

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 62

September Term, 2014

JOHN H. BURDYCK

v.

PHOENIX AFFILIATES, INC. t/a TRW
ASSOCIATES

Kehoe,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: December 1, 2015

1 Appellant, John H. Burdyck, filed suit against appellee, Phoenix Affiliates, Inc. t/a
2 TRW Associates (“Phoenix”), for breach of a lease for commercial property located at
3 3913 Pulaski Highway, in Abingdon, Maryland (“the Property”). He appeals the Circuit
4 Court for Harford County’s grant of Phoenix’s Motion to Dismiss for lack of standing,
5 and presents three questions, which we have reworded and reordered, for our review:

- 6 1. Did the circuit court err in granting the Motion to Dismiss?
- 7 2. Did the circuit court abuse its discretion in denying the Motion to Alter or
8 Amend Order Dismissing Complaint?
- 9 3. Did the circuit court abuse its discretion in not permitting the filing of an
10 Amended Complaint?

11 For the reasons that follow, we shall reverse and remand the case to the circuit
12 court for further proceedings.

13 **FACTUAL AND PROCEDURAL BACKGROUND**

14 Burdyck has been the sole owner of the Property since 1982. In 1996, he formed
15 the close corporation Burdyck Entertainment, Inc. (“the Corporation”), and served as its
16 president. Burdyck Entertainment forfeited its charter on October 3, 2011, but it was
17 revived on September 10, 2014, after the filing of this appeal.

18 Phoenix first leased the Property in 2004. The second lease, and the lease at issue
19 in this case, was executed by Burdyck, as president of the Corporation, and by Timothy
20 Newnan on behalf of Phoenix, on June 25, 2009. The lease term was five years,
21 commencing on July 1, 2009, and ending on July 1, 2014. The annual rent was \$28,800,

1 which was payable in monthly installments of \$2400 “in advance on the first day of each
2 month.”

3 Beginning July 1, 2009, through September 2011, Phoenix paid only \$2000 of the
4 \$2400 due each month, and as of October 1, 2011, it stopped making payments
5 altogether. It vacated the premises shortly thereafter. According to Phoenix, it paid the
6 reduced rate and ultimately vacated the Property due to difficulties that it experienced
7 with the Property.

8 On April 12, 2013, Burdyck individually filed the Complaint against Phoenix for
9 breach of lease. Phoenix filed an Answer to the Complaint on May 17, 2013, “admit[ting]
10 to the allegation contained in . . . the Complaint[.]” that “[o]n or about June 25, 2009,
11 Plaintiff leased certain real property located at 3913 Pulaski Highway, Abingdon,
12 Maryland 21009 . . . , to Phoenix Affiliates, Inc., trading as TRW Associates, for a five
13 (5) year term pursuant to a written rental agreement” But, on August 14, 2013, it
14 filed an Amended Answer and Motion to Dismiss, asserting that Burdyck lacked standing
15 because he was not a party to the June 25, 2009 lease. Burdyck responded that he “chose
16 to contract with [Phoenix] through [his] agent, Burdyck Entertainment, Inc. . . . but to sue
17 [Phoenix] for its breach of the lease in [his] own name.”

18 On January 23, 2014, the circuit court granted Phoenix’s Motion to Dismiss based
19 on Burdyck’s lack of standing.¹ Burdyck filed a Motion to Alter or Amend Order
20 Dismissing Complaint on February 3, 2014, “so as to allow [him] to amend his

¹ On December 16, 2013, a hearing on the motion was held off the record.

1 Complaint[.]” More specifically, he asked to amend the Complaint to “include an
2 allegation [that] John H. Burdyck [was] owner of the subject premises and Burdyck
3 Entertainment, Inc., [was] his agent for purposes of entering into, and executing the
4 subject lease.” He “acknowledge[d] that [the initial] complaint d[id] not contain an
5 allegation of agency, [but that] both his response to the motion to dismiss and his
6 deposition testimony d[id so].”

7 On February 18, 2014, Phoenix filed its response in opposition to Burdyck’s
8 motion to alter or amend the January 23, 2014 order dismissing the Complaint. The
9 circuit court, on February 26, 2014, denied Burdyck’s request to alter or amend the order
10 because allowing him to amend the Complaint would not correct the standing issue. On
11 March 25, 2014, Burdyck filed this appeal.

12 DISCUSSION

13 *Standard of Review*

14 “[T]he grant of a motion to dismiss [is reviewed] *de novo*.” *Reichs Ford Rd. Joint*
15 *Venture v. State Rds. Comm’n of the State Highway Admin.*, 388 Md. 500, 509 (2005).
16 The purpose of our review is to determine whether the trial court’s decision was legally
17 correct. *Napata v. Univ. of Md. Med. Sys. Corp.*, 417 Md. 724, 732 (2011). In doing so,
18 we “assume the truth of the well-pleaded factual allegations of the complaint, including
19 the reasonable inferences that may be drawn from those allegations.” *Gasper v. Ruffin*
20 *Hotel Corp. of Md.*, 183 Md. App. 211, 226 (2008) (quoting *Adamson v. Corr. Med.*

1 *Servs., Inc.*, 359 Md. 238, 246 (2000)). In other words, we look “not to evidence but only
2 to allegations.” *Magnetti v. Univ. of Md.*, 171 Md. App. 279, 284 (2006).

3 We review an order denying a motion to alter or amend judgment pursuant to
4 Maryland Rule 2-534 under an abuse of discretion standard. *Monarc Constr., Inc. v. Aris*
5 *Corp.*, 188 Md. App. 377, 384-85 (2009). “[That] standard for appellate review is highly
6 deferential to the many discretionary decisions of trial courts, [but] we nevertheless will
7 reverse a decision that is committed to the sound discretion of a trial judge if we are
8 unable to discern from the record that there was an analysis of the relevant facts and
9 circumstances that resulted in the *exercise* of discretion.” *Maddox v. Stone*, 174 Md. App.
10 489, 502 (2007) (emphasis in original) (internal citation omitted).

11 We also review a decision to deny leave to amend under the abuse of discretion
12 standard. *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 275-76 (2006)
13 (citing *McMahon v. Piazze*, 162 Md. App. 588, 598 (2005)).

14 *Burdyck’s Suit for Breach of Lease*

15 We treat lease agreements as contracts, and interpret them according to the rules of
16 traditional contract interpretation. See *Cloverland Farms Dairy, Inc. v. Fry*, 322 Md. 367
17 (1991). A contract, in this case the lease, has been defined by the Court of Appeals “as
18 follows: as an ‘agreement which creates an obligation[,]’ and such an agreement may be
19 defined as the concurrence of two or more persons in a common intent to affect their
20 legal relations.” *Sheeskin v. Giant Food, Inc.*, 20 Md. App. 611, 622 (1974) (quoting
21 *Buffalo Steel Co. v. Kirwan*, 138 Md. 60, 64 (1921) (internal citation omitted) (quotation

1 marks omitted). Black’s Law Dictionary 1144 (7th ed. 1999) defines a party as “[o]ne
2 who takes part in a transaction . . . [and explains that a] person² who takes part in a legal
3 transaction . . . is said to be a party to it. Thus, if an agreement, conveyance, lease, or the
4 like is entered into between A. and B., they are said to be parties to it[.]” Notably,
5 however, a principal may be deemed a party to a transaction even though his or her agent
6 is the active party in the transaction. *See* Restatement (Third) of Agency § 6.03 (2006).

7 The elements of a cause of action for breach of contract include the existence of a
8 contractual obligation, a material breach of that contractual obligation, and resulting
9 damages. *See Kumar v. Dhanda*, 198 Md. App. 337, 345 (2011). Maryland Rule 2-
10 303(b) states that “[a] pleading shall contain only such statements as necessary to show
11 the pleader’s entitlement to relief or ground of defense.” Functionally, the pleading “(1)
12 provides notice to the parties as to the nature of the claim or defense; (2) states the facts
13 upon which the claim or defense allegedly exists; (3) defines the boundaries of litigation;
14 and (4) provides for the speedy resolution of frivolous claims and defenses. Of these four,
15 notice [as to the nature of the claim or defense] is paramount.” *Scott v. Jenkins*, 345 Md.
16 21, 27-28 (1997).

² “‘Person’ includes an individual and a domestic or foreign corporation, business trust, statutory trust, estate, trust, partnership, limited partnership, limited liability company, association, two or more persons having a joint or common interest, or any other legal or commercial entity.” Md. Code (1975, 2007 Repl. Vol.) § 1-101(s) of the Corporations and Associations Article; *and see* Md. Code (1957, 2011 Repl. Vol.) § 15 of Article 1 (“Unless such a construction would be unreasonable, the word person shall include corporation, partnership, business trust, statutory trust, or limited liability company.”).

1 In his Complaint, Burdyck asserts that he “leased certain real property [(the
2 Property)] . . . to Phoenix . . . for a five (5) year term pursuant to a written rental
3 agreement . . .” and that “[p]ursuant to the [l]ease, [Phoenix] was obligated to pay [him]
4 an annual rental of Twenty-eight Thousand Eight Hundred Dollars (\$28,000.00), payable
5 on the first day of each month, beginning July 1, 2009, in equal installments of Twenty-
6 four Hundred Dollars (\$2,400.00) each.” He further contends that “[f]rom the inception
7 of the lease, through September 1, 2011, [Phoenix] paid [him] Two Thousand Dollars
8 (\$2,000.00) each month in lieu of the required payment of Twenty-four Hundred Dollars
9 (\$2,400.00)[.]” and that Phoenix failed to make any rental payment after September
10 2011. He alleges damages “in excess of Seventy-five Thousand Dollars (\$75,000.00)[.]”

11 *Burdyck’s Standing to Sue for Breach of Lease*

12 Burdyck contends that “[a]s owner of the leased property, [he] had standing to sue
13 [Phoenix,] and [the Corporation]’s failure to disclose that it was acting as [his] agent does
14 not deprive [him] of that standing.” Phoenix responds that: (1) “[t]he lease for the subject
15 property was executed by and between Burdyck Entertainment, Inc. and [a]ppellee,
16 Phoenix Affiliates, Inc. t/a TRW Associates and, [because Burdyck] is not a party to the
17 lease . . . [he] lacks standing to attempt to enforce the terms of the [l]ease[.]” (2) “for
18 [Burdyck], as an individual, to have standing to sue on the [l]ease on behalf of a defunct
19 Burdyck Entertainment, Inc., he must be engaging in ‘winding up’ the financial affairs of
20 his corporate entity pursuant to Md. Code Ann. Corporations & Associations Article § 3-

1 515[;]” and, (3) “[i]n framing this issue as an agency principle, [Burdyck] seemingly goes
2 against long-standing corporate/individual shielding and liability protection law.”

3 The circuit court rejected Burdyck’s agency argument and considered whether
4 Burdyck, as president, had authority to file suit on behalf of the then defunct Burdyck
5 Entertainment, Inc. It found:

6 [t]hat the lease was between Burdyck Entertainment, Inc. [a]nd [Phoenix],
7 not . . . Burdyck[, and that w]hile Mr. Burdyck may have been the owner of
8 the property, *there is no assertion in the complaint that there was an*
9 *assignment of any rights that Burdyck Entertainment, Inc. [m]ay have had*
10 *under the terms of the lease to [Burdyck] or that the corporation was*
11 *acting as his agent at the time the lease was executed. Indeed, the lease was*
12 *undoubtedly executed by the corporation to shield Mr. Burdyck personally*
13 *from any subsequent claims by [Phoenix].*

14
15 (Emphasis added).

16
17 In reviewing the grant of the Motion to Dismiss, we “must determine whether the
18 Complaint, *on its face*, discloses a legally sufficient cause of action. In doing so, [we]
19 presume[] the truth of all well-pleaded facts in the Complaint, along with any reasonable
20 inferences derived therefrom in a light most favorable to the plaintiff[.]” *Pittway Corp. v.*
21 *Collins*, 409 Md. 218, 234 (2009) (emphasis in original). Stated differently, we look to
22 whether the Motion to Dismiss was decided on allegations rather than evidence,
23 *Magnetti*, 171 Md. App. at 284, keeping in mind that “[i]n ruling on a motion to dismiss,
24 [a] circuit court is not to make factual findings.” *O’Brien & Gere Eng’rs, Inc. v. City of*
25 *Salisbury*, 222 Md. App. 492, 507 (2015).

26 In Maryland, a corporation may act as an agent and contract in its own name on
27 behalf of another person or entity. *See Adler v. Walker & Dunlop, Inc.*, 245 Md. 153, 159

1 (1967). And, Maryland Rule 2-304 does not require the pleader “to aver the capacity of a
2 party to sue or be sued or the authority of a party to sue or be sued in a representative
3 capacity . . .” in a complaint.

4 [In addition w]hen an agent acting with actual authority makes a
5 contract on behalf of an undisclosed principal, (1) *unless excluded by the*
6 *contract*, the principal is a party to the contract; (2) the agent and the third
7 party are parties to the contract; (3) the principal, if a party to the contract,
8 and the third party have the same rights, liabilities, and defenses against
9 each other as if the principal made the contract personally[.]

10
11 Restatement (Third) of Agency § 6.03 (2006) (emphasis added). In other words, “[a]n
12 undisclosed principal does not become a party to a contract if the contract excludes the
13 principal[,] . . . but [a]n undisclosed principal is not excluded from a contract by language
14 stating that the contract is not assignable.”³ Restatement (Third) of Agency § 6.03,
15 Comment d. (2006).

16 Burdyck, the owner of the property, sued in his individual name, and attached the
17 lease to his Complaint. Nothing in the lease excludes an undisclosed principal, should
18 there be one, from being a party to the lease. The anti-assignment clause restricts only
19 Phoenix from assigning or subletting. Nor is there anything in the lease that would
20 prevent an undisclosed principal from enforcing the lease to the same extent as could the
21 Corporation and Phoenix.

³ The anti-assignment clause reads as follows: “**Assignment and Subletting.** Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void, and, at the option of the Lessor, may terminate this lease.”

1 Although it would have been appropriate to do so in this case, Maryland Rule 2-
2 304(a) did not require Burdyck to aver either that he was suing on the lease as an
3 undisclosed principal of the Corporation, or, if that is what he was doing, that he was
4 winding up the affairs of the Corporation. An undisclosed principal may sue on a contract
5 made by an agent “in [the agent’s] own name[] . . . for and on behalf and for the benefit
6 of the [principal,]” without disclosing the name of the principal or even the existence of a
7 principal-agent relationship. *Balt. Coal Tar & Mfg. Co. v. Fletcher*, 61 Md. 288, 294-95
8 (1884). Thus, Burdyck’s failure to “*assert in the complaint that there was an assignment*
9 *of any rights that Burdyck Entertainment, Inc. [m]ay have had under the terms of the*
10 *lease to [Burdyck] or that the corporation was acting as his agent at the time the lease*
11 *was executed,*” would not, by itself, require dismissal of the Complaint.

12 Rather than an issue of pleading, the existence of a principal-agent relationship is
13 an issue of fact, and thus, one of evidence. “When legally sufficient evidence is
14 produced of an agency relationship, the question of the existence of the agency
15 relationship is a factual matter and must be submitted to the [finder of fact].” *Green v. H*
16 *& R Block, Inc.*, 355 Md. 488, 504 (1999). “[I]t is not for the court to determine the
17 question of agency *vel non*[.]” *Med. Mut. Liab. Ins. Soc. of Md. v. Mut. Fire, Marine &*
18 *Inland Ins. Co.*, 37 Md. App. 706, 712 (1977) (citations omitted) (internal quotation
19 marks omitted).

20 The circuit court’s statements in its January 23, 2014 Memorandum Opinion that
21 “the lease was undoubtedly executed by the corporation to shield Mr. Burdyck personally

1 from any subsequent claims by [Phoenix,]” is essentially a finding of fact regarding the
2 agency relationship that is not appropriate when deciding a motion to dismiss. *See*
3 *Gasper*, 183 Md. App. at 226. Therefore, the circuit court erred when it granted the
4 Motion to Dismiss based on standing. Accordingly, it follows that the circuit court
5 abused its discretion in denying the Motion to Alter or Amend the Order Dismissing the
6 Complaint.

7 *Failure to Grant Motion to Amend the Complaint*

8 And, even if we had concluded that the pleading was deemed insufficient for
9 failure to allege the principal-agent relationship, we would also be persuaded that
10 Burdyck should have been permitted to amend the Complaint. We explain.

11 In its February 25, 2014, letter from chambers denying Burdyck’s request for a
12 hearing on the motion to alter or amend the order granting the Motion to Dismiss, the
13 circuit court stated:

14 I believe [Burdyck’s] reliance on the cases that relate to the issue of agency
15 and principal are totally misplaced as the issue addressed by me in my
16 opinion which I believe is the crucial issue is whether the Plaintiff in this
17 case even has standing to bring the action. Allowing the Plaintiff to amend
18 his complaint to merely state that he was the owner of the subject premises
19 and that Burdyck Entertainment, Inc. was actually his “agent” for the
20 purposes of entering into and executing the subject lease will not correct the
21 problem of his lack of standing.

22
23 Burdyck contends that the court “should have permitted [him] to file an amended
24 complaint[,]” and that “[b]ecause the complaint contained sufficient allegations to
25 withstand a motion to dismiss, it is unclear on what basis the court determined that [he]

1 would have no standing if he specifically alleged that he owns the property and that
2 Burdyck Entertainment was acting as his agent when it entered into the lease.”

3 Phoenix counters that “allowing [Burdyck] to amend his Complaint to ‘merely
4 state that he was the owner of the subject premises and that Burdyck Entertainment, Inc.
5 was actually his agent . . . will not correct the problem of his lack of standing.’”

6 Maryland Rule 2-341(c) permits parties to amend:

7 [to] seek to (1) change the nature of the action or defense, (2) set forth a
8 better statement of facts concerning any matter already raised in a pleading,
9 (3) set forth transactions or events that have occurred since the filing of the
10 pleading sought to be amended, (4) correct misnomer of a party, (5) correct
11 misjoinder or nonjoinder of a party so long as one of the original plaintiffs
12 and one of the original defendants remain as parties to the action, (6) add a
13 party or parties, (7) make any other appropriate change. Amendments shall
14 be freely allowed when justice so permits.

15
16 Md. Rule 2-341(c). Generally, “amendments to pleadings are to be allowed freely and
17 liberally, so long as the operative factual pattern remains essentially the same, and no
18 new cause of action is stated invoking different legal principles.” *Gensler v. Korb*
19 *Roofers, Inc.*, 37 Md. App. 538, 543 (1977) (internal citations omitted). The purpose of
20 this policy is to promote justice by allowing cases to be “tried on their merits rather than
21 upon the niceties of pleading.” *Bord v. Balt. Cnty.*, 220 Md. App. 529, 566 (2014)
22 (citation omitted) (internal quotation marks omitted).

23 In his initial Complaint, Burdyck sued individually and alleged that he had leased
24 the Property to Phoenix. He also attached the lease executed by the Corporation. That
25 would at least suggest that the Corporation was acting on his behalf. Any amendment to
26 the Complaint specifically alleging that he owned the Property and that the Corporation

1 was acting as his agent, are facts that might be inferred from the facts stated in the initial
2 Complaint. The proposed amendment would more clearly state that the claimed principal-
3 agent relationship was at issue, and therefore, would provide a better statement of the
4 matter raised in the Complaint.

5 The most important function of a pleading is notice as to the nature of the claim or
6 defense to the claim. Here, Burdyck had raised the issue of a principal-agent relationship
7 in his Response to Defendant’s Motion to Dismiss, in his deposition testimony, and in an
8 affidavit in support of his motion to alter or amend by asserting that the Corporation was
9 acting as his agent in the execution of the lease with Phoenix. Because an undisclosed
10 principal has the same rights as the agent entering into a contract on the principal’s
11 behalf, Restatement (Third) of Agency § 6.03 (2006), an allegation of the principal-agent
12 relationship would be a better statement of the facts alleged and would not materially
13 change the overall nature of the action.

14 In our view, the circuit court’s statement that “[a]llowing the Plaintiff to amend his
15 complaint to merely state that he was the owner of the subject premises and that Burdyck
16 Entertainment, Inc. was actually his “agent” for the purposes of entering into and
17 executing the subject lease will not correct the problem of his lack of standing[,]”
18 represents either a misunderstanding of the law or amounts to a factual determination that
19 there was no principal-agent relationship. In either case, we hold that it would be an
20 abuse of discretion not to permit the amendment.

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CONCLUSION

In sum, we are persuaded that dismissal based on standing at this stage of the litigation was error and, even if it were not, that the denial of the motion for leave to amend was, under the circumstances, an abuse of discretion. Accordingly, we reverse and remand for further proceedings not inconsistent with this opinion. But, to be clear, we are expressing no opinion as to whether there was, in fact, a principal-agent relationship that permits Burdyck to sue as an undisclosed principal. That is a matter for a fact finder.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR HARFORD COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEES.