Circuit Court for Montgomery County
Case No.: 475731V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1366

September Term, 2020

MAJDI SHOMALI

v.

ENIWARE LLC, et al.

Graeff,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: March 24, 2022

On November 25, 2019, Majdi Shomali, appellant, filed an eight-count complaint in the Circuit Court for Montgomery County against Eniware, LLC (Eniware), his former employer, and James E. Bernstein, M.D. and Huma Malik, members, officers and directors of Eniware (collectively, the appellees). The circuit court granted appellees' motion to dismiss the complaint as barred by the applicable three-year statute of limitations. Appellant appealed, arguing that the circuit court erred in dismissing his complaint by determining that the accrual date for his cause of action was October 21, 2016, the day Eniware failed to pay his bi-weekly salary, instead of November 27, 2016, the day appellant notified appellees that he was involuntarily resigning from his position. For the reasons that follow, we shall affirm in part and reverse in part.

FACTS

For present purposes, we accept the allegations in the complaint. On September 11, 2013, appellant entered into an employment agreement (the Agreement) with Eniware, a limited liability company created to develop a portable, power-free, room temperature, surgical instrument sterilization kit. At all relevant times, Dr. Bernstein was the Chief Executive Officer of Eniware and Ms. Malik was President. Dr. Bernstein, as chief executive officer, signed the Agreement on behalf of Eniware. The Agreement provided that appellant's title would be Vice President of Product Development. It provided for the following compensation: (1) a base salary of $120,000 per year to be paid bi-weekly; (2) Eniware's standard benefits; (3) eligibility for an annual bonus based on performance of appellant and Eniware; (4) and up to 15,000 vested Restricted Class B units in Eniware.

The Restricted Class B units would vest as follows: 3,750 units would vest 12 months from the start date of employment; thereafter, 313 units would vest monthly for 36 months.

The Agreement also contained a termination provision. It provided for termination for cause or without cause by Eniware. With respect to termination without cause, it provided for a severance payment, after one year of employment, equal to six months base salary and accrued expenses.

The 15,000 vested units were subject to a Restricted Unit Award Agreement dated October 21, 2013 (First Unit Agreement). The units were to be held by the Secretary of Eniware and, according to the Unit Agreement, "shall be released to the Recipient promptly thereafter upon Recipient's request." Additionally, "[w]ithin ninety (90) days following the date on which [appellant]'s service with the Company terminates for any reason . . . the Company shall have the option (exercisable by written notice to [appellant]) to purchase, and [appellant] shall sell, any Vested Units then owned" in accordance with certain stated procedures.

Shomali began working on October 1, 2013.

On May 11, 2015, Eniware granted appellant an additional 5,000 equity units for his "excellen[t]" work. The 5,000 vested units were subject to a Restricted Unit Award Agreement dated May 8, 2015 (Second Unit Agreement). The Second Unit Agreement contained the same terms as the First Unit Agreement.

On October 20, 2016, Ms. Malik sent an email to Dr. Bernstein recommending that appellant be removed from payroll. On the same day, Dr. Bernstein spoke to appellant and told him he would not receive his next scheduled salary payment, due the next day, and

urged him to consent to not being paid. Appellant refused to consent. He advised Dr. Bernstein that he could continue to work only with a salary and demanded that Dr. Bernstein provide him with a commitment and a plan for resuming his salary, which Dr. Bernstein agreed to provide.

On October 21, 2016, Dr. Bernstein forwarded to appellant the October 20 email that Ms. Malik had sent to Dr. Bernstein in which she had recommended that appellant be removed from payroll. In his email to appellant, he added: "Per our discussion. I appreciate your commitment." In response, appellant emailed Dr. Bernstein and advised him: "It is not a question of commitment. As I clearly explained to you yesterday, it is not economically feasible without timely payment of salary." Eniware did not pay appellant his salary on October 21, 2016. When Eniware missed a second scheduled pay-check two weeks later, on November 4, appellant sent a letter to Dr. Bernstein stating, "I cannot stress enough that this is leading to hardship for me and my family and we are in dire need of those funds." On November 22, when appellant asked Dr. Bernstein "how the financing efforts" regarding his salary were proceeding, Dr. Bernstein responded, "I am working on it."

On Sunday, November 27, 2016, appellant sent a four-page letter to Dr. Bernstein. He wrote that since his arrival at Eniware in 2013, and despite assurances that Eniware had proper funding, it had been underfinanced, which had led to its periodic failure to pay wages, expenses, and health insurance. He reminded Dr. Bernstein that Eniware had failed to make payroll on several occasions, including a period between April 10, 2015 and June 19, 2016, which was later paid after an additional source of financing was found; had failed

to pay appellant's expenses; and had allowed his health insurance to lapse at one point without warning. Appellant also alleged that Dr. Bernstein and Ms. Malik had undermined and interfered with his ability to do his job. In conclusion, he stated: "Your creation of intolerable work conditions, which include, but are not limited to, non-payment, non-responsiveness, and non-commitment to paying my salary and other deliberate behavior, all motivated to coerce a resignation constitutes a constructive discharge of my employment." Appellant requested, among other things, his earned but unpaid wages; accrued expenses; release of all his vested units of equity; and severance pay of six months base salary plus expenses. He specifically alleged that appellees had violated the Maryland Wage Payment and Collection Law ("MWPCL"), Md. Code, Labor & Employment Article (Lab. & Empl.), § 3-501, *et seq*. by failing to pay wages.

Two days later, Dr. Bernstein sent a letter to appellant confirming receipt of appellant's letter that "separated your employment relationship with our company, which was further confirmed by your absence from work this week." Dr. Bernstein stated that the company construed appellant's letter as a resignation letter, even though "the company believes that well-documented grounds existed to terminate you for cause." Dr. Bernstein wrote that the company owed appellant only earned back wages and verified expenses, and that Eniware had exercised its right to purchase appellant's vested equity units rather than release the units to him.

On December 2, 2016, Eniware paid appellant for the missed salary payments on October 21, November 4, November 18, and December 2, 2016. Five days later, on December 7, 2016, appellant sent a letter to Dr. Bernstein, acknowledging Eniware's

payment of his back wages but denying that he had voluntarily resigned, stating that "if an employer does not make timely payment of wages, then the employer is constructively discharging the employee." He demanded that Eniware pay him his requested compensation as specified in his earlier letter, including his equity units, bonus, and severance.

On November 25, 2019, appellant filed an eight-count complaint, alleging: "breach of contract and breach of implied duties o[f] good faith and fair dealing and candor"; "breach of contract (unpaid wages/constructive discharge)"; declaratory judgment; negligence; accounting; unjust enrichment; quantum meruit; and constructive trust. In his first count, he claimed that Eniware breached his employment contract when it failed to pay salary, expenses, and a bonus to appellant on October 21, 2016. He claimed damages that included his equity units, interest, and attorneys' fees. In his second count, he claimed that Eniware breached his employment contract by failing to pay salary, expenses, bonus, equity units and "other remuneration[.]" He also alleged that he was constructively discharged on November 27, 2016 because of intolerable work conditions. Lastly, he alleged a violation of the MWPCL and claimed treble damages and attorneys' fees. In his third count, he sought a declaratory judgment that he was entitled to the fair market value of 13,542 vested units, that they were "wages" within the meaning of the MWCPL, and that he was entitled to treble damages under MWCPL. In his fourth count, he alleged that Dr. Bernstein and Ms. Malik owed appellant fiduciary duties and a "duty of care[.]" He alleged that they breached their fiduciary duties and were negligent in conducting Eniware's business that caused underfunding and failure to make payroll. In his fifth count,

he sought an accounting of all expenditures by Dr. Bernstein and Ms. Malik while acting as officers and directors of Eniware. In count six, he claimed that Eniware was unjustly enriched by his uncompensated work and by virtue of his assignment of a patent to Eniware to help it produce the instrument sterilization product. In count seven, appellant sought damages based on quantum meruit. Lastly, in count eight, appellant asked the court to impose a constructive trust on Eniware's assets and to sell those assets to satisfy his claims.

Appellees filed a motion to dismiss and memorandum, asserting that the complaint was barred by the three-year statute of limitations because the causes of action accrued on October 21, 2016 and the allegations were insufficient to pierce the corporate veil as to Dr. Bernstein and Ms. Malik. In addition, appellees argued that the allegations were substantively deficient for other reasons, including: (1) appellant failed to allege the elements of a negligence claim; (2) claims for unjust enrichment and quantum meruit will not lie when there is an express contract; and (3) claims for an accounting and the imposition of a constructive trust refer to remedies and are not standalone causes of action.

Appellant opposed the motion to dismiss. Appellant argued that all of his claims were filed within the applicable limitations period. In essence, appellant argued that the contractual claims were divisible and not tied to October 21, 2016, the payment of compensation was subject to the MWPCL and its limitations period, and the individual appellees owed duties to him.

The circuit court granted appellees' motion to dismiss with prejudice without a hearing. The circuit court reasoned that appellant's complaint was "based on … Eniware's failure to meet its payroll obligations, beginning October 21, 2016" and Shomali's

"essential objection was that he did not receive his paycheck as required." The court concluded that, because appellant's causes of action accrued on October 21, 2016, and he did not file his complaint until November 25, 2019, his complaint was barred by the three-year statute of limitation.

In addition, with respect to count II, the circuit court stated it was difficult to tell if the count was based on breach of contract or the tort of constructive discharge, but nevertheless, the cause of action accrued on October 21, 2016. The circuit court treated count III as a claim under the MWPCL but held that the cause of action related to the equity units and the claim for those units accrued on November 4, 2016, two weeks after Eniware failed to make the salary payment. With respect to counts IV and V, the circuit court stated that it was difficult to see how the claims were individual claims, as distinguished from derivative claims, but in any event, the breaches of duty were part of his contractual claim that accrued on October 21, 2016. The circuit court stated that counts VI and VII were brought alternatively, but in any event, were barred by limitations because the contract claims were barred by limitations. Lastly, with respect to count VIII, the circuit court held that the claim was barred by limitations because appellant's claims under the Agreement were barred by limitations.

Appellant filed a motion for reconsideration and clarification of the court's order. Appellant also requested leave to amend, acknowledging that the complaint "may have been unclear." Appellant objected to the circuit court's characterization of his complaint as one for back wages, pointing out that in his complaint he acknowledged that appellees had cured the payroll default on December 2, 2016. Appellant reiterated that his complaint

was based on Eniware's breach that occurred when he sent Eniware his constructive discharge letter dated November 27, 2016. Consequently, his causes of action did not accrue until on or after that date. Specifically, with respect to violations of the MWPCL, he argued that Eniware was obligated to pay all compensation due on the first regular payment date after termination of employment, *i.e.*, December 2, 2016. Thus, because suit cannot be filed under the MWPCL until two weeks after payment is required, the cause of action did not accrue before December 16, 2016.

Appellees filed a motion opposing appellant's motion for reconsideration, arguing that the court properly ruled that all of his claims accrued on October 21, 2016, and, therefore, were time barred.

A hearing was held on December 21, 2020. On December 30, 2020, the circuit court denied appellant's motion for reconsideration and for leave to amend his complaint.

In our discussion of the issues, we shall provide additional facts as necessary.

DISCUSSION

I.

Law

A. Standard of Review

Pursuant to Md. Rule 2-322(b)(2), a defendant may move to dismiss a complaint if the complaint "fail[s] to state a claim upon which relief c be granted[.]" In reviewing a grant of a motion to dismiss:

> we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party. Typically, the object of the motion is to argue that as a matter of law relief cannot be granted on the facts alleged. Thus, consideration of the universe of "facts"

> pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.

Litz v. Maryland Dep't of the Env't, 434 Md. 623, 639 (2013) (quotation marks and citations omitted). "[D]ismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Id.* (quotation marks and citation omitted). "The standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct." *Schisler v. State*, 177 Md. App. 731, 742 (2007) (citing *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998)).

B. Statute of Limitations

With exceptions not relevant here, the statute of limitations for a civil action is three years "from the date it accrues[.]" Md. Code Ann., Courts & Judicial Proceedings (Cts. & Jud. Proc.) § 5-101. In Maryland, "as a general rule, a cause of action accrues on the date of the alleged wrong." *Coll. of Notre Dame of Maryland, Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 170 (2000) (citations omitted). With respect to the date of accrual, the Court of Appeals has stated:

> The question of when a cause of action accrues is ordinarily "left to judicial determination." *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95 (2000). . . . When it is necessary to make a factual determination to identify the date of accrual, however, those factual determinations are generally made by the trier of fact, and not decided by the court as a matter of law. Motions to dismiss are generally granted in cases where "there [is] no justiciable controversy[.]" *Broadwater v. State*, 303 Md. 461, 467 (1985). Therefore, a motion to dismiss ordinarily should not be granted by a trial court based on the assertion that the cause of action is barred

> by the statute of limitations unless it is clear from the facts and allegations on the face of the complaint that the statute of limitations has run. *See Desser v. Woods*, 266 Md. 696, 703-04 (1972) ("It is well settled that the defense[ ] of the bar of the statute of limitations ... may only be availed of by demurrer to a bill of complaint when [it] appear[s] on the face of the bill of complaint, itself, and other matters not so appearing cannot be considered in determining whether or not these defenses are a bar to the alleged cause of action.")[.]

Litz, 434 Md. at 641 (citations omitted).

II.

Accrual of Claims

A. Contract

Appellant acknowledges that he is not asserting a claim for unpaid salary; it was paid on December 2, 2016. He argues that his claims for compensation under the Agreement are divisible, and they did not accrue at the same time. We agree.

Under the terms of the First and Second Unit Agreements, section 3(c), all vested units held by the Secretary of Eniware shall be released to the "Recipient" upon "the Recipient's request[.]" The preamble identifies appellant as the Recipient. Section 4 of both Unit Agreements provides that, within 90 days after appellant's termination of employment, Eniware has the option to purchase all vested equity units.

Appellant alleged that his employment terminated on November 27, 2016, when he sent his termination letter to Dr. Bernstein. In the letter, he also requested release of the equity units and demanded payment of the severance payment referenced in the Agreement. Appellant further alleged that, on November 29, 2016, Eniware exercised its option to purchase the units. Lastly, appellant alleged that Eniware did not release the units or pay the purchase price.

Generally, when a contract for a total price to be paid, especially when the total price is not to be paid until completion of the work to be performed, claims for compensation are not divisible. *See Shapiro Eng'g Corp. v. Francis O. Day Co.*, 215 Md. 373, 380 (1958) (citations omitted).

When payment of different types of compensation are subject to their own conditions, claims for payment are divisible. We find *Schneider v. Hagerstown Brewing Co.*, 136 Md. 151 (1920) instructive. In that case, the Court of Appeals stated:

> The appellant agreed in writing with the Hagerstown Brewing Company, the appellee, to serve as its brewmaster for the period of five years from December 5, 1913. The agreement provided that the salary to be received by the appellant for his services should be $150 per month, "payable as follows: Thirty dollars per week in cash, payable on the 15th and 1st day of the month for twelve months (one year), and at the end of the one year, the balance of salary, thirty dollars ($30.00) per month, to be paid in brewery company stock, par value $100.00 per share, making a total salary for the year eighteen hundred dollars ($1,800.00), and same to follow every year," so long as the contract remained in force.
>
> * * *
>
> If the contract had been entire and indivisible both as to the period of service and as to the payment of compensation, the plaintiff's breach would have deprived him of any right of action for the partial performance. But the agreement was divisible as to the salary payments. The cash salary was payable semimonthly, and the compensation in stock was to be settled annually. There were three annual installments of stock to which the plaintiff had become entitled prior to his breach of the agreement. The compensation in cash for which it provided having been fully paid, the only right which the plaintiff could still assert had relation to the stock which he had earned, but had not yet received.

Schneider, 136 Md. at 152-54 (citations omitted).

We also find *Shapiro Engineering* instructive. In that case, the plaintiff agreed to construct storm sewers in a subdivision for an aggregate price. *Shapiro,* 215 Md. at 375. The subdivision contained two sections. After substantially completing the work in the first section, the plaintiff sought payment for the value of that work. The defendant refused to pay. The Court ruled in favor of the plaintiff and explained:

> *Restatement, Contracts*, § 266(3), comment e, defines a divisible contract as one where performance of each party is divided into two or more parts, the number of parts due from each party is the same, and the performance of each part by one party is the agreed exchange for a corresponding part by the other party. Comment f, states that "It is a question of interpretation whether a contract is divisible." Corbin takes the view that interpretation and intention should play only a limited part in the decision, which should depend upon the particular facts and the object to be attained. 3 *Corbin, Contracts*, § 694. Williston agrees that a contract may be entire in some aspects and divisible in others. 3 *Williston, Contracts* (Rev. Ed.), § 866. Cf. 5 *Williston, Contracts* (Rev. Ed.), § 1363. Corbin recognizes that although a provision for progress payment alone may not make a contract divisible, in a building contract the work and price may be apportioned into pairs.
>
> In the instant case we find no error in the allowance made. The contract itself made an apportionment for purposes of payment, and upon the facts stated the two parts of the work were separate and distinct. Moreover, it is significant that in its letter of January 10, 1955, enclosing part payment of the first requisition, the appellant, while differing as to the mode of calculation, based its estimate of completion on the completion of Section I, and not on completion of the whole contract. The letter stated: "we estimate your completion as of December 25, 1954 as 51.3% for a gross amount due $11,719.00 (sic) less retainer of $1,179.90, making an amount due this payment of $10,619.10 for Section 1." 51.3% of $23,000 is $11,799.00, and the payment is "for Section 1". In short, the defendant itself recognized that the payments on account would completely pay for the first section, without

> regard to the completion of Section II. A clearer acknowledgment of the severability of the contract in relation to payment can hardly be imagined.

Id. at 380-81 (citations omitted).

Appellees rely on *Olmstead v. Bach*, 78 Md. 132 (1893) and *Hippodrome Co. of Baltimore v. Lewis*, 130 Md. 154 (1917) to argue that appellant's claims are indivisible. In *Olmstead*, the plaintiff and defendant entered into an employment contract in which the defendant agreed to pay the plaintiff a weekly salary for services. The term of the contract was one year. The defendant breached the contract during the term by refusing to pay salary due and by not letting the plaintiff work thereafter. The plaintiff sued for unpaid salary to the time of breach and received a judgment. Subsequently, the plaintiff sued again, claiming wages for the period of time subsequent to the breach. The Court held that the plaintiff's second claim was barred because his claims were indivisible. The Court explained that the plaintiff had to pursue all damages resulting from the breach at the time of the first suit. *See also Shum v. Gaudreau*, 317 Md. 49, 57 (1989) (applying the *Olmstead* holding in a landlord tenant dispute).

Similarly, in *Hippodrome Co.*, the plaintiff entered into a contract with the defendant for a two-year term whereby the defendant would pay plaintiff a weekly salary for services. The plaintiff alleged that the defendant stopped paying his salary and refused to let him work thereafter. The Court of Appeals found the contract similar to the one in *Olmstead* and held it was not divisible.

In *Olmstead* and *Hippodrome Co.*, unlike in the instant case, there were no preconditions that had to occur before the claims ripened. Moreover, when Eniware

exercised its option to purchase the equity units, it formed a new contract and, based on the allegations, breached it by failing to pay.

> An option, as such, is not susceptible of specific performance. As this Court stated in *Trotter v. Lewis*, 185 Md. 528, 534 (1946), "In any case of contract based upon an option, the remedy of specific performance is invoked not on the theory that the option itself is enforceable, but on the theory that the option is a continuing offer to sell and, when duly accepted by the optionee, becomes a definite contract mutually binding and enforceable." When an option is duly exercised it is said that the option "ripens into" a binding contract.

Simpers v. Clark, 239 Md. 395, 400-01 (1965) (citation omitted).

As explained above, we conclude that appellant's causes of action for the equity units did not accrue before November 27, 2016 because that is when Eniware failed to deliver the units or pay the option price. Thus, the claim filed on November 25, 2019 was timely. In addition, appellant could not have sued for a severance payment prior to severance, which occurred on November 27, 2016. Thus, that claim was timely.

B. MWPCL

The MWPCL provides "a remedy to employees who are attempting to collect lost wages." *Cunningham v. Feinberg*, 441 Md. 310, 325 (2015). The following provisions of the statute are pertinent.

> (c)(1) "Wage" means all compensation that is due to an employee for employment.
>
> (2) "Wage" includes:
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> (i) a bonus;
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> (ii) a commission;
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> (iii) a fringe benefit;
>
> (iv) overtime wages; or
>
> (v) any other remuneration promised for service.

Lab. & Empl. § 3-501. The statute provides, except for reasons not relevant here, that:

> each employer shall pay an employee or the authorized representative of an employee all wages due for work that the employee performed before the termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not been terminated.

Lab. & Empl. § 3-505(a). The statute further provides:

> (a) Notwithstanding any remedy available under § 3-507 of this subtitle, if an employer fails to pay an employee in accordance with § 3-502 or § 3-505 of this subtitle, after 2 weeks have elapsed from the date on which the employer is required to have paid the wages, the employee may bring an action against the employer to recover the unpaid wages.

Md. Code, Lab. & Empl. § 3-507.2(a).

Pursuant to the terms of the Agreement, appellant's equity units constituted compensation that were "promised for service." Thus, they were "wages" within the meaning of the MWPCL. *See Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 305 (2001) (holding that wages under the MWPCL includes bonus promised, as part of the compensation for employment). The Court in *Whiting-Turner Contracting Co*. reached a contrary conclusion on its facts, but it is distinguishable. In that case, unlike in this case, the compensation was not "promised for service." As explained by the Court, "[w]here such remuneration is not a part of the compensation package promised, it is merely a gift, a gratuity, revocable at any time before delivery." *Id*. at 306 (citations omitted).

Similar to the equity units, the severance pay claimed by Shomali was "wages" within the meaning of the MWPCL. In *Aronson & Co. v. Fetridge*, 181 Md. App. 650, 674 (2008), *appeal dismissed*, 408 Md. 148 (2009), we explained that:

> Section 3-505 [of the MWPCL], required Aronson to pay Fetridge what he was regularly due under the terms of the Employment Agreement. This included TEC [Terminating Employee Compensation] according to Section 9(c), which states that he would be paid "twelve (12) equal quarterly installments" with the first installment being paid "on the first day of the fourth (4th) month after [his] termination of employment."

Fetridge, 181 Md. App. at 674.

In the instant case, the Agreement provided for a severance payment for a termination without cause. There are fact questions to be decided by the lower court, but as stated earlier, for present purposes, we must accept appellant's allegation that he was constructively terminated without cause.

The MWPCL is violated when an employer fails to pay for wages due for work performed prior to termination. Under § 3-507.2, the limitations period, at the earliest, did not begin to run until two weeks after termination of employment. The date of termination was alleged to be November 27, 2016; thus, the claim, which was filed on November 25, 2016, was timely.

III.

Leave to Amend

"[It] is well-established that leave to amend complaints should be granted freely to serve the ends of justice and that it is the rare situation in which a court should not grant leave to amend[.]" *Norino Props., LLC v. Balsamo,* 253 Md. App. 226, 261 (2021)

(quotation marks and citations omitted). "The determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge." *Pines Point Marina v. Rehak*, 406 Md. 613, 641 n.10 (2008) (quotation marks and citation omitted).

It follows from the above discussion that none of appellant's claims are facially barred by limitations.

Because the primary basis for the circuit court's order of dismissal was limitations, and the court denied appellant's leave to amend, some of the non-limitations issues have not been fully developed. Because we believe the lower court abused its discretion when it denied appellant's motion for leave to amend his complaint, on remand, appellant shall be allowed to file an amended complaint, as follows.

Breach of Contract; Violation of MWPCL; Declaratory Judgment

We conclude that, although inartfully stated in his complaint, in counts I, II, and III, appellant included causes of action for breach of contract, violations of the MWPCL, and a request for declaratory judgment. The judgment dismissing this count without leave to amend is reversed, and appellant may file an amended complaint.

Wrongful Discharge

The complaint, in count II, contains allegations of wrongful discharge. As the circuit court observed, that allegation is in a contract count. If the intent was to allege a tort, again as the circuit court observed, in addition to being inartful, the allegations are substantively insufficient. The judgment dismissing this count without leave to amend is reversed, and appellant may file an amended complaint.

Negligence

In count IV, appellant alleged that the individual defendants were negligent and breached their fiduciary duties. As alleged members, officers, and managers of Eniware, they owed duties of care to appellant. *See Plank v. Cherneski*, 469 Md. 548, 572 (2020) (holding that managing members of an LLC owe common law fiduciary duties to the LLC and other members of the LLC). The judgment dismissing this count without leave to amend is reversed, and appellant may file an amended complaint.

Accounting

In count V, appellant sought an accounting by the individual defendants, arguing that they breached their fiduciary duties.

Under the facts of this case, we conclude that a request for an accounting is not a standalone cause of action. In count III, appellant alleged that the individual defendants breached their fiduciary duties. As part of that claim, he can pursue discovery relevant to accounting and seek that remedy, as appropriate. *See Alts. Unlimited, Inc. v. New Baltimore City Bd. of Sch. Comm'rs*, 155 Md. App. 415, 507-11 (2004) (discussing how an equitable accounting claim "has been rendered obsolete by the modern rules of discovery") (citation omitted).

The judgment dismissing this count without leave to amend is affirmed.

Unjust Enrichment/Quantum Meruit

Appellant acknowledges that these claims, counts VI and VII, were pled in the alternative. These claims will not lie when, as here, the subject matter of the dispute is governed by a contract. *See Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell &*

Sons, Inc., 358 Md. 83, 101 (2000). The judgment dismissing these counts without leave to amend is affirmed.

Constructive Trust

In count VIII, appellant sought an order imposing a constructive trust on the assets of Eniware. As this Court stated in *Chassels v. Krepps*, 235 Md. App. 1, 15–16 (2017):

> A constructive trust is an equitable remedy, not a cause of action in itself. A constructive trust may be imposed by the court where property was acquired through an improper method or a breach of a confidential relationship, *Wimmer v. Wimmer*, 287 Md. 663, 668 (1980), or where there is a "higher equitable call" on that property by the complaining party. *Starleper v. Hamilton*, 106 Md. App. 632, 640 (1995). Whether or not a constructive trust might be an appropriate remedy, there is no standalone cause of action for "constructive trust," and the court was right to dismiss Count IV.

(Citations omitted.) The judgment dismissing this count without leave to amend is affirmed.

After an amended complaint is filed, if and when it is appropriate to do so, the circuit court may address other issues, including whether some of appellant's claims are derivative in nature.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS REVERSED IN PART AND AFFIRMED IN PART. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE HALF BY APPELLEES.