UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0988

September Term, 2014

JANNIE LATHAN

v.

RICHARD STERNBERG

Wright,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 30, 2015

This appeal arises from two unusual secured transactions where appellant, Jannie Lathan, agreed to loan $36,000 to Ernest Nicholson, Jr., in exchange for a fractional interest in Mr. Nicholson's shares of Sagent Energy LLC, a Delaware limited liability company. The two contracts embodying this transaction were drafted by appellee, Richard Sternberg, the attorney for Mr. Nicholson.

Mr. Nicholson, as it turned out, had extant child support obligations in the District of Columbia, and faced the prospect of jail time for contempt of court if he did not begin paying his arrearages. As soon as Ms. Lathan wired Mr. Sternberg the first loan amount, he used that money to pay a portion of the arrearages and kept the remainder as payment for the legal services he rendered to Mr. Nicholson. He additionally kept a portion of the second loan amount as payment for his legal fees.

Ms. Lathan, however, contended she never received a share certificate from Mr. Nicholson representing a portion of his interest in Sagent Energy. She further contended no such share certificate could be provided because Sagent Energy was not a stock corporation. These facts, in her mind, added up to fraudulent conduct and, to that end, she filed a complaint against Mr. Sternberg in the Circuit Court for Prince George's County alleging that Mr. Sternberg breached an escrow agreement with her (Count I), that he aided and abetted his client in the commission of fraud (Count II), and that he negligently breached the fiduciary duties owed to her as an escrow agent (Count III).

After the action was transferred to the Circuit Court for Montgomery County, Mr. Sternberg sought dismissal of Counts I and III of the complaint, and summary judgment on all counts. The circuit court granted, without prejudice, the motion to dismiss the entire

complaint, rather than granting summary judgment. Ms. Lathan appealed the circuit court's order.

Ms. Lathan presents a single question for our review:

> Whether the circuit court erred when it granted Mr. Sternberg's motion to dismiss the complaint without prejudice.

We answer this question in the negative, and, as we shall explain, hold that the trial court did not err in dismissing the complaint. Accordingly, we affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

At the heart of this appeal are a pair of documents entitled "Shared Loan and Share Purchase Agreement" (the "Agreements") executed by appellant, Jannie Lathan, and Ernest Nicholson, Jr., an individual not a party in this matter. The Agreements were prepared by appellee, Richard Sternberg, in his capacity as attorney for Mr. Nicholson, whom he had previously represented in the Superior Court of the District of Columbia for an arrearage of child support payments

Mr. Nicholson allegedly owned an 8% interest in Sagent Energy LLC ("Sagent"). Per the first purchase agreement ("Agreement I"), Ms. Lathan agreed to loan Mr. Nicholson $25,000. That loan would be secured by a fractional interest representing 1/1,240th of Mr. Nicholson's interest. Mr. Nicholson was to provide, on the date of closing, a certificate representing that 1/1,240th share of his interest in Sagent. Mr. Sternberg, for his part, would hold the certificate in escrow. The parties to the contract executed Agreement I on March 9, 2011.

Ms. Lathan and Mr. Nicholson entered into a subsequent purchase agreement ("Agreement II"), in which Ms. Lathan agreed to loan Mr. Nicholson $11,000, secured by another fractional interest in Sagent. Per Agreement II, Mr. Nicholson would secure the loan with a 1/2,818th share of his interest in Sagent and, again, he would provide a certificate representing that share for Mr. Sternberg to hold in escrow. Agreement II was executed on April 12, 2011.

Ms. Lathan filed a three-count complaint against Mr. Sternberg in the Circuit Court for Prince George's County on September 23, 2013. According to the complaint, Mr. Sternberg was aware as early as November 17, 2010, that Mr. Nicholson had a significant arrearage in child support in the District of Columbia. She alleged that she wired to Mr. Sternberg on March 8, 2011, the $25,000 required under Agreement I. Rather than place the $25,000 into escrow, however, she averred Mr. Sternberg immediately used $22,254.82 to pay a portion of Mr. Nicholson's arrearage, and retained the remainder of funds as payment of the attorney's fees Mr. Nicholson owed. The complaint further alleged that the disbursement occurred *before* Agreement I was executed and *before* Ms. Lathan received a promissory note for the $25,000 from Mr. Sternberg.

She also alleged that the $11,000 loaned to Mr. Nicholson for investment purposes only were used instead to satisfy his attorney's fees obligation to Mr. Sternberg. Furthermore, according to the complaint, Mr. Nicholson refused to repay the $36,000 debt he incurred under the Agreements. Although Mr. Nicholson filed for Chapter 7 protection in the U.S. Bankruptcy Court for the Eastern District of Virginia, Ms. Lathan averred Mr.

Nicholson was denied discharge of the debt owed to her because it determined he had perpetrated a fraud on her.

Accordingly, Ms. Lathan alleged in her three counts that Mr. Sternberg (1) breached the escrow agreement he had with her; (2) aided and abetted in the commission of fraud by misrepresenting the value of Mr. Nicholson's interest in Sagent in order to induce her to loan Mr. Nicholson the $36,000; and (3) negligently breached the fiduciary duty of reasonable care arising from his receipt of the advanced funds because there were no share certificates provided before disbursement, and because he misrepresented the value of Mr. Nicholson's Sagent interest and negligently allowed Mr. Nicholson to commit a fraud on Ms. Lathan while acting as an agent for her.

Mr. Sternberg sought dispositive relief from the circuit court by way of motion on November 20, 2013. He asked that the court either dismiss the complaint, grant summary judgment on the counts therein, or transfer venue to the Circuit Court for Montgomery County. The circuit court granted the motion to transfer venue, and Mr. Sternberg again filed his motion to dismiss or for summary judgment in the Circuit Court for Montgomery County on March 28, 2014. That circuit court held a hearing on May 7, 2014, where it granted the motion to dismiss, without prejudice, and denied the grant of summary judgment. Ms. Lathan requested via motion on May 15, 2014, that the circuit court reconsider its May 7 order, but the circuit court denied the motion on June 27, 2014.

Ms. Lathan timely noted her appeal on July 21, 2014.

DISCUSSION

A. Parties' Contentions

Ms. Lathan argues the circuit court should not have granted the motion to dismiss. First, she explains that the Agreements contained express language requiring Mr. Sternberg to conduct the closing and to receive the share certificates from Mr. Nicholson. Mr. Sternberg failed to do so and, accordingly, breached the agreement when he accepted and immediately disbursed Ms. Lathan's funds. She further contends there was, at minimum, an implied contract between herself and Mr. Sternberg that would support her breach claim. Second, Ms. Lathan argues that Mr. Sternberg negligently breached his fiduciary duty to her by accepting the responsibilities of an escrow agent as set forth in the Agreements, and by failing to abide by those terms. Finally, Ms. Lathan argues that she is able to demonstrate that Mr. Sternberg aided and abetted Mr. Nicholson in the commission of fraud. Specifically, she explains that Mr. Sternberg substantially assisted Mr. Nicholson by drafting the Agreements, and that he had actual knowledge that Mr. Nicholson had financial difficulties that required the loan of $36,000 from Ms. Lathan.

Mr. Sternberg counters Ms. Lathan's arguments vigorously. He initially argues that Count I failed because he was not a party to the Agreements, and an individual cannot breach a contract to which they are not a party. Moreover, although Ms. Lathan argues he could have breached an implied contract, she did not plead any facts indicating she had an implied contract with Mr. Sternberg, rendering this argument ineffective. Mr. Sternberg further argues that Count III was also properly dismissed because Ms. Lathan could not demonstrate Mr. Sternberg owed her a duty as she was neither the third-party beneficiary

of the attorney-client relationship between Messrs. Sternberg and Nicholson, nor was she in direct privity with Mr. Sternberg. Mr. Sternberg additionally explains that the circuit court properly dismissed Count II of the complaint because Ms. Lathan failed to plead any facts that would establish the elements of a cause of action for aiding and abetting. Finally, Mr. Sternberg argues Ms. Lathan's claims are barred by contributory negligence because she did not investigate the nature of the collateral offered before wiring the funds, and also, that she was not entitled to punitive damages because she did not plead facts demonstrating actual malice.

B. Standard of Review

Maryland Rule 2-322 sets forth the pre-answer dispositive motions a defendant may file in response to a complaint. At issue in this appeal is the circuit court's grant of Mr. Sternberg's motion to dismiss pursuant to Rule 2-322(b)(2), which allows a defendant to seek dismissal of those counts that fail to state a claim upon which relief can be granted.

Where a circuit court has granted a motion to dismiss for failure to state a claim upon which relief may be granted, an appellate court shall review the circuit court's decision for legal correctness. *Bacon v. Arey*, 203 Md. App. 606, 651 (2012) (quoting *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 155–56 (2010)). In so doing,

> a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may be reasonably drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted.

Bacon, 203 Md. App. at 651. We will uphold the dismissal if the facts alleged and permissible inferences would, if proven, fail to afford relief to the plaintiff. *Id.*

C. Analysis

This case presents us with a somewhat unusual procedural posture. The motion before the circuit court was a dispositive motion seeking alternative forms of relief, whether it was to dismiss the legally insufficient counts in the complaint or to grant Mr. Sternberg judgment as a matter of law as to all counts. While the record is somewhat unclear as to which forms of relief were sought for each count, both parties, and the circuit court, appeared to treat the ruling as a motion to dismiss the entire complaint without prejudice. Accordingly, we treat it that way as well.[1]

Although Mr. Sternberg is in a defensive posture in this appeal, he also seeks our review of the denial of summary judgment. We cannot oblige. If Mr. Sternberg wanted us to consider the circuit court's denial of summary judgment, a notice of cross-appeal was necessary. As he did not file a notice of cross appeal within the ten days required by Maryland Rule 8-202(e), Mr. Sternberg has not preserved this question for our review. Therefore, we limit our review to the arguments regarding the legal sufficiency of the circuit court's dismissal of the complaint, in the order both parties have addressed them.

[1] The record shows that Counts I and III were often argued together in either parties' filings, likely due to their similar nature. Thus, several motions have the appearance of seeking one form of relief for Counts I & III and another for Count II. In the absence of a written order by the circuit court directing us otherwise, we resolve the ambiguity this way for the sake of clarity.

i. Count I—Breach of Escrow Agreement

Ms. Lathan's complaint alleges in Count I that Mr. Sternberg breached his escrow duties under Agreement I. The allegations arise from Mr. Sternberg's handling—or averred lack thereof—of the Sagent shares certificate. Ms. Lathan alleged that Mr. Sternberg not only did not advise her that he had not received a share certificate from Mr. Nicholson, but that no such certificates even existed because Sagent was a Delaware LLC and not a stock corporation. Accordingly, because of these alleged failures, Mr. Sternberg breached his escrow duties under the terms of Agreement I.

The challenge to Ms. Lathan's arguments is the requirement in Maryland law that a plaintiff who alleges a breach of contract "must of necessity allege with certainty and definiteness *facts* showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 655 (emphasis in original) (citing *Cont'l Masonry Co. v. Verdel Constr. Co.*, 279 Md. 476, 480 (1977)); *accord Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 362 (2012). To reiterate what is critical to the success of Ms. Lathan's claim—"a plaintiff must prove *that the defendant owed the plaintiff a contractual obligation* and that the defendant breached that obligation." *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001) (emphasis added).

Simply, Ms. Lathan's complaint was lacking in any allegations demonstrating Mr. Sternberg owed Ms. Lathan a contractual duty pertaining to the funds in the escrow account. The signatories to Agreement I were Ms. Lathan and Mr. Nicholson. Mr. Sternberg did not agree to any duties in Agreement I, nor did he make a separate agreement

with Ms. Lathan. In fact, the only escrow provisions in the contract pertained to Mr. Sternberg's retention of the $25,000 in his attorney trust account if the parties opted to close on the transaction via mail, and to Mr. Sternberg's retention in escrow of the Sagent stock certificate. Ms. Lathan was not able to allege sufficiently facts demonstrating an *express* agreement that Mr. Sternberg was to hold the funds in escrow.

Similarly, we are not persuaded that there existed an implied contract between Ms. Lathan and Mr. Sternberg. We have previously stated than a contract implied-in-fact is one arising from "actions implying definite terms." *Dolan v. McQuaide*, 215 Md. App. 24, 37 (2013). These actions arise from mutual agreement and an intent to promise. *See id.* at 36 (citing 1 Williston on Contracts § 1:5 (4th ed. 2002)). The complaint, however, is devoid of any factual allegations that would demonstrate Ms. Lathan and Mr. Sternberg had an implied agreement regarding escrow of the $25,000. As stated, the only clause in the contract that comes remotely close to the escrow subject matter is Paragraph 2 of Agreement I, regarding the option to close the transaction via mail. The clause's language makes clear that the option is between the parties to Agreement I, *i.e.*, Ms. Lathan and Mr. Nicholson.

The complaint contains no allegations indicating Mr. Sternberg owed Ms. Lathan any contractual duties—implied or express—with regard to escrow of the funds. Ms. Lathan, therefore, was not able to allege sufficiently that Mr. Sternberg breached an escrow agreement between the two parties. The circuit court did not err in dismissing Count I of the complaint without prejudice.

ii. Count III—Negligent Breach of Fiduciary Duty

Count III is similar to Count I in that Ms. Lathan argues Mr. Sternberg negligently breached a fiduciary duty to her through his handling of the funds received per the Agreements. She alleges Mr. Sternberg not only disbursed funds to Mr. Nicholson without obtaining a Sagent shares certificate, but did so without advising her that no such certificates existed. Moreover, Ms. Lathan alleges that Mr. Sternberg assisted his client in defrauding her by valuing Mr. Nicholson's Sagent interest at $31 million. All of these allegations, according to Ms. Lathan, demonstrate the breach of a fiduciary duty that was owed to her by Mr. Sternberg. Yet, Ms. Lathan cannot demonstrate there even existed a duty between her and Mr. Sternberg, which is necessary for a *prima facie* case of negligence.

First, to the extent that Ms. Lathan pleads breach of fiduciary duty as a separate tort, this claim fails as Maryland courts do not recognize this cause of action. *See Vinogradova v. Suntrust Bank, Inc.*, 162 Md. App. 495, 510 (2005) (quoting *Int'l Brotherhood of Teamsters v. Willis Corroon Corp. of Md.*, 369 Md. 724, 727 n.1 (2002): "[A]lthough the breach of a fiduciary duty may give rise to one or more causes of action, in tort or in contract, Maryland does not recognize a separate tort action for breach of fiduciary duty."). If, however, we treat Ms. Lathan's claim as one sounding in professional negligence, it fails because she cannot plead the existence of a duty between herself and Mr. Sternberg.

Ms. Lathan argues that Mr. Sternberg committed professional negligence arising not from his services as an attorney, but his service as an escrow agent who agreed to accept the funds on behalf of his client. Necessary to the *prima facie* case of professional

negligence is for a plaintiff first "to satisfy the threshold requirement of alleging and proving the existence of a duty between the plaintiff and the defendant." *Goerlich v. Courtney Indus., Inc.*, 84 Md. App. 660, 663 (1990) (citing *Flaherty v. Weinberg*, 303 Md. 116, 134 (1985)). Typically, this duty of diligence and care extends only to the attorney's client, *i.e.*, where there is strict privity between the parties. *Goerlich*, 84 Md. App. at 663. Ms. Lathan does not contest that Mr. Sternberg does not owe her a duty as a client. Rather, her claim ostensibly falls within the third-party beneficiary exception to the strict privity rule.

Beginning in the early 1970s, Maryland courts began to discuss and develop the third-party beneficiary exception. *See Flaherty*, 303 Md. at 129–30. Per this exception, courts will permit a third party to maintain a suit for legal malpractice if that party "can allege and prove that the client intended him to be a third-party beneficiary of the attorney's services," and that party's interests "are identical to those of the client." *Goerlich*, 84 Md. App. at 664. Accordingly, the third party must "allege and prove that the intent of the client to benefit the nonclient was a *direct purpose of the transaction* or relationship." *Id.* (emphasis added) (quoting *Flaherty*, 303 Md. at 130–31).

In *Goerlich*, appellant Goerlich was discharged from his employment with appellee Courtney Industries, Inc., a company previously named Cortlic Chemical Corporation that he founded with James Courtney. *Goerlich*, 84 Md. App. at 661–62. At the heart of the dispute was a Shareholders' Agreement prepared by the appellee-attorney Bernard Denick. *Id.* at 662. In a previous unreported opinion, we affirmed the circuit court's findings that a disputed clause in the agreement, which supposedly gave Goerlich employment during the

life of the corporation, was invalid because of indefinite duration, and also that Goerlich was an at-will employee whose termination was permissible. *Id.* (citing *Goerlich v. Cortlic Chem. Corp.*, No. 1226, Sept. Term 1983 (filed June 12, 1984)). Goerlich sued Denick alleging he had committed legal malpractice during the drafting of the agreement. *Id.* at 662–63. We held Goerlich did not sufficiently allege that the direct purpose of the Shareholders' Agreement was to establish an employment relationship between himself and Cortlic. *Id.* at 664. To allow third parties to sue for an incidental benefit, we explained, would allow for excessive litigation "brought by those who might conceivably derive some indirect benefit from the contractual performance of the attorney and his client." *Id.* at 664–665 (citation omitted). Moreover, we emphasized that Goerlich and the corporation were in an adversarial posture, and Denick could not represent the interests of both Cortlic and Goerlich. *Id.* at 665.

We think *Goerlich* is applicable here. Mr. Sternberg's duty was to his client, Mr. Nicholson, and not to Ms. Lathan. Indeed, she and Mr. Nicholson were adverse to each other as the conflicting parties in a transaction. Ms. Lathan was not a third party to the Agreements. She was a first party creditor who stood to benefit from the transaction in the event Mr. Nicholson defaulted and had to transfer to her a portion of his interest in Sagent. Mr. Sternberg could not possibly owe duties to both Ms. Lathan and Mr. Sternberg without violating his ethical responsibilities under the Maryland Lawyers' Rules of Professional Conduct. *See Goerlich*, 84 Md. App. at 665 (citing *Flaherty*, 303 Md. at 131).

Moreover, as discussed *supra*, the Agreements do not *impose* any escrow duties on Mr. Sternberg. The parties had the *option* of having Mr. Sternberg collect the consideration

for the share certificates and place it in his attorney trust account if they elected to close on the transaction by mail. Furthermore, the Agreements' only mentions of escrow are with regard to Mr. Sternberg holding the shares certificates in escrow pending repayment in full of the loans. The Agreements contain no language that would demonstrate Mr. Sternberg owed Ms. Lathan any duties.

We hold Ms. Lathan is unable to demonstrate that Mr. Sternberg owed her any duties under the Agreements. She certainly was not his client, and cannot demonstrate the limited third-party beneficiary exception applies to her because of her adversarial posture *vis-à-vis* Mr. Nicholson. Accordingly, the circuit court committed no error in dismissing Count III of the complaint without prejudice.

iii. Count II—Aiding and Abetting in the Commission of a Fraud

Count II of Ms. Lathan's complaint alleges that "[w]ithout the aid, advice and assistance of [Mr. Sternberg], [Mr.] Nicholson would have been unable to car[ry] out his fraud." She argues that, because of his role in Mr. Nicholson's child care arrearage contempt case, he "knew or should have known that [Mr. Nicholson] was in arrears on court ordered payments and was facing incarceration for non payment [sic] and had no present ability to make the court ordered payments." That information led Ms. Lathan to believe that "he knew or should have known" that Mr. Nicholson's plan was fraudulent. In sum, Ms. Lathan concludes that

> [Mr. Sternberg's] conduct in assisting in the preparation and use of Agreements I and II for the purpose of obtaining money for [Ms. Lathan] was wilful[l], wanton and reckless and was done with the intent of assisting and aiding [Mr.] Nicholson in his scheme to fraudulently obtain $36,000

> from [Ms. Lathan] based on false and misleading representations made by [Mr.] Nicholson.

Upon consideration of the facts as alleged in her complaint, we disagree.

In Maryland, "[a] person may be held liable as a principal . . . if he, by any means (words, signs, or motions) encouraged, incited, aided or abetted the act of the direct perpetrator of the tort." *Alleco Inc. v. Harry & Jeanette Weinberg Foundation, Inc.*, 340 Md. 176, 199 (1995) (citation omitted). What logically follows, then, is that in order to withstand a motion to dismiss on an aiding and abetting claim, a complaint must demonstrate three things: (1) a tortious act committed by a primary actor, (2) the defendant's knowledge of that tortious act, and (3) the defendant's substantial assistance in the commission of that tortious act. *See generally Manikhi v. Mass Transit Admin.*, 360 Md. 333, 360 (2000); *Alleco Inc.*, 340 Md. at 199; *Faulkner v. American Cas. Co. of Reading, Pa.*, 85 Md. App. 595, 630 (1991); Restatement (Second) of Torts, § 876(b). In short, "To be liable in tort, the aider or abettor must have engaged in assistive conduct that he would know would contribute to the happening of that act." *Saadeh v. Saadeh, Inc.*, 150 Md. App. 305, 328 (2003). Importantly, as with any civil pleading, "[t]he facts in the complaint must be pled with specificity; bald allegations and conclusory statements are not sufficient to support a complaint." *Polek*, 424 Md. at 350-51.

Based on a fair reading of the complaint, we are unable to discern any error in the circuit court's decision to dismiss Count II. For the purposes of our discussion, viewing the allegations in the light most favorable to Ms. Lathan, we think it is fair to assume that the complaint establishes: (1) the first element, in Mr. Nicholson's tortious act, as apparently

found in the bankruptcy proceedings, and (2) the third element, in that the Agreements were prepared by Mr. Sternberg and utilized in the commission of Mr. Nicholson's fraud.[2] What the complaint falls decidedly short of establishing, however, is the second element – Mr. Sternberg's actual knowledge *vel non* of the tortious act.

After excising its conclusory statements, the complaint simply does not demonstrate, with enough factual support, that Mr. Sternberg had any actual knowledge of Mr. Nicholson's plan to use the Agreements to fraudulently obtain the payments from Ms. Lathan. A generous reading of the complaint *factually* shows that:

> (1) Mr. Sternberg represented Mr. Nicholson in the child support contempt proceedings and knew of his non-payments and potential incarceration;
> (2) Mr. Nicholson was responsible for "soliciting" Ms. Lathan to participate in the transaction;
> (3) Mr. Sternberg drafted the Agreements for Mr. Nicholson, according to the terms that were negotiated between Mr. Nicholson and Ms. Lathan;
> (4) The Agreements were executed by both parties;
> (5) Ms. Lathan wired Mr. Sternberg the money, which was mostly disbursed to Mr. Nicholson and partially retained by Mr. Sternberg for his legal fees; and
> (7) Mr. Nicholson did not perform his obligations under the Agreements, ultimately declared bankruptcy, and was unable to discharge the amount paid to him by Ms. Lathan because of the bankruptcy court's finding of fraud.

Indeed, without its legal conclusions, the complaint does not factually demonstrate much more than Mr. Sternberg drafted the agreements and collected his legal fees—a role not dissimilar from that of many attorneys.

[2] Although, suffice it to say, we are certainly not convinced that the complaint demonstrates Mr. Sternberg's "substantial assistance" in Mr. Nicholson's fraud. While the Agreements may have played a substantial role in Mr. Nicholson's scheme, simply concluding that Mr. Nicholson would have been "unable" to perpetrate the fraud without Mr. Sternberg, with no substantiated factual support that Mr. Sternberg knew of, let alone actively played a role in, the scheme, is unpersuasive at best.

Admittedly, we do agree with what almost every party has said, in one way or another: this was a bizarre transaction.[3] That alone, however, is not enough to overcome the complaint's shortcomings. The complaint is missing a crucial, demonstrable link between Mr. Sternberg and Mr. Nicholson's fraud. For example, it does not factually show: (1) that Mr. Sternberg played any role in the negotiations regarding those transactions with Ms. Lathan, (2) that Mr. Sternberg actually knew that Mr. Nicholson was misrepresenting his ownership interest in Sagent, or (3) that Mr. Sternberg encouraged, or even advised him about, the scheme.

Nor does the complaint provide any factual basis for linking Mr. Sternberg's representation in the child support case to aiding in Mr. Nicholson's attempt to defraud Ms. Lathan. Without more, the fact that Mr. Sternberg represented Mr. Nicholson in the child support arrearage case, at most, proves that Mr. Sternberg was aware that Mr. Nicholson was failing to make his court ordered payments, and needed to satisfy those obligations to avoid potential jail time. It takes an enormous inferential leap to then link that situation with Mr. Sternberg having actual knowledge of that same client's scheme to defraud his family friend of $36,000; a leap we are disinclined to make.

Ms. Lathan attempts to bridge the gap between actual known facts and her ultimate conclusion by repeating vague phrases such as, "[u]pon information and belief," and "knew or should have known." In alleging causes of action like that of fraud, those statements

[3] At the motions hearing, the circuit court remarked that he had "never come across a document like this propounded by a lawyer," Ms. Lathan's counsel said that it was, "on its face, a very unusual transaction, and Mr. Sternberg's counsel called it a "weird transaction." *See* Motions Hearing Tr., 17, 18, 20, May 7, 2014.

amount to little more than an indication that the plaintiff has a "feeling" that the defendant has committed some potential wrongdoing. A plaintiff cannot substitute such a feeling in their pleading for the requisite particularity under the Maryland Rules, in hopes of later vindicating that feeling in a later stage of litigation. The complaint was properly dismissed. The circuit court committed no error.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.