

Circuit Court for Prince George's County  
Case No. CAL20-19320

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1425

No. 2485

September Term, 2022

September Term, 2023

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THOMAS PHAM

v.

JAIME CRESPIN

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Arthur  
Shaw,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Shaw, J.

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Filed: February 20, 2025

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal from the Circuit Court for Prince George’s County stemming from the sale of a condominium unit. Appellee Jaime Crespín filed a civil complaint against Appellant Thomas Pham averring, in various counts, that he breached their contract and committed fraud. At the conclusion of a bench trial, the trial court entered judgment in favor of Appellee on two counts, fraudulent inducement and fraudulent concealment, and assessed damages in the amount of \$95,000. Appellant timely appealed. Following oral argument, this Court remanded the case to the circuit court for the issuance of a final judgment to include the outstanding issue of attorneys’ fees. The trial court later imposed attorneys’ fees in the amount of \$39,631.53. Appellant timely noted this appeal and he presents seven questions for our review:

1. Did the Circuit Court err by determining there was a misrepresentation?
2. Did the Circuit Court err by determining there was justifiable reliance on an omission of details?
3. Did the Circuit Court err by finding fraud where there was no reasonable reliance on a statement when Mr. Crespín testified he did not read, review, or rely on anything from Mr. Pham?
4. Did the Circuit Court abuse its discretion by not allowing Mr. Pham to provide evidence supporting and giving rise to his belief there were no further issues with the Unit?
5. Did the Circuit Court abuse its discretion by not treating Mr. Crespín’s sworn Complaint as a statement by a party opponent under Md. R. 5-803?
6. Did the Circuit Court err by imposing attorney’s fees based on Maryland Rules 2-704 and 2-705?<sup>1</sup>

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<sup>1</sup> The final two questions presented in this appeal are based on the court’s decision on remand.

7. Did the Circuit Court err and abuse its discretion by imposing attorneys’ fees based on Maryland Rule 1-341 and determining Appellant committed “deliberate acts of misrepresentation and fraud” and that such actions are sufficiently grievous to give rise to sanctionable conduct.

For the reasons discussed below, we reverse and remand this matter to the circuit court for an articulation of its factual findings and determination as to whether Mr. Crespin relied on fraudulent misrepresentations by Mr. Pham. We decline to address the remaining issues as they may be resolved upon remand.

### **BACKGROUND**

In April of 2019, Appellant and Appellee entered into a contract for the sale of Condominium Unit 8, located at 7951 Riggs Road, Hyattsville Maryland. Appellee took possession of the unit on April 27, 2019. He subsequently learned that the unit’s configuration was in violation of the Condominium’s<sup>2</sup> bylaws and he, as the owner, was assessed fines. In December 2022, Appellee filed a civil complaint against Appellant in the Circuit Court for Prince George’s County. The complaint included five counts: (1) breach of contract; (2) breach of implied contract of habitability and breach of warranty of habitability; (3) fraudulent inducement – failure to disclose; (4) fraudulent concealment; and (5) negligence. A three-day bench trial was held beginning on August 25, 2022.

During Appellee’s case-in-chief, Appellant Thomas Pham was called to testify. He stated that in July 2018 he purchased the condominium unit at a foreclosure sale. When asked whether he received the Condominium’s bylaws, he stated “I think at some point I

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<sup>2</sup> The Marylander Condominiums Community is the condominium association that is responsible for the management and operation of the unit at issue.

got it. . . .” He stated that when he purchased the unit, he was not aware that it was a one-bedroom. When he obtained the keys and surveyed the unit, he “walked [through] and [he] counted three rooms.” Shortly after the purchase, Appellant met with Alejandro Lopez, the Condominium’s community manager, and he inspected the unit. Mr. Lopez did not tell Appellant that the unit was in violation of the Condominium’s bylaws. During the inspection, Appellant asked Mr. Lopez whether the unit should have the three rooms and Mr. Lopez answered “no.”

Appellee’s counsel then asked:

[Mr. Crespin’s Attorney]: You are saying the bedroom existed [at the time of your purchase] with a door and a closet there?

[Mr. Pham]: Yeah, even the wall, the drywall too.

[Mr. Crespin’s Attorney]: You are saying that you took down the wall on the second bedroom?

[Mr. Pham]: I removed the wall and put the folding door.

[Mr. Crespin’s Attorney]: And you moved the kitchen?

[Mr. Pham]: I just flipped the kitchen, move a little bit but, yes.

[Mr. Crespin’s Attorney]: So you moved the gas line and the water line?

[Mr. Pham]: No, nothing different, the water line [sic].

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[Mr. Crespin’s Attorney]: The gas line had to be moved for the stove, correct?

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[Mr. Pham]: I just hire the people to work for with [sic] me.

Appellant testified that he did not notify the Condominium about the changes that he intended to make prior to the contractor performing the work. After the work was completed, Mr. Lopez inspected the unit and he did not advise Appellant of any violations. The next day, Neil Nichols, the Condominium’s business manager, gave Appellant approval via email by sending a signed Resale Certificate and “saying everything . . . look [sic] okay.”

Appellant was asked about the Resale Certificate and Notice of Resale documents. He conceded that he saw the documents and they were accurate, but that “we go [sic] quick because I didn’t [sic], you know, the whole thing with my agent. He just said, okay, just check, check here, because I work for my agent and that is – then sign here, that’s why.” He stated that he left the portion of the Resale Certificate asking about changes to the unit blank, and that he “show[ed] the office and the office didn’t say anything to me[.]” When asked about Paragraph 16 of the disclosures, which states “Are there zoning violation nonconforming uses in violation of the building restrictions or set back requirements and any unrecorded easement except for utility on the property[.]” Appellant stated that he checked “Yes.” He also testified that even though Paragraph 16 specified, “if you check yes, explain[.]” he did not write anything.

Mr. Lopez was next called as a witness. He testified that he had been employed by the Marylander Condominiums Community for nearly twelve years as the community manager. His duties included performing annual inspections of the units and the property. He stated that prior to 2017, he was familiar with the configuration of Unit 8, and that it

was a “one bedroom and one den.” In 2017, he inspected the unit and “noticed [no]thing out of the ordinary.” In October 2018, he conducted another inspection and during that inspection “[he] noticed that the kitchen had been removed and reinstalled in the dining room and then a wall and a door was also placed, making it seem like a new bedroom had been created to the unit.” He notified the owner, Appellant Thomas Pham, that “the extra bedroom has to be removed and the kitchen has to be reinstalled the way it was originally built.” Mr. Lopez testified that Appellant responded, “he [was] going to change it.” He performed a second inspection in December of 2018, and noticed the unit had not been converted back to its 2017 configuration. Following the inspection, Mr. Lopez provided a list of concerns to Neil Nichols. When asked whether he was aware of any communications between Neil Nichols and Appellant, he answered “no.”

Mr. Lopez testified that in November 2019, he performed an inspection of the unit, and at that time Appellee Jaime Crespin was the owner. During this inspection he noticed that “the kitchen was moved somewhere else and the space that was the kitchen, they put a door on to make it look like a bedroom.” Mr. Lopez advised Appellee of the pre-existing violation and that he would be fined until the unit was changed back to its original configuration, or consent for the alterations was given by Condominium Board.

Jocelyn Hogan is the property manager for the Condominium and handles the collections department. According to her, the unit was in violation of the Condominium’s bylaws and as a result, a monthly fine had been assessed, commencing January 1, 2020. She stated that the assessments were “still going on.”

Appellee testified that he purchased the unit in 2019. He “wanted to buy a unit with two-bedrooms because [he has] a child[,]” and the listing of this unit had “two bedrooms.” He presented photographs of the unit furnished as a two-bedroom unit when it was advertised for sale during an “open house” and he stated that he did not know that the unit was supposed to be a one-bedroom. Had he known, he would not have purchased the unit. Appellee stated that Appellant did not disclose any issues or problems with the unit at the time of sale. In October 2019, an inspection was conducted by Mr. Lopez and Appellee was told that “the condo association was going to fine [him] because of alterations to the apartment.” He was assessed \$200 per month, beginning in January 2020, and told that the fine would continue until necessary changes were made. Appellee stated he would have to remove the bedroom where his son sleeps, and the change would “affect the value of the property” and “cause hardship.”

On cross-examination, Appellee stated that he did not carefully read or review the real estate contract or the disclosures, nor did he read or review the Condominium’s bylaws. He stated that he never spoke to Appellant and that he relied on the advertisement of the unit. When asked, what statement, contained in the contract, by Appellant he relied on, he stated, “[w]ell, all of this was signed online and I would lie to you if I said that I read it all because that’s not the case.” He testified that Appellant never directly told him, either verbally or in writing, that the unit was in compliance with the bylaws. When asked whether he relied on representations made by his real estate agent in entering the

transaction, Appellee answered “yes.” Appellee also stated that he did not complete an inspection of the unit or request a floor plan prior to entering into the contract of sale.

At the end of Appellee’s case in chief, Appellant moved for judgment and his motion was granted by the court as to Count 1 – breach of contract; Count 2 – breach of implied warranty of habitability; and Count 5 – negligence.

During his testimony, Appellant described the unit’s condition when he purchased it in 2018 and he sketched a picture, depicting the rooms. Appellant stated that after Mr. Lopez’s initial inspection in 2018, he told him “this one is not supposed to be the room.” And when Appellant asked Mr. Lopez why it was there, Mr. Lopez told him “he didn’t know” and “[he] had to remove it.” Appellant stated that he removed the two walls creating the room, because Mr. Lopez said it “does not belong here” and replaced it with a sliding door. He stated that he installed a sliding door so “I can, you know, open all the way to one side and then if I don’t need the room . . . I just close it.” He testified that when he purchased the unit, no one informed him that it was a one bedroom. When asked how he determined it was a two-bedroom unit, he stated:

Because I thought it – when I walk it, I saw three rooms. I thought in my mind, I thought even a three bedroom too.

But then, you know, I say, this one is sealed in or they can use a den, they can use a bedroom, or they can use the office, whatever they want, so I decided, I’m thinking, I thought it can be the bedroom. That way in my mind I thought.

Appellant stated that the deed for the unit did not identify it as a one bedroom and that he thought the alterations made to the unit were proper. He also testified that he

believed the Condominium had approved the work because Neil Nichols emailed him a signed copy of the Resale Certificate. Although Mr. Lopez had raised concerns, “he believed that the violations had been abated.”

Appellant’s counsel then asked about the real estate contract:

[Mr. Pham’s Attorney]: I am going to start with [Paragraph] 16a. . . it says, “If you or a contractor have made improvements to the property, were the required permits pulled from the county or local permitting office?” What did you answer there, Mr. Pham?

[Mr. Pham]: I said unknown. I don’t know.

[Mr. Pham’s Attorney]: Why did you answer that [?]

[Mr. Pham]: Because nobody tell me anything about a permit. Nobody say anything. So I just hired the contractor so he could do it. I’m guessing that he could do his job. That’s why I care.

[Mr. Pham’s Attorney]: Now, in paragraph 16 it says, “Are there any zoning violations, non-conforming uses, violation of building restrictions or setback requirements, or any recorded or unrecorded easement except for utilities on or affecting the property?” What did you answer for that one?

[Mr. Pham]: I checked yes.

[Mr. Pham’s Attorney]: Why did you check yes?

[Mr. Pham]: Because I thought like when I walk in the room right in the front, the living room, I think it’s, the office area, it not [sic] belong to [] I think it might be a violation before the previous owner.

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[Mr. Pham’s Attorney]: When you just said that, were you referring to the wall that you testified Mr. Lopez asked you to remove?

[Mr. Pham]: Yes.

[Mr. Pham’s Attorney]: Just to clarify. It is your testimony, right, that you checked yes because Mr. Lopez had mentioned that wall to you previously? Is that what your testimony is?

[Mr. Pham]: Yes.

Appellant stated that he never talked to Appellee and “never told him that there were two bedrooms there.” He testified that while he owned the unit, no fines were assessed.

After a recess, Jesses Griswold was called by Appellant as a witness. He testified that he was Appellant’s real estate agent, and he assisted him with the 2019 sale of the unit. He stated that he listed the unit as a two-bedroom condominium, but he had no personal knowledge about its actual configuration.

Following the close of evidence, the court heard arguments from the parties and adjourned. The court reconvened on September 21, 2022, and found in favor of Appellee on the fraudulent inducement and fraudulent concealment counts.

The court explained:

It is improper to shift the responsibility upon Mr. Crespin in this matter. Mr. Pham had an absolute affirmative duty to disclose, he had multiple opportunities to do so and he did not. He did not fully disclose on the disclosure statement that he chose to complete as opposed to the disclaimer nor did he disclose in his required resale certificate on two separate occasions.

It is clear that he is to disclose what he is knowledgeable about. The testimony was sufficient that he had knowledge that something was incorrect and he didn’t disclose it. Not only did he not disclose but in fact, he made false representations by way of his listing, providing conflicting and incomplete answers in the addendums, configuring the property to look like a two bedroom and staging it to appear to be a two bedroom during an open house despite being told to remove the extra bedrooms.

It is clear to me that this was done with the intent that anyone in this case, Mr. Crespin, relied on it and purchased the unit. Ultimately Mr. Crespin did rely upon the false representation and Mr. Crespin acted in purchasing the unit to his detriment. There was no way for him to know otherwise. It is clear that he would not have purchased the unit had he known the consequences and therefore as a result I do find absolutely that he was justified in his reliance.

Appellee was awarded \$95,000, which included \$60,000 in compensatory damages, \$25,000 in punitive damages, and \$10,000 in restitution damages and the court reserved on the issue of attorneys' fees. Appellant timely appealed, this Court heard oral arguments, and remanded the matter to the court for a final judgment to include a determination regarding attorneys' fees.

On remand, Appellee filed a motion to award attorneys' fees, and Appellant filed an opposition. The court, in a written opinion on January 20, 2024, awarded Appellee \$39,631.53 in attorneys' fees. Appellant noted this appeal.

### **STANDARD OF REVIEW**

Maryland Rule 8-131(c) states:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

In a bench trial, the judge “shall prepare and file . . . a brief statement of the reasons for the decision and the basis of determining any damages.” Md. Rule 2-522(a). A trial court must avoid “summarily articul[at]ing” its factual findings and legal conclusions. *Patriot Constr., LLC v. VK Electrical Servs., LLC*, 257 Md. App. 245, 269–70 (2023). Where

there is a lack of adequate factual findings, the appellate court must remand the matter. *See Hartford Fire Ins. Co v. Est. of Sanders*, 232 Md. App 24, 39 (2017) (holding that the appellate court is constrained to “making a legal assessment as to whether the trial court’s factual findings” were made in clear error and cannot make its own findings of fact).

## DISCUSSION

### **I. The circuit court failed to articulate its factual findings regarding the issue of Appellee’s reliance on fraudulent misrepresentations.**

Appellant argues that Appellee did not establish the elements of his fraudulent claims. He asserts that Appellee failed to present evidence that Appellant made misrepresentations and that Appellee relied on those misrepresentations in entering into the real estate agreement. Appellee argues the trial court did not err in finding that misrepresentations had been made and that he justifiably relied upon them.

In its basic sense, fraud is defined as “deceit” or “trickery.” *Fraud*, Merriam-Webster, <http://merriam-webster.com/dictionary/fraud> (last visited Feb. 3, 2025) (“intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right). As tortious conduct, it “encompasses, among other things, theories of fraudulent misrepresentation, fraudulent concealment, and fraudulent inducement.” *Sass v. Andrew*, 152 Md. App. 406, 432 (2003). A party can be liable for the tort of fraud by (1) knowingly making a false statement of material fact; or (2) for concealing material facts when that person has a duty to disclose. *Hoffman v. Stamper*, 385 Md. 1, 28 (2005) (describing the key difference between a claim for fraudulent inducement and a claim for fraudulent concealment). For any type of fraud, the plaintiff

must establish five elements in order to prevail. *Sass*, 152 Md. App. at 429. Each element must be proven by clear and convincing evidence. *Md. Env't Trust v. Gaynor*, 370 Md. 89, 97 (2002). The clear and convincing standard requires “more than a preponderance of the evidence and less than evidence beyond a reasonable doubt.” *Berkey v. Delia*, 287 Md. 302, 413 (1980).

Fraudulent inducement “means that one has been led by another’s guile, surreptitiousness or other form of deceit to enter into an agreement to his detriment.” *Rozen v. Greenberg*, 165 Md. App. 665, 674 (2005) (citing *Sec. Constr. Co. v. Maietta*, 25 Md. App. 303, 307 (1975)). This Court described the elements of fraudulent inducement as:

(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.

*Id.* at 674–75 (citing *Hoffman*, 385 Md. at 28 ). “To be actionable, misrepresentations must be material to the transaction at issue, either because it would be material to reasonable people generally or because it was material to the plaintiff.” *Id.* at 675 (citing *Sass*, 152 Md. App. at 429).

The elements of a fraudulent concealment are:

(1) the defendant owed a duty to the plaintiff to disclose a material fact; (2) the defendant failed to disclose that fact; (3) the defendant intended to defraud or deceive the plaintiff; (4) the plaintiff took action in justifiable reliance on the concealment; and (5) the plaintiff suffered damages as a result of the defendant’s concealment.

*Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 138 (2007) (quoting *Green v. H & R Block*, 355 Md. 488, 525 (1999)). In *Frederick Rd. v. Brown & Sturm*, the Maryland Supreme Court held:

Absent a fiduciary relationship . . . a plaintiff seeking to establish fraudulent concealment must prove that the defendant took affirmative action to conceal the cause of action and that the plaintiff could not have discovered the cause of action despite the exercise of reasonable diligence and that . . . the affirmative act on the part of the defendant must . . . be some act intended to exclude suspicion and prevent injury, or there must be a duty on the part of the defendant to disclose such facts, if known.

360 Md. 76, 100 (2000) (citations omitted). In *Rhee v. Highland Dev. Corp.*, this Court stated:

a cause of action for fraudulent concealment will lie in favor of a purchaser of real property against the seller when, in the absence of any independent duty to disclose, the seller actively and with the intent to deceive conceals a material fact about the property; the purchaser justifiably relies upon the concealment in buying the property; and, as a proximate result, the purchaser suffers damages.

*Rhee v. Highland Dev. Corp.*, 182 Md. App. 516, 526 (2008).

In the case at bar, the trial court found that Appellant had committed fraud through fraudulent inducement and fraudulent concealment. In making its ruling, the court stated:

In this case, the Court finds actions of Defendant fraudulent with respect to material facts and material defects. With respect to materiality, a material fact in the real estate sense is actually defined as anything that would affect the value of hte [sic] property or a buyer/tenants decision to purchase or lease the property or how much to offer to purchase or lease the property.

It is true that renovations are generally not material facts in the negative sense, generally they are welcome. However, when a renovation violates a provision of the condo's declaration, bylaws and or rules and regulations and

more importantly result in regular and ongoing fines, then the renovation is a material fact that must be disclosed to the buyer.

In this case, the Defendant has [sic] several opportunities to disclose and failed to disclose, meaning each and every element of fraudulent claims against him to the detriment of the Plaintiff and the Plaintiff must be compensated for that.

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I certainly believe that there is an issue surrounding material fact and a material defect. And let's see, so with all of that, the Court does find that a change in the unit resulted in long term fines and was a material defect. Was there justifiable reliance? Defendant argues that Mr. Crespin needed to ask to investigate or to find out on some issues that is true but not this one.

It is improper to shift the responsibility upon Mr. Crespin in this matter. Mr. Pham had an absolute affirmative duty to disclose, he had multiple opportunities to do so and he did not. He did not fully disclose on the disclosure statement that he chose to complete as opposed to the disclaimer nor did he disclose in his required resale certificate on two separate occasions.

It is clear that he is to disclose what he is knowledgeable about. The testimony was sufficient that he had knowledge that something was incorrect and he didn't disclose it. Not only did he not disclose but in fact, he made false representations by was of his listing, providing conflicting and incomplete answers in the addendums, configuring the property to look like a two bedroom and staging it to appear to be a two bedroom during an open house despite being told to remove the extra bedrooms.

It is clear to me that this was done with the intent that anyone in this case, Mr. Crespin, relied on it and purchased the unit. Ultimately Mr. Crespin did rely upon the false representation and Mr. Crespin acted in purchasing the unit to his detriment. There was no way for him to know otherwise. It is clear that he would not have purchased the unit had he known the consequences and therefore as a result I do find absolutely that he was justified in his reliance.

We note that while the court did reference the elements required to prove a claim of fraudulent inducement and concealment, it did not provide any factual findings regarding

Appellee’s reliance on such misrepresentations. The judge found that (1) there was a false misrepresentation when Appellant “provid[ed] conflicting and incomplete answers in the addendums, configur[ed] the property to look like a two bedroom and stag[ed] it to appear to be a two bedroom during an open house[;]” (2) Appellant knew about the falsity of the representation because he had knowledge that the renovations were not proper based on communications with the Condominium; (3) Appellant falsely advertised the unit in order to induce a sale; and (4) Appellee suffered detriment because of the costs required to restore the property.

As to the element of reliance, the judge concluded that: “Mr. Crespin[] relied on [the false representations]” and “[u]ltimately Mr. Crespin did rely upon the false representation.” The court, however, did not provide any factual findings in support of its conclusion. *See* Md. Rule 2-522(a). As previously noted, a finding for fraud cannot be “summarily articulated.” *See Patriot Constr., LLC*, 257 Md. App. at 270. We, therefore, remand this matter to allow the court to make factual findings consistent with the record.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
VACATED; CASE REMANDED FOR  
FURTHER PROCEEDINGS IN  
CONFORMANCE WITH THIS OPINION.  
COSTS TO BE DISTRIBUTED EVENLY  
BETWEEN PARTIES.**