual question that should not be resolved on a motion to dismiss. The tenants cite *Green v. H & R Block, Inc.*, 355 Md. 488 (1999), in which the Court of Appeals stated that the question of whether an omission is material enough to mislead a significant number of consumers is "[o]rdinarily" and "[i]n the usual case" a question of fact, and that issue should be decided as a matter of law "[o]nly when the facts do not allow for a reasonable inference of materiality or immateriality[.]" *Id.* at 524 (citations omitted).[17]

In appropriate cases, however, this Court has determined that certain statements are not actionable as a matter of law under the Consumer Protection Act where the claim depends on an objectively unreasonable interpretation of the statement. *E.g. Margolis*, 221 Md. App. at 719-20 (affirming dismissal of Consumer Protection Act claim that bank misled consumers if the consumer checked the provisional account balance before the end of the business day where "in view of the bank's [other] disclosures, a reasonable customer would understand that it is impossible to ascertain" the actual balance until 'the

[17] Strictly speaking, the *Green* case, on which the tenants rely, concerns whether a misrepresentation is material; it does not concern the different but related question in this case, which is whether a representation has the capacity, tendency, or effect of deceiving or misleading consumers. *Sager*, 855 F. Supp. 2d at 558.

end of each business day'"); *McGraw v. Loyola Ford, Inc.*, 124 Md. App. 560, 579-81 (affirming grant of summary judgment on Consumer Protection Act claim where, viewing the representation as a whole, the false statement could not have misled plaintiff), *cert. denied*, 353 Md. 473 (1999); *see also Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977, 988 (2002) (holding that statement was not a misrepresentation supporting a claim under the Consumer Protection Act where the statement could not reasonably be read to imply the meaning that the plaintiffs ascribed to it), *aff'd*, 92 Fed. App'x 933 (4th Cir. 2004). "In this respect, a statement 'cannot be viewed in a vacuum'; rather, it must be viewed in the context in which it was made, along with other representations to the consumer." *Sager*, 855 F. Supp. 2d at 558 (quoting *McGraw*, 124 Md. App. at 580).

McGraw is a case in which the defendant's representation could not have misled an objectively reasonable consumer. In that case, a car dealer disclosed that it was selling a demonstrator vehicle, but checked a box on a form denoting that the vehicle was a "new" vehicle rather than a "used" or "demo" vehicle. *McGraw*, 124 Md. App. at 568. On the same form, however, the dealer accurately disclosed that the vehicle's mileage was over 6,000 miles. *Id.* In addition, on a second order form that the buyer signed a few days later, the dealer checked the "demo" box. *Id.* at 570. The circuit court granted summary judgment in the dealer's favor on the Consumer Protection Act claims based on the allegation that the dealer had falsely represented that the vehicle was "new." *Id.* at 573.

Affirming that judgment, this Court concluded that "the act of checking the 'new' box on the [initial] buyer's order form had absolutely no 'capacity, tendency, or effect of deceiving or misleading' [the buyer]." *Id.* at 579 (quoting CL § 13-301(1)). The Court explained that, to support a misrepresentation claim under the Consumer Protection Act, "the dealer's description of the [vehicle] as 'new' cannot be viewed in a vacuum." *Id.* at 580. The Court reasoned that any falsity from the act of checking a box to describe the vehicle as "new" on one order form did not overcome the dealer's other representations that the vehicle was a demonstrator vehicle with over 6000 miles on it. *Id.* The dealer's statement did not violate CL § 13-301 because "'viewing [the representation] as a whole, without emphasizing isolated words or phrases apart from their context,' the description of the vehicle as new[] could not have misled [the buyer]." *Id.* at 580-81 (quoting *Consumer Prot. Div. v. Luskin's, Inc.,* 120 Md. App. 1, 27 (1998), *aff'd in part, rev'd in part by Luskin's, Inc. v. Consumer Prot. Div.*, 353 Md. 335 (1999)) (further citation and quotation marks omitted).

In essence, the tenants argue that an unsophisticated consumer would rely on the words "this communication is from a debt collector" at the expense of all of the other statements on the document. The tenants assert that Tapper's statements "transformed the documents" and "overshadowed the fact that the documents were actually court orders." But under the Consumer Protection Act standard, a statement cannot simply be removed from the context of the representation as a whole. It would be objectively unreasonable to ignore the name and seal of the District Court of Maryland at the top of the page, the bold headings for the request for a court order and the order itself, the

judge's signature, the language ordering the consumer to appear in court, and the warnings of grave consequences for failing to appear. Reading the document as a whole, without emphasizing the words apart from their context, the statement here could not have misled a reasonable consumer. *See McGraw*, 124 Md. App. at 580-81.[18]

In another effort to transform this legal issue into a factual one, the tenants retained an expert witness, Dr. Thomas J. Maronick, an attorney and marketing professor who formerly worked for the Federal Trade Commission. Dr. Maronick prepared a report discussing the results of his online survey of Maryland residents. The survey asked consumers to review DC/CV form as if they had received it in the mail, first with the same language used by Tapper and then again with that language "highlighted." Most consumers said that they would communicate with the sender if they had received the document. Some consumers believed that the document had been sent by Sawyer Property or a collection agency, and some believed that it had been sent by a court. Few of them understood that they could be arrested if they did not attend court. Based on these results, Dr. Maronick opined that the highlighted language was the source of the consumers' confusion.[19]

[18] In addition to their allegations of "deceptive" practices, the tenants also appear to argue independently that Tapper's collection efforts are "unfair" under a three-prong test used by the Federal Trade Commission. *See Legg v. Castruccio*, 100 Md. App. 748, 768, 770-73 (1994). The tenants do not explain why all three prongs are satisfied.

[19] The appellees' briefs include various criticisms of Dr. Maronick's methodology. For instance, unlike Dr. Maronick, Tapper did not "highlight" the language on the forms he sent to the tenants. In addition, the survey included no control group of consumers who reviewed completed forms without the additional language added by Tapper. Arguably, therefore, there was no basis to conclude that confusion resulted (continued)

The tenants offered the report in different contexts in the three actions: with the reconsideration motions in the Ramsay action, with a supplemental response to the dismissal motions in the Bookman-Tarasov action, and as an attachment to the complaint in the Bell-Robinson action. At the motions hearing, the tenants' attorney told the court: "[W]e have agreed that this is a motion to dismiss . . . , and we think it is proper that the Court consider the [Maronick] Report as allegations which we would have been able to amend into our complaint purely on a motion to dismiss." Upon that submission, the court said that it considered the report, but that the report did not affect the ruling.

Treating the report's findings as a set of additional allegations does not alter the conclusion that the statements are not misleading under the Consumer Protection Act standard. The question of whether a statement is misleading is, in the first instance, a question for the court to answer. A party cannot short-circuit the court's analysis by engaging a witness to advocate its legal argument in the guise of expert testimony. Were the law otherwise, parties could routinely defeat dispositive motions merely by hiring an expert to advance their position regarding a putatively ambiguous or misleading contract, statute, or other writing.

As an additional ground for upholding the dismissal of the claims against it, JK2 Westminster contends that Bell and Robinson failed to plead other necessary elements of their Consumer Protection Act claims. To state a misrepresentation claim under CL § 13-301, a plaintiff must allege not only that the defendant made a false or misleading

from the *additional* language that Tapper placed on the forms rather than from the language of the form itself.

statement, but also that the plaintiff relied upon that representation in a way that caused actual injury. *See Peete-Bey v. Educ. Credit Mgmt. Corp.*, 131 F. Supp. 3d 422, 432-33 (D. Md. 2015); *Bey v. Shapiro Brown & Alt, LLP*, 997 F. Supp. 2d 310, 319 (D. Md.), *aff'd*, 584 Fed. App'x 135 (4th Cir. 2014); *Goss v. Bank of America, N.A.*, 917 F. Supp. 2d 445, 450 (D. Md.), *aff'd*, 546 Fed. App'x 165 (4th Cir. 2013); *Stewart v. Bierman*, 859 F. Supp. 2d 754, 769 (D. Md. 2012), *aff'd sub nom. Lembach v. Bierman*, 528 Fed. App'x 297 (4th Cir. 2013).

In *Morris v. Osmose Wood Preserving*, 99 Md. App. 646, 657-58 (1994), *aff'd in part, rev'd in part on other grounds*, 340 Md. 519 (1995), this Court observed that plaintiffs satisfied this MPCA pleading requirement by alleging that they had purchased property "'[i]n reliance upon'" alleged misrepresentations and omissions in the defendant's advertisements. Although no particular form of words is necessary to plead the reliance element, the pleadings here do not "contain a clear statement of the facts necessary to constitute a cause of action" (Md. Rule 2-305) under the Consumer Protection Act.

The allegations on behalf of Robinson are inadequate. According to the complaint, Tapper served a DC/CV 32 form on Robinson, and Robinson attended the court-ordered oral examination. There is no allegation that any statement misled Robinson or that Robinson suffered any consequence from her reliance on any statement.

The allegations on behalf of Bell are slightly less inadequate, but still too vague to satisfy Maryland pleading standards. After recounting that Tapper served forms on Bell, it states, in a conclusory fashion, that "this course of conduct resulted in the issuance of a

body attachment against [Bell] when she failed to appear in response to orders from the District Court on the DC/CV 32 and DC/CV 33 forms that had been modified by [JK2 Westminster] and Tapper to include . . . false and misleading information[.]" The pleadings from Ramsay, Bookman, and Tarasov follow this same pattern. In fact, despite the allegedly misleading language, the pleadings state that Bookman attended the first of two scheduled oral examinations in compliance with the court order.

Absent from these pleadings are any allegations that the tenants actually read the statements on the forms, that the statements confused or misled them, or that the statements affected their decision of whether to attend the scheduled court appearances. Given the absence of an unambiguous allegation about reliance, the pleadings must be construed against the pleader as to that element. *See Manikhi v. Mass Transit Admin.*, 360 Md. 333, 352 (2000) (construing ambiguous pleadings against plaintiff and holding that plaintiff's allegation "that she was 'forced to transfer' out of [a position] in order to escape 'unlawful conduct'" was too ambiguous to state a retaliation claim). Therefore, the court properly dismissed the tenants' claims under CL § 13-301(1).[20]

CONCLUSION

Each complaint failed to state a claim under the Consumer Debt Collection Act or under the Consumer Protection Act. The factual allegations were insufficient to show that the management companies or their attorney attempted to enforce a right with

[20] In view of our disposition of the foregoing issues, we need not address the question of whether collateral estoppel bars all or some of Ramsay's claims. Even if collateral estoppel did not bar her claims, they are legally insufficient for the reasons that we have set forth in this opinion.

knowledge that the right did not exist, insufficient to show that the management companies or their attorney made a false or misleading statement in the collection of a debt, and insufficient to show that the tenants reasonably relied on any such statement to their detriment. Consequently, we affirm the judgments.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

APPENDIX A

DISTRICT COURT OF MARYLAND FOR Baltimore County
Located at 120 E. Chesapeake Ave, Towson, MD 2128 Case No. 9036-2011

Complaint #

Sawyer Property Mgmt of MD, LLC
9658 Baltimore Avenue, Suite 300
College Park, Maryland 20740
Plaintiff/Judgment Creditor

vs.

Kharyn Ramsay
917 Holgate Drive, Apt. J
Essex, Maryland 21221
Defendant/Judgment Debtor

☑ Original ☐ Renewal
☐ Serve by Sheriff.
☐ Send by Restricted Delivery Mail.
☑ Return to Plaintiff To Serve.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. IT IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

REQUEST FOR ORDER DIRECTING DEFENDANT TO APPEAR FOR EXAMINATION IN AID OF ENFORCEMENT OF JUDGMENT (3-633) (ORAL)

The Judgment Creditor having recovered a judgment against the Judgment Debtor in the District Court on 6/30/11 which was at least 30 days ago in the amount of $ 1,540.84 and ☑ no payment of judgment amount having been made ☑ no previous examination having been held.

☐ Previous examination was held on _____ ☐ Additional examination is requested because _____

☑ The Judgment Creditor requests the Court to summon the Defendant to appear for examination under oath.

☑ The Judgment Creditor further requests that the Defendant bring the following (see back of page)

I solemnly affirm under the penalties of perjury that the matters and facts set forth in the foregoing Petition are true to the best of my knowledge, information, and belief.

I agree to promptly notify the Court if payment is made.

8/5/11
Date

#1408
Signature of Plaintiff/Attorney/Attorney Code
90 Painters Mill Rd #230 OM, MD 21117
Address
(410) 363-2355 (o) (410) 363-2379 (f)
Telephone
lawman01@comcast.net

ORDER OF COURT

Upon the foregoing Request and Affidavit, _____ Defendant is subpoenaed to appear in person before a judge of this Court, at the location shown above, on _____ at _____ to be examined under oath concerning any assets, property or credits of the Debtor.

☐ It is further ORDERED that if any records are requested above, you are to bring those records.

_____
Date

_____
Judge

NOTICE TO PERSON SERVED: If you refuse or without sufficient excuse neglect to obey this Order, you may be punished for contempt. If you pay the amount of the judgment prior to the hearing date, you must notify the Court; however, formal written notice must be received from the Plaintiff. **YOU ARE ORDERED TO APPEAR IN PERSON.**

Any reasonable accommodation for persons with disabilities should be requested by contacting the court prior to the hearing date

DC/CV 32 (Rev. 10/96)

APPENDIX B

DISTRICT COURT OF MARYLAND FOR Baltimore County
City/County
Located at 120 E. Chesapeake Ave, Towson, MD 21286 Case No. 9036-2011
Court Address

Sawyer Property Management of MD, LLC
Name
9658 Baltimore Avenue, Suite 300
Address
College Park, Maryland 20740 Go-N
Plaintiff/Judgment Creditor

vs.

Kharyn Ramsay
Name
917 Holgate Drive, Apt J
Address
Essex, Maryland 21221
Defendant/Judgment Debtor

☑ Original ☐ Renewal

☐ Serve by Sheriff.
☐ Clerk to mail by Restricted Delivery Mail.
☑ Return to Plaintiff to serve.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. IT IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

REQUEST FOR SHOW CAUSE ORDER FOR CONTEMPT
(3-633) (SHOR)

The Plaintiff alleges that Kharan Ramsay has failed to:
Name

☐ obey this Court's Order compelling answers to interrogatories in Aid of Execution entered on
Date

☑ appear in court for examination in the Aid of Enforcement of Judgment on October 19, 2011
Date
as ordered by this Court and properly served on August 21, 2011
Date

☐ other

The Plaintiff requests that the Court:

1. Require the person named above to appear in Court and show cause why an order for in contempt should not be passed;
2. ☐ (Check if jail is also requested) Send the person named above to jail until the Court's order is obeyed. Please read important notice on reverse side of this form.

December 2, 2011
Date

Signature of Plaintiff/Attorney
90 Painters Mill Rd, #230, Owings Mills, MD 21117
Address
(410) 363-2355 (410) 363-2379
lawman01@comcast.net
Telephone No.

SHOW CAUSE ORDER FOR CONTEMPT

Upon consideration of the Plaintiff's request, it is ORDERED:

That Kharyn Ramsay appear in person before this
Name
Court on Oct 19 at 9am to show cause why this Court
Date Time
should not find you in contempt for refusing or failing to respond as shown above provided a copy of this Request and Order is served on the person named above on or before Oct 5 Date
Date

Judge

NOTICE

If you fail to appear, an order may be issued resulting in your arrest and you may be found in contempt of court. Please read the important information on the reverse side of this form

DC/CV 33 (Rev. 6/2002)

NOTICE TO ALLEGED CONTEMNOR

To the person alleged to be in contempt of court and for whom a request for jail has been made:

1. It is alleged that you have disobeyed a court order, are in contempt of court, and should go to jail until you obey the Court's order.
2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not now have a lawyer, please note:
   (a) A lawyer can be helpful to you by:
      (1) explaining the allegations against you;
      (2) helping you determine and present any defense to those allegations;
      (3) explaining to you the possible outcomes; and
      (4) helping you at the hearing.
   (b) Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.
   (c) If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you.
      - To find out if the Public Defender will provide a lawyer for you, you must contact the Public Defender after any prehearing conference and at least 10 business days before the date of a hearing before a judge.
      - If no prehearing conference is scheduled, you must contact the Public Defender as soon as possible, at least 10 business days before the date of the hearing before the judge.
      - The court clerk will tell you how to contact the Public Defender.
   (d) If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
   (e) DO NOT WAIT UNTIL THE DATE OF YOUR COURT HEARING TO GET A LAWYER. If you do not have a lawyer before the court hearing date, the judge may find that you have waived your right to a lawyer, and the hearing may be held with you unrepresented by a lawyer.
3. IF YOU DO NOT APPEAR FOR A SCHEDULED PREHEARING CONFERENCE OR COURT HEARING BEFORE THE JUDGE, YOU WILL BE SUBJECT TO ARREST.

To request a foreign language interpreter or a reasonable accommodation under the Americans with Disabilities Act, please contact the court immediately.