Circuit Court for Prince George's County
Case No. CAE20-13618

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 46

September Term, 2021

HOWARD MAJOR

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION

Reed,
Wells,
Zic,

JJ.

Opinion by Zic, J.

Filed: February 8, 2022

Howard Major appeals from the Circuit Court for Prince George's County's ruling granting United Services Automobile Association's ("USAA") motion to dismiss Mr. Major's specific performance claim and granting USAA's motion for summary judgment on Mr. Major's breach of contract claim. He presents the following two questions for our review:

1. Did the circuit court err in dismissing Mr. Major's specific performance claim?

2. Did the circuit court err in granting summary judgment in favor of USAA as to Mr. Major's breach of contract claim?

For the reasons to be discussed, we answer both questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

This appeal relates to the settlement of a personal injury claim. Mr. Major was involved in a motor vehicle accident on April 8, 2019, where liability of the accident was undisputed. The at-fault vehicle was owned by William Taylor, the USAA-insured, and driven by permissive user Daphne Wells at the time of the accident. In January 2020, USAA offered Mr. Major the entirety of Mr. Taylor's $50,000 liability policy limit on behalf of the at-fault vehicle ("Offer Letter"). Mr. Major accepted that offer and, in March 2020, executed a release of both Mr. Taylor and Ms. Wells ("Release").

After executing the Release, Mr. Major claimed that his attorney "learned for the first time that [Ms.] Wells in fact had her own separate automobile liability policy with State Farm, thereby potentially providing an additional $50,000 in excess liability coverage to [him] for his underlying claim." Mr. Major asserts that prior to accepting

USAA's offer, his attorney asked if there was any other available coverage, to which USAA responded that its offer was the "full amount . . . available for payment."

Specifically, Mr. Major points to USAA's Offer Letter, dated January 28, 2020, which states: "This letter will serve to confirm our offer to settle Howard Major[']s injury claim for $50,000.00. Our offer represents the full amount of bodily injury liability coverage available for payment."[1] Although Mr. Taylor is the only named insured on the Offer Letter, Mr. Major asserts that, "based solely on that assurance," he settled his claim against both Mr. Taylor and Ms. Wells.

After learning of Ms. Wells's additional coverage,[2] Mr. Major filed suit against USAA in July 2020. In his amended complaint, Mr. Major alleged three counts: specific performance, breach of contract, and failure to act in good faith. Subsequently, USAA

[1] In relevant part, the Offer Letter reads as follows:

> I'm writing regarding the claim referenced below.
>
> > USAA policyholder: William E[.] Taylor
> > Claim number: 002029273-047
> > Date of loss: April 8, 2019
> > Loss location: Greenbelt, Maryland
>
> This letter will serve to confirm our offer to settle Howard Major[']s injury claim for $50,000.00. Our offer represents the full amount of bodily injury liability coverage available for payment. Our offer is contingent on a waiver of subrogation by any insurer providing underinsured motorist coverage.
>
> Pursuant [to] Maryland Statute § 19-511, we request that you forward a copy of this letter, by certified mail, to any insurer providing underinsured motorist coverage so that they may respond to our offer.

[2] The record does not reflect how this discovery was made.

moved to dismiss all three counts for failure to state a claim upon which relief can be granted or, in the alternative, for summary judgment. On February 9, 2021, the circuit court held a motions hearing. The court heard, through Mr. Major's counsel, arguments regarding the statements made by USAA prior to signing the Release:

> [COUNSEL FOR MR. MAJOR]: Now two things were asked: What are your policy limits? Is there any other available coverage? USAA kicked out its standard letter. . . .
>
> Here is the statement made by USAA in response, okay: "Our offer represents the 'full amount of bodily injury coverage available for payment.'" It doesn't say our offer represents the full amount of bodily injury liability coverage of USAA available for payment. It says available for payment.
>
> [THE COURT]: But it's their letter, so, presumably, it would be for their coverage and not for the whole wide world's coverage.
>
> [COUNSEL FOR MR. MAJOR]: Well, it is their letter, I agree with you. But it is in response to a specific inquiry that can only be directed to USAA because USAA insures [Ms.] Wells. . . .
>
> * * *
>
> If USAA knew as of [the date of the Offer Letter] that there was another policy covering its insured [Ms.] Wells, who USAA had a duty to defend, okay -- if there was another policy, that wasn't disclosed in the letter. As a result of that nondisclosure, the Plaintiff detrimentally relied on that and signed a release which included [Ms.] Wells.

The court granted USAA's motion, dismissing Mr. Major's specific performance and failure to act in good faith claims and granting summary judgment as to his breach of

contract claim. With regard to Mr. Major's specific performance claim, the court made the following findings:

> [I]n order to maintain the action for specific performance, the Plaintiff has to allege and prove the existence and breach of a valid enforceable contract and that any necessary tendered performance was made and rejected or that the Plaintiff was ready, willing, and able to perform and that there's no adequate remedy at law.
>
> With regard to this count . . . there's no allegation of [a] valid enforceable contract, no allegation that there's any inadequate remedy of law that was not performed. . . . The Court finds that that is proper to grant the motion to dismiss.

Regarding Mr. Major's breach of contract claim, the court made the following findings:

> [T]he Plaintiff in this case is alleging that the -- an allegation of fraud, in this case the Court does not find any facts to support any type of fraud that was the case. . . .
>
> The Court does not find there's a genuine dispute as to any material fact here. There's [sic] no facts that would support a fraud allegation at this point in order to move forward or to say that this case should move forward. So with regard to the motion for summary judgment as to [the breach of contract claim], that motion will be granted.

Thereafter, Mr. Major filed this appeal, challenging the court's ruling as to his first count for specific performance and his second count for breach of contract.[3]

[3] Mr. Major does not appeal the dismissal of his third count for failure to act in good faith.

DISCUSSION

Mr. Major asserts that his specific performance claim was adequately pled and thus the circuit court erred in granting the motion to dismiss because he alleged that the Release was premised on USAA's misrepresentation in the Offer Letter that Ms. Wells had no additional insurance and there is no adequate remedy at law. He maintains we should direct the court to grant specific performance in the form of "remov[ing] [Ms.] Wells from the Release." Moreover, he contends that the court improperly granted summary judgment as to his count for breach of contract because there is a genuine dispute of material fact as to "whether [USAA] had a duty to disclose the existence of [Ms. Wells's] additional insurance" and "whether a jury could reasonably conclude that [Mr. Major] was wrongly induced to enter the . . . Release."

USAA responds that the court's ruling on Mr. Major's first count should be affirmed because the "[a]mended [c]omplaint lacked allegations of a valid and enforceable contract and inadequate remedy at law" as is necessary to maintain a specific performance action. USAA further contends that summary judgment of Mr. Major's breach of contract claim was proper because there is no genuine dispute of material fact as to whether USAA's Offer Letter constituted a misrepresentation or a breach of duty.

I. STANDARD OF REVIEW

We review a grant or denial of a motion to dismiss de novo. *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153 (2008). "[W]e must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Lewis v. Baltimore Convention Ctr.*, 231 Md. App. 144, 151 (2016) (quoting *Ransom v. Leopold*, 183 Md.

App. 570, 578 (2008)). If the complaint would fail to provide a judicial remedy to the plaintiff, dismissal is proper. *Pulliam*, 181 Md. App. at 153. Moreover, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Lewis*, 231 Md. App. at 151 (quoting *Converge Servs. Grp. v. Curran*, 383 Md. 462, 475 (2004)).

When reviewing a grant of summary judgment, we must first determine whether there is a genuine dispute of material fact. *See Dashiell v. Meeks*, 396 Md. 149, 163 (2006). "A genuine dispute of material fact exists when there is evidence 'upon which the jury could reasonably find for the plaintiff.'" *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 739 (1993)). If there is no dispute of material fact, we then determine whether the moving party is entitled to judgment as a matter of law. *See Dashiell*, 396 Md. at 163. We apply "the non-deferential de novo standard of review." *Uthus v. Valley Mill Camp, Inc.*, 472 Md. 378, 385 (2021). Additionally, we consider "only the grounds upon which the trial court relied in granting summary judgment." *Springer v. Erie Ins. Exch.*, 439 Md. 142, 146 n.2 (2014) (quoting *Gourdine v. Crews*, 405 Md. 722, 736 (2008)).

II. SPECIFIC PERFORMANCE COUNT

As we stated in *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429 (2012), "[s]pecific performance is an 'extraordinary equitable remedy which may be granted, in the discretion of the chancellor, where more traditional remedies, such as damages, are either unavailable or inadequate.'" *Id.* at 454 (quoting *Archway Motors, Inc. v. Herman*, 37 Md. App. 674, 681 (1977)). The party seeking specific performance

must demonstrate that he or she has fully performed on his or her part because "[t]he performance of all conditions precedent is generally required before specific performance will be granted." *Cattail Assocs., Inc. v. Sass*, 170 Md. App. 474, 499 (2006). Existence and breach of a legal or contractual obligation is essential to a claim for specific performance. *See Falls Garden Condo. Ass'n v. Falls Homeowners Ass'n*, 441 Md. 290, 308 n.8 (2015) (explaining that "[s]pecific performance is a[] . . . contract remedy that is only available to enforce a valid contract against one party"); *see also Yaffe*, 205 Md. App. at 453-56 (seeking specific performance of a settlement agreement*); Cattail Assocs., Inc.*, 170 Md. App. at 485-86 (seeking specific performance of contract for sale of two parcels of real property); *Archway Motors, Inc.*, 37 Md. App. at 675 (seeking specific performance of contract for sale of real property).

Here, the circuit court correctly found that Mr. Major did not allege the existence and breach of an enforceable contract necessary to maintain a claim for specific performance. The only contract between the parties mentioned in the amended complaint is the Release signed by Mr. Major on March 31, 2020. That document released both Mr. Taylor and Ms. Wells from liability associated with the April 8, 2019 auto accident in exchange for $50,000—the maximum amount available under Mr. Taylor's USAA policy. There is no dispute that USAA paid the full $50,000 to Mr. Major pursuant to the Release, nor is there any allegation of any other outstanding obligation unperformed by USAA pursuant to the Release. Indeed, in his appellate brief, Mr. Major concedes that USAA fulfilled its promise under the Release:

> Appellant does not contend that Appellee failed to perform its promise to pay $50,000 in policy limits to him. Rather, Appellant has alleged that the premise for the Release of [a]ll [c]laims in which . . . [Ms.] Wells was added was faulty, and not intended or bargained for in light of USAA's representation that its offer represented the "full amount of bodily injury coverage available for payment." Consequently, as there is no adequate remedy at law to cure the faulty premise on which the Release was based, specific performance has been adequately pled, and the only remedy available to Appellant is for this Court to direct USAA to remove [Ms.] Wells from the Release.

Despite this concession, Mr. Major, in his amended complaint, points to no other contractual obligation under which he seeks specific performance. And he alleges no facts to support the proposition that there is no adequate remedy at law. *See Sullivan v. Caruso Builder Belle Oak, LLC*, 251 Md. App. 304, 317 (2021) ("Bald allegations and conclusory statements are insufficient to state a claim."). Moreover, the remedy of specific performance gives courts the opportunity to specifically enforce a contract—not to amend its terms or change the parties to it. *See Falls Garden*, 441 Md. at 308 n.8 ("Specific performance is an 'extraordinary' contract remedy that is only available to enforce a valid contract against one party."); *Chestnut Real Est. P'ship v. Huber*, 148 Md. App. 190, 207 (2002) ("[S]pecific performance will usually be decreed, as a matter of course, where the contract is in its nature and circumstances unobjectionable, that is, fair, reasonable and certain in all its terms." (quoting *Maryland-Nat'l Cap. Park & Plan. Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615 (1978))). In short, because Mr. Major failed to allege the existence of a contract under which USAA failed to perform, Mr. Major's specific performance claim was properly dismissed.

III. BREACH OF CONTRACT COUNT

At the outset, we note that although this count was captioned as breach of contract in the amended complaint, the substance of Mr. Major's argument appears to be a fraudulent misrepresentation claim.[4] Specifically, he alleged that USAA misrepresented "that their $50,000 offer was the full amount of liability coverage available" when it stated in the Offer Letter that its "offer represents the full amount of bodily injury liability coverage available for payment." According to Mr. Major, he relied on that misrepresentation when signing the Release and is unable to access Ms. Wells's State Farm insurance coverage. In granting summary judgment, the circuit court concluded that "[t]here[] [are] no facts that would support a fraud allegation."[5] Mr. Major argues that the court erred because there is a dispute of material fact as to "whether a jury could reasonably conclude that [Mr. Major] was wrongly induced to enter the . . . Release" and

[4] To the extent Mr. Major, in this second count, alleged fraudulent inducement and the circuit court's ruling was premised on that claim, our analysis below would remain unchanged. Similar to fraudulent misrepresentation, a claim of fraudulent inducement requires a showing that the defendant made a false representation. *See Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 452 (2012).

[5] We note that "when motions and other pleadings are considered by a trial judge, it is the substance of the pleading that governs its outcome, and not its form. In other words, the nature of a motion is determined by the relief it seeks and not its label or caption." *Davis v. Bd. of Educ. for Prince George's Cnty.*, 222 Md. App. 246, 271 (2015) (quoting *Hill v. Hill*, 118 Md. App. 36, 44 (1997)); *see also Higgins v. Barnes*, 310 Md. 532, 535 n.1 (1987) (explaining that "our concern is with the nature of the issues legitimately raised by the pleadings, and not with the labels given to the pleadings"); *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 589-91 (2006) (holding that the circuit court did not err in sua sponte treating a filing entitled motion for child support as a motion for counsel fees and costs when the filing, in substance, requested such an award and given that "[i]t is well established in Maryland law that a court is to treat a paper . . . according to its substance, and not by its label").

"whether USAA's [O]ffer [L]etter . . . was a misrepresentation of an existing fact (to wit, the existence of other insurance for . . . [Ms.] Wells)." Mr. Major further asserts that "a jury could reasonabl[y] consider that USAA's [Offer Letter] on its face misrepresented the known existence of other coverage."[6] We hold that the circuit court did not err in granting summary judgment.

This Court has explained that

> [t]o prevail on a claim for fraud, the plaintiff must prove: 1) that the defendant made a false representation to the plaintiff; 2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth; 3) that the misrepresentation was made for the purpose of defrauding the plaintiff; 4) that the plaintiff relied on the misrepresentation and had the right to rely on it; and 5) that

[6] In his opposition brief to USAA's motion and during the motions hearing, Mr. Major raised an additional argument that "USAA had a duty, when asked [whether there was additional insurance available], to respond factually, accurately and truthfully" and that it breached that duty. He also raises this issue in his appellate brief as support for the contention that summary judgment was improper, claiming that a dispute of material fact exists regarding "whether USAA . . . had a duty to be accurate[] and . . . to disclose the existence of the additional insurance it knew . . . [Ms.] Wells had." But Mr. Major does not appear to rely on this theory in his amended complaint. We need not address the merits of this claim. As previously stated, under the applicable standard of review, we consider "only the grounds upon which the trial court relied in granting summary judgment" and, here, the circuit court did not appear to address this contention when ruling on USAA's motion for summary judgment. *Springer*, 439 Md. at 146 n.2 (quoting *Gourdine*, 405 Md. at 736) (declining to consider one of the questions presented when reviewing a grant of summary judgment because that issue was not the basis of the court's decision).

Mr. Major, in his appellate brief, also contends that there is a dispute of material fact as to whether USAA "conceal[ed]" the existence of other insurance. But based on our review of the amended complaint, no such claim was alleged. Indeed, there is no mention of any duty owed by USAA to Mr. Major. *See Hoffman v. Stamper*, 385 Md. 1, 28 n.12 (2005) (describing one of the elements of fraudulent concealment as "the defendant owed a duty to the plaintiff to disclose a material fact" (quoting *Green v. H & R Block, Inc.*, 355 Md. 488, 525 (1999))).

> the plaintiff suffered compensable injury resulting from the misrepresentation.

Goldstein v. Miles, 159 Md. App. 403, 434-35 (2004). "A 'false representation' is a statement, conduct, or action that intentionally misrepresents a material fact." *Sass v. Andrew*, 152 Md. App. 406, 429 (2003). "Ordinarily . . . the representation must be definite, and mere vague, general, or indefinite statements are insufficient, because they should, as a general rule, put the hearer upon inquiry, and there is no right to rely upon such statements." *Goldstein*, 159 Md. App. at 436 (quoting *Fowler v. Benton*, 229 Md. 571, 579 (1962)).

Although Mr. Major asserts that he "made efforts to rule out whether [Ms.] Wells had further insurance[] and USAA in its [O]ffer [L]etter . . . responded to that effort in the negative,"[7] we cannot say that a reasonable interpretation of the Offer Letter yields such a conclusion. *See Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 153 (2008) ("The parameter for appellate review [of summary judgment for the defendant] is determining 'whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented . . . .'" (quoting *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 516 (2000))). The Offer Letter does not state that Ms. Wells does not have any additional insurance. Nor does it assert that "there [is] no other insurance covering any defendant," which Mr. Major's attorney, according to his sworn affidavit, requested USAA to confirm prior to accepting the offer. Instead, it merely states, "Our

[7] Despite this contention, during the motions hearing Mr. Major expressly characterized the Offer Letter as a "standard letter" that USAA "kicked out."

offer represents the full amount of bodily injury liability coverage available for payment." Moreover, the only party listed is "USAA policyholder: William E[.] Taylor." Ms. Wells is not identified in the Offer Letter. As such, we conclude that USAA's statement cannot be reasonably interpreted as a misrepresentation that would support a cause of action for fraud. *See Miller v. Fairchild Indus., Inc.*, 97 Md. App. 324, 344-45 (1993) (upholding the grant of summary judgment on fraudulent misrepresentation claims premised on statements that the company's stock rose in value and that the number of deliveries was similar to last year's total, which allegedly misrepresented the "[company]'s future [as] secure," because "[a]ppellants cannot . . . hold the company liable for erroneous inferences they themselves drew from true and accurate statements").

We therefore disagree with Mr. Major's assertion that "a jury could reasonabl[y] consider that USAA's [Offer Letter] on its face misrepresented the known existence of other coverage." The circuit court noted, and we agree, that the Offer Letter was "[USAA's] letter, so, presumably, it would be for their coverage and not for the whole wide world's coverage." In the absence of a false representation by USAA, an action for fraudulent misrepresentation cannot be maintained. *See Goldstein*, 159 Md. App. at 434-35 (identifying false representation as one of the elements of a claim for fraud).

Accordingly, we hold that USAA's motion for summary judgment was properly granted. *See Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 388-90 (2010) (holding that summary judgment on the plaintiff's fraud claim was proper when there was no evidence that the defendant made any false representations).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.