Circuit Court for Baltimore County
Case No. 03-C-10-013980

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 354

September Term, 2018

RAMACHANDRA S. HOSMANE, Ph.D

v.

UNIVERSITY OF MARYLAND, *ET AL.*

Nazarian,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 20, 2019

Ramachandra Hosmane was a tenured chemistry professor at the University of Maryland, Baltimore County ("UMBC") from approximately 1982 to 2009. In 2009, he resigned from his position after a university investigation into allegations of sexual misconduct against him by one of his graduate students. About a year after he resigned, he sued UMBC, the State of Maryland, the university's provost, its general counsel, and its director of human relations (the "University Defendants") in the Circuit Court for Baltimore County. He alleged a number of claims, including breach of contract, negligence, misrepresentation, violation of due process under the Maryland Declaration of Rights, and a statutory wage claim. The case was consolidated with another lawsuit Dr. Hosmane brought against a colleague for defamation, and both cases proceeded in labyrinthine fashion, including a mistrial and an appeal in the defamation case to this Court and the Court of Appeals (each of which resulted in a reported opinion),[1] and yet another trial in early 2018.

None of the remaining claims, the ones at issue, were decided by a jury—they were all adjudicated either by dismissal or by summary judgment in favor of the University Defendants. Dr. Hosmane appeals, and we affirm.

I. BACKGROUND

A. Factual Background[2]

In September 2009, one of Dr. Hosmane's graduate students accused him of

[1] *Hosmane v. Seley-Radtke*, 227 Md. App. 11 (2016), *aff'd Seley-Radtke v. Hosmane*, 450 Md. 468 (2016).

[2] These facts are undisputed unless we indicate otherwise.

sexually harassing her in his office. In addition to filing a criminal complaint that was later dismissed as part of a settlement, the student filed a formal complaint of sexual harassment with the university.[3] The director of UMBC's human relations department at the time, Adrienne Mercer, conducted an investigation. During this investigation, Ms. Mercer reviewed documents, interviewed 29 witnesses, and convened a hearing at which the student testified and Dr. Hosmane appeared. In her confidential report of the investigation, Ms. Mercer credited the student's account and found that Dr. Hosmane had "fabricat[ed]" his version of the events. She recommended that the University terminate Dr. Hosmane.

Ms. Mercer sent the report to Elliot Hirshman, UMBC's provost at the time, and to David Gleason, UMBC's general counsel. Mr. Hirshman prepared a letter finding Dr. Hosmane in violation of UMBC's sexual harassment policy and imposing a two-year suspension without pay.

On December 10, 2009, Dr. Hosmane went to Mr. Gleason's office at Mr. Gleason's request, and the events of that meeting underlie most of Dr. Hosmane's claims in this case. Mr. Gleason told Dr. Hosmane at this meeting that he had three options: (1) resign, and the university would keep confidential the investigation's findings; (2) be suspended for two years without pay, as recommended by Mr. Hirshman in his letter, and agree not to invoke the appeal process available tenured professors; or (3) be suspended for two years without pay, as recommended by Mr. Hirshman, and appeal. Although Dr. Hosmane's

[3] The student alleged that Dr. Hosmane "pushed his tongue inside my mouth, kissed me on my face, and groped my breasts."

characterization of the meeting adds other details, he does not dispute that Mr. Gleason offered him the opportunity to retain his tenured position and pursue an appeal. Mr. Gleason told Dr. Hosmane that if he chose either of the latter two options, the finding that Dr. Hosmane had violated the university's sexual harassment policy would be released the following day.

Dr. Hosmane characterizes the representation that he could be suspended without pay as untrue, and asserts that if he had been suspended, he would have had the right to continue to receive his salary. The University Defendants do not deny this, and it appears to be confirmed by the 1982 agreement appointing Dr. Hosmane as a tenured professor.[4] Mr. Gleason also told Dr. Hosmane that if he did not resign, and if an insulting and threatening email sent to the graduate student by someone claiming to be "Nimmy Watson" was ultimately found to have come from Dr. Hosmane (the email was then under

[4] The relevant paragraph provides:

> 8. The Board of Regents of the University may terminate this Agreement, on written recommendation of the President of the University, for immorality, misconduct in office, incompetency, or willful neglect of duty, provided that the charges be stated in writing, that the APPOINTEE be furnished a copy thereof and that the APPOINTEE be given an opportunity, prior to such termination to be heard by the Board of Regents with advice of counsel upon not less than ten days' notice. Upon receipt of a copy of the charges the APPOINTEE may request a hearing by a Faculty Board of Review appointed by the University Senate. [] The findings of the Board of Review shall be transmitted to the President and to the Board of Regents prior to their hearing of the case. Pending action by the Board of Regents, the President of the University may suspend the APPOINTEE with full compensation.

investigation), Dr. Hosmane likely would be fired.[5] Mr. Gleason also informed Dr. Hosmane—erroneously, as it turned out—that if those events came to pass and he was fired, he also would lose his pension.

During the meeting, Mr. Gleason offered Dr. Hosmane the opportunity to speak with his lawyer in the criminal matter—which had not yet been dismissed and for which the trial was scheduled to begin on January 6, 2010. Dr. Hosmane declined.

Instead, Dr. Hosmane resigned, by handwritten letter, before the meeting ended. He testified that he felt "he did not have any other option that day other than to retire."[6] He also expressed concern about the effect that a sanctions letter from UMBC would have on the then-pending criminal trial.

The day after the meeting, December 11, 2009, UMBC sent a letter to Dr. Hosmane confirming his resignation and retirement and stating that the administrative processes concerning the sexual harassment complaint would be held "in abeyance" pending his retirement, effective January 1, 2010. On December 15, 2009, Mr. Gleason provided Ms. Mercer's report and a draft "Agreement and Release" to Dr. Hosmane, who decided not to sign the agreement after consulting with an attorney. As part of that unsigned

[5] The graduate student forwarded the email to the UMBC Police Department, which subpoenaed, and had begun to receive, records from Comcast, Yahoo, and UMBC's information technology department.

[6] Dr. Hosmane testified in his deposition that the potential of losing his pension benefits "really scared" him. He asserted that he "was not in that state of mind to question Mr. Gleason. [Mr. Gleason] was the boss and he was telling me all these things. . . . And he is the Chief Legal Officer, you know, so, I had to trust him."

agreement, UMBC agreed to pay Dr. Hosmane for 231.18 accrued hours of annual leave. Over a year later, and about a month after Dr. Hosmane filed his initial complaint, the University issued a payroll check in the amount of $14,568; the check also indicated it was a "final payout." Dr. Hosmane did not sign the check on advice of his counsel, out of concern that because of the "final payout" language, it would "constitute an accord and satisfaction" of some or all of his pending claims against the University and the State. Dr. Hosmane, through counsel, requested that the check be reissued without reference to "final payout," but the university did not agree to do so.

B. Procedural History

This case has a lengthy and complicated procedural history that we have condensed to focus on the events relevant to this appeal.

On December 10, 2010, Dr. Hosmane filed his initial complaint. He named UMBC, the State of Maryland, Mr. Hirshman, Mr. Gleason, and Ms. Mercer (the "University Defendants") as defendants. The complaint asserted twelve counts, eleven of which the circuit court dismissed for failure to state a claim, with leave to amend, on November 7, 2012. The surviving count was a claim for violation of the Maryland Wage Payment and Collection Law, Maryland Code § 3-501, *et seq.* of the Labor and Employment Article ("LE").

Dr. Hosmane filed a First Amended Complaint on November 27, 2012, asserting eleven counts:

1. intentional misrepresentation;
2. negligent misrepresentation;

3. constructive fraud;
4. negligence based on breach of a fiduciary duty;
5. defamation;
6. false light invasion of privacy;
7. invasion of privacy (unreasonable publicity given to private life);
8. violation of Maryland Wage Payment and Collection Law;
9. breach of contract;
10. malicious prosecution; and
11. violation of Maryland Declaration of Rights.[7]

On December 26, 2012, after the close of discovery, the University Defendants filed a motion to dismiss or, in the alternative, for summary judgment. Dr. Hosmane opposed the motion on January 11, 2013. On July 31, 2013, the circuit court held a hearing and, on August 7, 2013, the court issued an order stating that all counts "have been dismissed with no leave to amend," except for the following three counts, which "remain[ed] for trial":

1. invasion of privacy (unreasonable publicity given to private life);
2. violation of Maryland Wage Payment and Collection Law; and
3. breach of contract.

As to the dismissed claims, the court articulated additional reasoning on the record at the hearing, which we discuss in more detail below. Its August 7, 2013 written order cited the absence of evidence or pleading that could support a finding that Dr. Hosmane was owed a duty by the University Defendants:

> [Dr.] Hosmane alleges that he was wrongfully accused of a

[7] The only claim present in the original complaint but omitted from the First Amended Complaint was a claim for general negligence. Dr. Hosmane asserts that he omitted that claim from the First Amended Complaint because he didn't have room due to a twenty-page page limit for amended pleadings imposed by the circuit court.

> sexual assault by one of his students [], written administrative findings being communicated to him verbally by Mr. Gleason on 12/15/2009. The rest of the picture as to the circumstances of his leaving the University follow. What [Dr.] Hosmane has tried to construct is circumstantial evidence to show bad motives from most of the people involved with the case, except himself, which would support the multiple causes of action he has pled. Seeing no evidence or pleading support of duty on the part of other individuals, no evidence or pleading support [] for fraudulent or intentional misrepresentation, and no evidence or pleading support for defamatory statements, most of the causes of action have been dismissed by me.

The court initially scheduled trial on the remaining claims for August 12, 2013, then postponed it on its own initiative until April 28, 2014. Approximately five days before the trial was set to begin, on April 23, the University Defendants filed a Renewed Motion for Summary Judgment. The court heard argument on the motions on April 28, 2014, and the next day, in open court, granted summary judgment in favor of all defendants on the breach of contract claim and denied the motion on the invasion of privacy (unreasonable publicity) claim and the statutory wage claim.

A jury trial began on April 30, 2014.[8] The defendants renewed their motion for summary judgment on May 6, and on May 7, after the trial concluded but before the matter was submitted to the jury, the circuit court granted summary judgment in favor of all defendants on the statutory wage claim. The court also ultimately granted judgment in

[8] The trial was consolidated with another lawsuit Dr. Hosmane brought in connection with his resignation. In that case, Dr. Hosmane alleged defamation and invasion of privacy (false light) against a former colleague. *See Hosmane*, 227 Md. App. 11, *aff'd Seley-Radtke*, 450 Md. 468. That case was consolidated with this one for the purpose of trial only, and is not the subject of this appeal.

favor of all defendants on Count VII (invasion of privacy (unreasonable publicity)), a judgment Dr. Hosmane does not challenge on appeal. Dr. Hosmane filed a timely notice of appeal.

II. DISCUSSION

Dr. Hosmane's brief states a single Question Presented that identifies neither the particular circuit court decisions he challenges nor the legal propositions underlying those decisions:

> Were the Circuit Court's rulings over the course of the litigation which resulted in the dismissal of Appellant's various causes of action incorrect and subject to reversal?

This question, which violates Maryland Rule 8-504(a)(3) (requiring a brief to include "[a] statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail"), would leave us to sift through the voluminous record of this case and through the piecemeal resolution of the many dismissed claims. We were able at oral argument to narrow the task, and, in light of the significant judicial resources that have been expended on this case over the course of almost a decade, we will resolve this case on the merits. But it is worth repeating that parties risk dismissal of their appeal for noncompliance with the Rules, and that this sort of kitchen-sink Question Presented is not a good option.

Counsel confirmed at oral argument that the only decisions Dr. Hosmane challenges in this appeal are those identified in the subsections of the argument section of his brief, which encompass the following seven claims:

1. intentional misrepresentation;
2. negligent misrepresentation;
3. constructive fraud;
4. negligence based on breach of a fiduciary duty;
5. violation of Maryland Wage Payment and Collection Law, LE § 3-501, *et seq.*;
6. breach of contract; and
7. violation of Maryland Declaration of Rights.

The question before us, then, is whether the circuit court erred in dismissing or granting judgment on those counts.[9] As we explain, it didn't.

In reviewing a circuit court's decision on a motion to dismiss, "we assume the truth

[9] The University Defendants grouped the seven counts into three categories:

> 1. Did the circuit court properly grant summary judgment in favor of the University Defendants on Dr. Hosmane's claims of breach of contract and violation of the Maryland Declaration of Rights where Dr. Hosmane voluntarily resigned from his position as a tenured professor in order to avoid sanctions for sexually assaulting a graduate student?
>
> 2. Did the circuit court properly grant summary judgment in favor of the University Defendants on Dr. Hosmane's claims of negligent and intentional misrepresentation, constructive fraud, and negligence based on breach of fiduciary duty based on statements by David Gleason, the University's General Counsel, where Mr. Gleason did not owe Dr. Hosmane a duty of care, and there was no evidence that Mr. Gleason intended to deceive Dr. Hosmane?
>
> 3. Did the circuit court properly grant judgment in favor of the University Defendants on Dr. Hosmane's claim under the Maryland Wage Payment and Collection Law for unpaid annual leave where Dr. Hosmane's contract stated that he would not receive a payout for unused annual leave and where the Wage Payment and Collection Law [] does not contain an express waiver of the State's sovereign immunity?

of all well-pleaded facts in the complaint and reasonable inferences drawn therefrom," and we "consider those facts and inferences in the light most favorable" to Dr. Hosmane. *Samuels v. Tschechtelin*, 135 Md. App. 483, 515 (2000). We "determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Schisler v. State*, 177 Md. App. 731, 743 (2007) (citations omitted).

When reviewing a trial court's summary judgment ruling, we determine whether the trial court was legally correct. *Nationwide Mut. Fire Ins. Co. v. Tufts*, 118 Md. App. 180, 186 (1997). "In so doing, we review the same material from the record and decide the same legal issues as the circuit court." *Id.* We decide first whether a genuine dispute of material fact exists, and if not, whether the winning party was entitled to judgment as a matter of law. *Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners*, 380 Md. 106, 114 (2004). We resolve all inferences from the record against the moving party. *Id.*

A. The Negligence and Misrepresentation Claims Were Dismissed Properly.

Dr. Hosmane's first set of four claims (negligent misrepresentation, intentional misrepresentation, constructive fraud, and negligence based on breach of fiduciary duty) is grounded in the same set of factual allegations, *i.e.*, that Mr. Gleason's representations to Dr. Hosmane at the December 10, 2009 meeting were untrue and that Dr. Hosmane relied on them to his detriment in deciding to resign. Dr. Hosmane identifies the following allegedly false representations by Mr. Gleason: (1) if Dr. Hosmane did not resign, he would be suspended for two years without pay and the investigation report would be released the next day; (2) if he did not resign and if he were eventually fired, he would lose his pension;

and (3) if he decided to resign, the University would "cease all further action" against him.

The circuit court resolved these claims in the University Defendants' favor in its August 7, 2013 order. The record leaves some uncertainty about whether the court dismissed the claims or granted summary judgment, but that uncertainty does not preclude us from finding both that the allegations of the First Amended Complaint are legally insufficient to support the claims and that there is no genuine issue of material fact as to any of them. *First*, neither the allegations nor the evidence supports the existence of a duty of care flowing from the University Defendants to Dr. Hosmane, so the claims for negligent misrepresentation, constructive fraud, and negligence based on breach of fiduciary duty fail on that ground. *Second*, neither the allegations nor the evidence can support a finding that the University Defendants intended to deceive Dr. Hosmane, so the claim for intentional misrepresentation fails for that reason.

1. The University Defendants Owed Dr. Hosmane No Duty Of Care.

Claims for negligent misrepresentation, constructive fraud, and negligence based on breach of fiduciary duty all depend in the first instance on the existence of a duty.[10] Because

[10] Negligent misrepresentation occurs when "(1) the defendant, *owing a duty of care* to the plaintiff, negligently asserts a false statement; (2) the defendant intends that his statement will be acted upon by the plaintiff; (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury; (4) the plaintiff, justifiably, takes action in reliance on the statement; and (5) the plaintiff suffers damage proximately caused by the defendant's negligence." *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 337 (1982) (emphasis added).

Constructive fraud is "a breach of *a legal or equitable duty* which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interest." *John B.*

Dr. Hosmane did not allege facts that could establish a duty that Mr. Gleason or the University Defendants owed to him, the circuit court did not err in dismissing those claims.

Dr. Hosmane argues that Mr. Gleason, as "the general counsel for the entire University, a man who has advised [Dr. Hosmane] personally in the past, speaking for the University with a tenured professor who has been a highly-compensated contracted employee of that University for the better part of three decades," owed him a duty. That's wrong: Mr. Gleason, UMBC's General Counsel, is the University's lawyer. *See Upjohn v. United States*, 449 U.S. 383, 389 (1981); *E.I. duPont Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396 (1988). He owes his duties to the University, not to University employees in their individual capacities, particularly those the University is in the process of disciplining.

Dr. Hosmane cites *Griesi v. Atlantic Gen. Hosp. Corp.*, 360 Md. 1, 16 (2000), for the general proposition that "a simple at will employment scenario can suffice to create a duty." But *Griesi* does not stand for that proposition: it sets forth the standard for determining whether a duty exists in a business relationship, which requires more than "a

---

Parsons Home, LLC v. John B. Parsons Foundation, 217 Md. App. 39, 69 (2014) (cleaned up) (emphasis added).

Maryland does not recognize a stand-alone tort for breach of fiduciary duty, *Vinogradova v. Suntrust Bank, Inc.*, 162 Md. App. 495, 510 (2005) (*citing International Brotherhood of Teamsters v. Willis Corroon Corp. of Maryland*, 369 Md. 724, 727 n.1 (2002)), but any alleged breach of fiduciary duties requires a duty in the first instance. So too with negligence: to establish a cause of action in negligence a plaintiff must prove the existence of four elements: *a duty owed to him* (or to a class of which he is a part), a breach of that duty, a legally cognizable causal relationship between the breach of duty and the harm suffered, and damages." *Jacques v. First Natl. Bank of Md.*, 307 Md. 527, 531 (1986) (emphasis added).

simple at will employment [relationship]." In *Griesi*, a job applicant alleged negligent misrepresentation against a prospective employer that had negotiated extensively with him and offered the applicant a job, even though the employer had reason to believe there would be no job to offer. *Id.* at 16. The Court of Appeals held that the prospective employer owed him a duty of care. *Id.* To establish a duty, the plaintiff must demonstrate an "intimate nexus" with the defendant "by showing contractual privity or its equivalent." *Id.* at 13. The inquiry is fact-specific and involves "many considerations":

> There must be knowledge, or its equivalent, that the information is desired for a serious purpose; that he to whom it is given intends to rely and act upon it; that, if false or erroneous, he will because of it be injured in person or property. Finally, **the relationship of the parties, arising out of contract or otherwise, must be such that in morals and good conscience the one has the right to rely upon the other for information**, **and the other giving the information owes a duty to give it with care**. An inquiry made of a stranger is one thing; of a person with whom the inquirer has entered, or is about to enter, into a contract concerning the goods which are, or are to be, its subject, is another.

Griesi, 360 Md. at 13–14 (*quoting Weisman v. Conners*, 312 Md. 428, 447 (1988)) (emphasis added). The Court held that the duty arose from the extensive negotiations over a starting date, salary, and other aspects of the employment, and the prospective employer's knowledge that the applicant was considering other job offers that he eventually turned down.

Unlike *Griesi*, this case involves the results of the University's investigation into a graduate student's allegations of sexual misconduct against an experienced and tenured professor. And under these circumstances, no duty of care flowed from any of the

University Defendants to Dr. Hosmane. At the time of the December 2009 meeting, Dr. Hosmane was aware that he was being accused of and investigated for a sexual misconduct of one of his students. He concedes that he had already retained counsel at that point. Dr. Hosmane's relationship with his employer was adversarial at that point, then, and was not—and indeed could not be—a relationship "such that in morals and good conscience" he had the right to rely on his employer or their representatives for information. *Griesi*, 360 Md. at 13–14 (*quoting Weisman*, 312 Md. at 447). There was no duty, and the claims for negligent misrepresentation, constructive fraud, and negligence based on breach of fiduciary duty fail.[11]

2. There Was No Intent To Deceive Dr. Hosmane.

To plead a claim for intentional misrepresentation, a plaintiff must allege facts supporting the following elements, including facts supporting a finding that the defendant made the representation "for the purpose of defrauding the plaintiff":

> (1) the defendant made a false representation to the plaintiff, (2) the falsity of the representation was either known to the defendant or the representation was made with reckless indifference to its truth, (3) *the misrepresentation was made for the purpose of defrauding the plaintiff*, (4) the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) the plaintiff suffered compensable injury as a result of the misrepresentation.

[11] As noted above, Dr. Hosmane's general negligence claim was dropped from the amended complaint, which supersedes the original complaint. He complains that the reason he left that claim out of the First Amended Complaint was due to a 20-page limit imposed by the circuit court. We do not decide whether the limitation was appropriate; however, to the extent Dr. Hosmane's general negligence claim is still viable, it fails for the same reasons as the other negligence-based claims.

Hoffman v. Stamper, 385 Md. 1, 28 (2005) (emphasis added). Maryland is not a notice pleading state, so Rule 2-305 requires that a complaint contain "a clear statement of the facts necessary to constitute a cause of action." *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 527 (2014). "Maryland courts have long required parties to plead fraud with particularity," an even more demanding pleading standard. *Id.* And in this case, that standard means that, in addition to pleading facts to support elements such as the identity of the person(s) who made the false statements, when and where they were made, why the statements are false, Dr. Hosmane was required to plead facts to support that Mr. Gleason intended to deceive him. *See Hoffman*, 385 Md. at 28. But Dr. Hosmane's complaint contains no allegation that Mr. Gleason's purpose in making the statements to Dr. Hosmane at the December 2009 meeting was to deceive or mislead him so that he would make the choice to resign. Instead, the allegations are conclusory and insufficient as a matter of law.

Even if the allegations were sufficient to state a claim, Dr. Hosmane identifies no evidence that Mr. Gleason or any of the University Defendants intended to deceive him. He asserts that "the University was facing the risk of lawsuits against it by [the graduate student] and Dr. Seley-Radke arising out of [Dr. Hosmane's] alleged misconduct, which the University hoped to defuse by getting rid of him" and that "[t]his is an obvious source of [the Defendants'] motivation to intentionally misrepresent the truth in communicating with [Dr. Hosmane] on December 10, 2009" and pressuring him to resign. But even if those assertions were true, they can't prove that Mr. Gleason intended to mislead Dr. Hosmane at the December 2009 meeting. Dr. Hosmane does not explain or support the connection

between the unspecified risk of lawsuits and Mr. Gleason's (or the University's) intent to mislead Dr. Hosmane. The intentional misrepresentation claim was properly dismissed.[12]

B. Sovereign Immunity Protects The University From Liability Under Maryland's Wage Payment and Collection Law.

Dr. Hosmane's claim under the Maryland Wage Payment and Collection Law under LE § 3-519 *et seq.*—which flows from the claim that the University[13] did not pay him for accrued but unused annual leave—survived the initial motion to dismiss. Right before trial in April 2014, the University Defendants filed a renewed motion for summary judgment, arguing that the claim was barred under the sovereign immunity doctrine and, in the alternative, that Dr. Hosmane's "Appointment Letters" allowed the University to decline payment of accrued but unused leave. The circuit court initially denied the motion in open court, but after the trial concluded and before the matter was submitted to the jury, the circuit court granted summary judgment in open court in favor of all defendants on this claim. The court stated its reasoning as follows—and although not entirely clear, it appears that the court agreed that the claim was barred by sovereign immunity, insofar as it observed that the statutory wage claim is not a tort for which the State has waived

[12] Although not raised by the parties, we observe that the allegations and evidence also fail to allege reasonable reliance. Intentional misrepresentation requires proof not only that the plaintiff relied on the statements, but also that he or she had *had the right to rely on them*. *See Hoffman*, 385 Md. at 28. At the time of the December 2009 meeting, Dr. Hosmane's relationship with the University was an adversarial one. Neither the allegations nor the evidence supports a claim that he had a right to rely on representations concerning his pension and resignation by the University's general counsel in the context of an investigation into sexual misconduct allegations.

[13] The parties do not dispute that the University is a State actor for the purpose of sovereign immunity. *See Stern v. Board of Regents, Univ. Syst. of Md.*, 380 Md. 691, 702 (2004).

immunity:

> Concerning the Wage Claim Act the court, having reviewed the statutes described by [Dr. Hosmane's counsel], as well as having reviewed the Stern case and Batson v. Shiflett the court is persuaded that summary judgment is appropriate. The court is not persuaded that the statute which allows two times the recovery, if it's [] a Wage Claim Act translates it into a tort action, so summary judgment's granted as to those [].

(Underlining in original.)

The doctrine of sovereign immunity "bars actions against the State for money damages." *Rodriguez v. Cooper*, 458 Md. 425, 451 (2018). "In the absence of a waiver of sovereign immunity by the General Assembly, a person injured by an action or omission" of the State has no recourse against the State. *Id.* In this case, Dr. Hosmane has identified no waiver of sovereign immunity by the General Assembly for claims brought under LE § 3-501, *et seq*. Indeed, the language of the statute indicates that the General Assembly intended to exclude the State from liability under subtitle 5, the subtitle containing the applicable sections (LE § 3-501 *et seq*.). The General Assembly limited the definition of "employer" in subtitle 5 to "person" (LE § 3-501(b)), a definition that does not include the State: a person is "an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity." LE § 1-101(d). The general provisions of the Labor and Employment Article, in which the definition of "person" appears, includes a separate definition for "Governmental unit" that does include "the State." LE § 1-101(c); *see also id.* § 1-101(e). And in contrast, subtitle 3 of the Labor and Employment Article (LE § 3-301, *et seq.*),

which imposes liability for, among other things, an employer's failure to provide equal pay for equal work, includes "the State and its units" in its definition of "employer." LE § 3-301(b)(ii). If the General Assembly had intended to include the State as a potentially liable entity in subtitle 5, it could readily have done so, as it did in subtitle 3.

Dr. Hosmane's argument about why subtitle 5 applies to the State is difficult to follow. He argues, on the one hand, that "[t]he issue is not immunity," but in the same sentence asserts that the statutory claim is a tort and that he properly filed a "tort claim notice with the Treasurer prior to filing suit." We assume that Dr. Hosmane refers to the waiver of sovereign immunity provided for in the Maryland Tort Claims Act (Md. Code, § 12-101, *et seq*. of the State Government Article), which provides that individuals may sue for compensation for "negligent actions or omissions of State personnel within the scope of their public duties." *Rodriguez*, 458 Md. at 430. But he cites no authority for the proposition that a statutory claim under LE § 3-501, *et seq*. is a "tort" or that the MTCA has any applicability here. The court did not err in granting judgment in favor of the University defendants on the statutory wage claim.

C. The Court Properly Entered Judgment For The University Defendants On The Breach of Contract Claim.

Shortly before the April 2014 trial, the circuit court granted summary judgment in favor of all defendants on Dr. Hosmane's breach of contract claim.[14] The contract at issue

[14] The breach of contract claim survived the motion to dismiss even though the circuit court found that the allegations in the First Amended Complaint failed to state a claim. We need not review that decision, though, because even if the complaint did state a claim, we find that judgment was properly entered against Dr. Hosmane.

is the agreement entered into by Dr. Hosmane and the University in 1982 setting forth terms of his employment and the procedure for termination.

To succeed on a breach of contract claim, a plaintiff must prove "a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 655 (2010). Dr. Hosmane's claim fails at the first step. There was no contractual obligation between him and the University because it is undisputed that he resigned. As soon as he resigned, his 1982 employment agreement with the University terminated, preempting the University's liability for breach of that agreement.

Dr. Hosmane asserts that the University Defendants breached the covenant of good faith and fair dealing implied in his employment contract. Such a breach occurs when a party does something that "injur[es] or frustrate[es] the right of the other party to receive the fruits of the contract between them. *Clancy v. King*, 405 Md. 541, 571 (2008). For example, in *Questar Builders, Inc. v. CB Flooring, LLC*, the Court of Appeals held that the implied obligation of good faith and fair dealing prevented a party from terminating a contract for any reason or no reason at all when—according to the express terms of the contract—a party could terminate the contract only for convenience. 410 Md. 241, 279 (2009).

Dr. Hosmane does not dispute that the University, through Mr. Gleason at the 2009 meeting, gave him the choice to resign or to stay in his position and pursue the appeals process. Dr. Hosmane implies—often with indignation—that he resigned under duress or

that he was discharged constructively. But he does not actually argue those theories expressly,[15] nor does he cite case law supporting that a person who *resigned* can bring a cause of action for breach of an employment contract based on the assertion that the appeals process for *suspension and/or termination* was not followed.

Instead, Dr. Hosmane argues that the misstatements—specifically those about his potential suspension without pay and the loss of his pension if he were fired—constituted a breach of the obligation to deal in good faith under the contract. But even when construed in a light most favorable to Dr. Hosmane, the evidence supports that, after a lengthy investigation into sexual misconduct allegations the University provided Dr. Hosmane the choice between resignation on the one hand, and keeping his position but appealing the disciplinary actions taken by the University on the other. Even if misstatements were made, they are insufficient to establish that the University Defendants acted in bad faith in this context. Dr. Hosmane did not identify evidence supporting any nefarious intent behind those misstatements.

D. Dismissal Of The Violation Of Maryland Declaration Of Rights Claim Was Proper.

Finally, Dr. Hosmane alleges violations of Articles 19, 24, and 36 of the Maryland

[15] The University Defendants offer a lengthy argument in their brief concerning "constructive discharge" and duress, but we need not address it. The initial burden to establish a claim lies with Dr. Hosmane, who does not raise, let alone develop, those arguments in his opening brief. *Beck v. Mangels*, 100 Md. App. 144, 149 (1994); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); Md. Rule 8-504(a)(6) (requiring that an appellate brief contain "[a]rgument in support of the party's position").

Declaration of Rights, and specifically that his "due process rights were violated in three distinct ways":

> First, the process that was provided was deficient under the Declaration of Rights because there was clearly in [sic] impermissible entangling of religion and the business of the State. Second, the defective process that was provided was the process due to [the graduate student], not [Dr. Hosmane]. And, finally, the process due to [Dr. Hosmane] as a tenured professor was never provided on account of his forced retirement.

(Emphasis in original.) The circuit court dismissed this claim in its August 7, 2013 order. The court heard argument on the claim at the July 31, 2013 hearing on the motions to dismiss. Dr. Hosmane represents in his appellate brief that "the Circuit Court focused exclusively on the first of these components" and that "[i]n fact, when undersigned counsel attempted to address the other components, the court indicated to counsel that he would not be heard." In support of his assertion that the circuit court did not fully consider his arguments, Dr. Hosmane includes in his brief the following out-of-context quote from the transcript of the July 31 hearing:

> [COUNSEL FOR DR. HOSMANE]: Your Honor, there's other parts to that Declaration of Rights claim.
>
> THE COURT: I don't—I'm through with that, sir.
>
> [COUNSEL FOR DR. HOSMANE]: You don't want to hear me on the other parts?
>
> THE COURT: No, I don't.

But this quote, when read in context, tells a different story—that Dr. Hosmane failed to identify adequate legal support for his due process claim:

> [COUNSEL FOR DR. HOSMANE]: May I be heard, Your Honor?

THE COURT: I'll listen to you.

[COUNSEL FOR DR. HOSMANE]: Okay. The focus with respect to the Declaration of Rights claim is on procedural due – a procedural due process violation based upon the deprivation of a property interest, namely, Dr. Hosmane's job.

The case law is clear that a public sector employee has a property interest in his or her job, citing the Samuels [v. Tschechtelin], which is 135 Md. App. 4[8]3. That case indicates, "To be successful in an action" --

THE COURT: Sir, I understand all of that. Where is the religious component to this?

[COUNSEL FOR DR. HOSMANE]: The religious component comes into place when you apply the factors. There are three factors[16] in determining whether or not --

THE COURT: All she said is, I will pray on this.

[COUNSEL FOR DR. HOSMANE]: Well, she said a lot more than that.

THE COURT: But it's the essential aspect of it.

[COUNSEL FOR DR. HOSMANE]: Well, Your Honor, the --

THE COURT: What did she say? Specifically, what were the quotes from her?

[COUNSEL FOR DR. HOSMANE]: They're in the brief. Do you want me to read them?

THE COURT; Yes, I do.

[COUNSEL FOR DR. HOSMANE]: Okay.

THE COURT: They're in a footnote.

[COUNSEL FOR DR. HOSMANE]: No, they're not -- they're more than a footnote, Your Honor.[17] Ms. Mercer testified on

[16] Dr. Hosmane does not raise or identify these three factors in his appellate briefing. But we assume he was referring to three factors set forth in the *Samuels* case. *See below*, fn.19.

[17] The First Amended Complaint alleged, in a footnote, that Ms. Mercer, who conducted the investigation, "makes [sic] decision in these matters by 'praying to Christ,'" and that she "asked a student to pray for her in writing her report regarding the alleged sexual assault." The complaint further alleged that "Prior to her decision, [Ms. Mercer] exchanged an email with [Dr. Hosmane] in which she said, in essence, that Jesus reserved his harshest

deposition that she is a Christian. Conversely, Doctor --

THE COURT: Where are you, where are you reading?

[COUNSEL FOR DR. HOSMANE]: From the brief.

THE COURT: Where from the brief?

[COUNSEL FOR DR. HOSMANE]: I don't have the exact page number.

THE COURT: Sir, you can't do that. You have a responsibility to tell your sister at the bar where you are reading from.

[COUNSEL FOR DR. HOSMANE]: Yes, Your Honor.

[COUNSEL FOR THE DEFENDANTS]: Your Honor --

THE COURT: Why don't you let him find it.

[COUNSEL FOR THE DEFENDANTS]: Okay.

THE COURT: He refers to paragraph 12, number two in the complaint

[COUNSEL FOR DR. HOSMANE]: Page, let's see, page 10 of the brief through -- let's see. Page 10 and 11 is most of it and then it's brought back up in the --

THE COURT: I'm a woman of faith probably, and that's my MO, et cetera. Okay. I've read that.

[COUNSEL FOR DR. HOSMANE]: And then there's argument on the issue.

THE COURT: I'm praying for wisdom. What I have said, sir, is that amounts to something I hear people say all the day -- all -- I'm praying on it.

[COUNSEL FOR DR. HOSMANE]: Your Honor, it's clear to me at least from her testimony that she turned over the decision making in this matter to her belief in God and Christ. In her testimony she said that is her MO, that is what she does, she's praying for wisdom, there's nothing that God doesn't know. Mr. Gleason and Mr. Hirshman both testified they knew that

criticism not for those who made mistakes, but those who should have known better. And she believes that God knows what happened between [Dr. Hosmane] and [the graduate student] on the night in question." Based on those allegations, Dr. Hosmane alleged in the Declaration of Rights claim that "she turned to her religious beliefs and prayer in making her decision with respect to the sexual harassment allegations of [the graduate student]."

she was devoutly religious. And our position would be that as a fact finder at a public University there was an improper entanglement between religion and the business of the State.

THE COURT: I don't think so, sir. That's out, too.

[COUNSEL FOR DR. HOSMANE]: May I be heard on that issue further please?

THE COURT: No. No.

[COUNSEL FOR DR. HOSMANE]: I didn't get to present my legal argument on the factors.

THE COURT: On what factors?

[COUNSEL FOR DR. HOSMANE]: Well, there's, there's three factors, the second of which is the risk of an erroneous deprivation of such interest --

THE COURT: Sir, let me ask you this.

[COUNSEL FOR DR. HOSMANE]: Yes, Your Honor.

THE COURT: Do you have any case law anywhere, any place, any time that remotely says that that is the type of entanglement, with words like this, that can lead to a deprivation of rights?

[COUNSEL FOR DR. HOSMANE]: Yes, we cite two cases.

THE COURT: What cases did you cite, sir?

[COUNSEL FOR DR. HOSMANE]: We cite two 4th Circuit cases. North Carolina --

THE COURT: Where did you cite these, sir?

[COUNSEL FOR DR. HOSMANE]: In the brief.

THE COURT: Where in the brief, sir?

[COUNSEL FOR DR. HOSMANE]: Okay. Page 33. We also cite a law review.[18]

THE COURT: Just a second now.

[COUNSEL FOR DR. HOSMANE]: Yes, Your Honor.

THE COURT: What happened in North Carolina Liberties

[18] Dr. Hosmane cites neither the cases or the law review article discussed with the court in his appellate briefing.

versus Konstange.

[COUNSEL FOR DR. HOSMANE]: Both --

THE COURT: What were the facts of that case?

[COUNSEL FOR DR. HOSMANE]: Both cases were similar. They were -- I believe they are both sentencing cases, situation in which the Judge invoked his belief in God in passing down sentence.

THE COURT: **What exactly happened in those cases? What exactly did the Judge say?**

[COUNSEL FOR DR. HOSMANE]: **Your Honor, I don't, I don't honestly recall off the top of my head.**

THE COURT: **Well, what exactly happened in the United States versus Baker?**

[COUNSEL FOR DR. HOSMANE]: **Baker was the preacher, I forget his first name, but Mr. Baker, and I don't remember the exact words, but it's --**

THE COURT: All right, sir. Well, again, please do not cite generalizations to me. Please cite specifics to me and quotes from cases, which is, of course, the way the Court of Appeals does it, okay, in parenthesis or whatever.

So again, sir, is there anything else that you want to say?

[COUNSEL FOR DR. HOSMANE]: Your Honor, we also cited a law review article which discusses the issue at length.

THE COURT: **What in that law review article specifically is similar to this?**

[COUNSEL FOR DR. HOSMANE]: **Talking about the entanglement --**

THE COURT: **No, sir. What specifically from the law review article? I can't deal in generalizations. Tell me and read to me the part from the law review that you say correlates to this?**

[COUNSEL FOR DR. HOSMANE]: **There's not necessarily a particular part. It just discusses the issue.**

THE COURT: All right, then, and that's fine. Okay. All right. Let me remind you both that when the Court of Appeals does things like this, they never deal in generality. They tell me not

> to deal in generalities. Okay. Now –
>
> [COUNSEL FOR DR. HOSMANE]: Your Honor, there's other parts to that Declaration of Rights claim.
>
> THE COURT: I don't—I'm through with that, sir.
>
> [COUNSEL FOR DR. HOSMANE]: You don't want to hear me on the other parts?
>
> THE COURT: No, I don't.

(Emphasis added.)

On appeal, Dr. Hosmane cites even fewer cases in support of his Declaration of Rights claim than he did when arguing before the circuit court. Indeed, Dr. Hosmane does not develop his religious theory in his appellate brief, or the second theory (*i.e.*, that the investigation that was conducted was initiated by the graduate student, and as a result Dr. Hosmane was deprived of due process). Instead he states that "in this appeal he will focus on the third way in which his rights were violated—that the process due to him as a tenured professor under contract with a state university was never provided on account of his forced retirement." But the only case he cites, *Samuels v. Tschelchtelin*, 135 Md. App. 483 (2000), does not help him. Unlike Dr. Hosmane, who resigned from his position, the plaintiff in that case was fired. *Id.* at 504. In *Samuels*, this Court held (among other things) that the plaintiff faculty member's complaint stated a claim for violation of Article 24 of the Maryland Declaration of Rights where the faculty member was found to have a contract-based property interest in his employment because he was not an at-will employee, *and* where an individual defendant (*i.e.*, the president of the college) was alleged to have been involved in the inadequate procedures surrounding his termination. 135 Md. App. at 527–28. We reasoned that "[a] public employment contract may confer a constitutionally

protected property interest in continued employment" and that "a public employee with a property interest in continued employment is ordinarily entitled to a limited hearing prior to termination and a more comprehensive hearing after termination."[19] *Id.* at 527. But again, as with the breach of contract claim, *Samuels* does not apply because Dr. Hosmane was not terminated. He resigned, and he cannot assert a lack of process when he was afforded the opportunity to engage in that process and made a conscious decision to forgo it. Dr. Hosmane's claim for violation of Maryland's Declaration of Rights was properly dismissed.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[19] *Samuels* identified the following three factors—which we assume are the factors to which Dr. Hosmane referred during the July 31, 2013 hearing—in determining whether a complaint states a claim for violation of Article 24:

> [F]or purposes of the motion to dismiss, it appears that appellant had a property interest in his employment. If appellant had a property interest in continued employment, as alleged, the question arises as to what process, if any, he was due. That determination generally depends on a balancing of three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if an, of additional or substitute procedural safeguards;" and (3) the governmental interest.

135 Md. App. at 528 (*quoting Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).