Circuit Court for Anne Arundel County
Case No.: C-02-CV-19-002098

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1727

September Term, 2019

WILLIAM VAN EVANS, *et al.*

v.

ST. PLEASURE COVE MARINA, LLC

Beachley,
Gould,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: November 30, 2020

William and Karen Van Evans (the "Owners") brought their sailing vessel to St. Pleasure Cove Marina, LLC (the "Marina") to be hauled, washed, and painted. They allege that as the Marina was hauling the vessel from the water, the rear strap broke, "dropping the aft end of the boat onto reinforced concrete." They further allege that "[t]he shock to the hull did significant damage in numerous places and required repairs in the engine room, to the decks, bilge area, keel, rudder, interior carpentry, and windows and frames."

Although their insurance company paid for repairs to the boat, the Owners allege that "[a]fter completion of the repairs, there remain joinery issues . . . [and] cracks and pitmarks that result[ed] from the fall, and are not repairable." In other words, the Owners alleged that their insurance company did not make them whole. As a result, they filed a two-count complaint against the Marina, seeking compensatory damages, on theories of bailment and negligence.

The Marina responded to the complaint with a motion to dismiss for failure to state a claim or, in the alternative, for summary judgment, alleging that:

- The Owners failed to "disclose that [they] filed a claim against their own insurance company . . . and were reimbursed for any and all damages sustained."
- By "filing such a claim with their own insurance company, [the Owners assigned] their right of recovery to" their insurance company.
- The Owners' insurance company then "filed a subrogation action" against the Marina.
- In a settlement, the Marina's insurance company reimbursed the Owners' insurance company in the amount of $275,000, in exchange for a release by the latter of the Marina and its insurers.

The Marina attached a copy of the release agreement (the "Release") as an exhibit to its motion.

Based on these facts, the Marina argued that "Plaintiffs fail[ed] to state a cause of action as the Complaint fails to allege facts to establish that the elements of damage now claimed in the instant matter are outside the scope of, or excluded by the release when the original claim was resolved and the repairs were paid for." The Owners did not file a response to the Marina's motion.[1]

The circuit court granted the motion in an order stating:

> **UPON CONSIDERATION** of Defendant St Pleasure Cove Marina, LLC's Motion to Dismiss, or Alternatively for Summary Judgment and any Opposition thereto, it is, by the Circuit Court for Anne Arundel County, hereby
>
> **ORDERED**, that the Motion be and hereby is GRANTED; and it is further
>
> **ORDERED**, that the Complaint in this matter be and hereby is DISMISSED WITH PREJUDICE as to Defendant, St Pleasure Cove Marina, LLC.

The Owners filed a timely appeal and present the following question: Did the trial court err in granting judgment to the Marina?

[1] The Owners contend that they attempted to file a response, but due to a technical problem involving the electronic filing system, they were unsuccessful.

DISCUSSION

I.

STANDARD OF REVIEW

The Marina's motion was framed as a motion to dismiss or, in the alternative, as a motion for summary judgment.[2] To the extent that the Marina's motion was a motion to dismiss for failure to state a claim, we review the circuit court's decision without deference. *Bradley v. Bradley*, 214 Md. App. 229, 234 (2013). 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." *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21 (2007) (quotations omitted). "Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Pendleton v. State*, 398 Md. 447, 459 (2007) (quotations omitted).

Where, as here, the motion includes "matters outside the pleading"—in this case, the Release—that are "not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501." Md. Rule 2-322(c). In that case, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501." *Id.*

The court must review the motion "in the light most favorable to the non-moving party." *Gallagher v. Mercy Medical Ctr., Inc.*, 463 Md. 615, 627 (2019). Under Rule 2-

[2] The Marina invoked Maryland Rules 2-311, 2-322(a) and 2-501 in its motion. Because Rule 2-322(a) applies to mandatory preliminary motions, we assume that this was inadvertent and that it intended to invoke Rule 2-322(b)(2), which applies to motions to dismiss for failure to state a claim upon which relief may be granted.

501(f), the "court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and the [moving] party . . . is entitled to judgment as a matter of law." A "material fact is a fact the resolution of which will somehow affect the outcome of the case." *King v. Bankerd*, 303 Md. 98, 111 (1985).

We review an order granting summary judgment without deference. *Wooldridge v. Price*, 184 Md. App. 451, 457 (2009). We must first determine whether there was a genuine dispute of material fact—a fact that would affect the outcome of the case—on the summary judgment record. *Id.* at 457-58. If there is no genuine dispute of material fact, we must determine whether the circuit court reached the correct legal result. *See Windesheim v. Larocca*, 443 Md. 312, 326 (2015).

II.

ANALYSIS

The court's order does not explain the basis for its decision or whether it treated the Marina's motion as a motion to dismiss or as a motion for summary judgment. That being the case, we will review the order under the standards for both types of motions.

A.

MOTION TO DISMISS

The Owners argue that the motion to dismiss for failure to state a claim should not have been granted because they alleged in their complaint sufficient facts to sustain causes of action for bailment and negligence.

"A bailment is the relation created through the transfer of the possession of goods or chattels, by a person called the bailor to a person called the bailee, without a transfer of ownership, for the accomplishment of a certain purpose . . ." *Broadview Apts. Co. v. Baughman*, 30 Md. App. 149, 151 (1976) (quotations omitted). "To constitute a bailment there must be an existing subject-matter, a contract with reference to it which involves possession of it by the bailee, delivery, actual or constructive, and acceptance, actual or constructive." *Id.* (quotations omitted). In the complaint, the Owners alleged: (1) that they had an agreement with the Marina to "pull the boat from the water for maintenance activities"; (2) that they delivered the boat into the possession of the Marina; and that (3) the Marina failed to exercise due care and damaged the boat.

The elements of a negligence claim are: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Washington Metropolitan Area Transit Authority v. Seymour*, 387 Md. 217, 223 (2005) (quotations omitted). In the complaint, the Owners alleged that: (1) they hired the Marina to pull the boat from the water for maintenance; (2) they delivered the boat to the Marina; (3) the Marina owed the Owners a duty of care; (4) the Marina breached that duty of care; and (5) as a result of the Marina's breach of the duty of care, the boat was damaged.

We agree with the Owners that they sufficiently alleged causes of action for both bailment and negligence, and we note that the Marina does not argue otherwise. Instead,

the Marina argues that, as a matter of law, the Owners' claims are barred by the Release. According to the Marina:

> Once the insurance company was compelled to pay for the repairs under the policy issued to the [Owners], the insurance company acquired the common law right to subrogation, and was entitled to step into the shoes of the [Owners], . . . and to compromise the claim, without seeking the consent of the [Owners]. Under the doctrine of subrogation, the [Owners'] insurance company had the right to, and did in fact, enter into the Release of All Claims in favor of [the Marina] and its insurers, which released the claims the [Owners] are attempting to pursue against [the Marina] in this case as a matter of law.

The problem with the Marina's argument is that the Release is neither mentioned nor even hinted at in the Owners' complaint. The Marina's release defense, therefore, cannot serve as a basis for a motion to dismiss for failure to state a claim, which only tests the sufficiency of the complaint. *Lubore v. RPM Associates, Inc.*, 109 Md. App. 312, 322 (1996). The motion to dismiss, therefore, should have been denied.

B.

SUMMARY JUDGMENT

As noted above, the Marina's defense was predicated on the Release. The Marina contends that: (i) the Owners made a claim against their own insurance company; (ii) the Owners' insurance company paid for the repairs; (iii) the Owners' insurance company was therefore subrogated to the Owners' claims against any third parties; (iv) the Owners' insurance company pursued its subrogation claim against the Marina and its insurance companies; (v) the Owners' insurance company granted a release to the Marina and its insurance companies in exchange for a monetary payment; and (vi) the Owners are therefore bound by that release.

The Owners argue that, assuming the court treated the motion as a summary judgment motion by considering the Release, the court erred in granting the motion for three reasons. First, they argue that the motion was not supported by an affidavit as required under Rule 2-501(a). Second, they argue that they were not parties to the Release. Third, they argue that the summary judgment record contains no evidence to establish that the Owners' insurance company—which was a party to the Release—had authority to release the Owners' claims.

The Marina's defense hinges on the nature and scope of the subrogation rights acquired by the Owners' insurance company when it paid for the repairs to the Owners' vessel. The doctrine of subrogation applies when A owes a debt to B, and that debt is then paid by C.[3] *See Poteet v. Sauter*, 136 Md. App. 383, 400–03 (2001). If C pays off the entire debt, B is made whole and therefore no longer has a claim against A. *See id.* at 405. However, A is not off the hook because, to prevent A from being unjustly enriched at C's expense, the doctrine of subrogation permits C—the subrogee—to stand in B's shoes—the subrogor—to bring a claim against A. *See id*. at 401.

But what happens if C only *partially* pays off A's debt? "Partial subrogation occurs when 'both the subrogor and the subrogee retain an interest in the claim.'" *Id.* at 402. Thus, in our hypothetical, C becomes partially subrogated to B's claim, and absent an agreement between C and B otherwise, *both* C and B have claims against A, to the extent of their respective interests. *See id.*

[3] This assumes that C is acting as "neither a volunteer nor an intermeddler" in paying off A's debt. *George L. Schnader, Jr., Inc. v. Cole Bldg. Co.*, 236 Md. 17, 23 (1964).

Poteet v. Sauter is an example of the application of partial subrogation. *Poteet* involved a motor vehicle accident caused by the defendant in which the plaintiffs were the injured victims. 136 Md. App. at 388. The defendant's insurance company offered to settle the claim for the limits of the defendant's insurance policy, $50,000, which the victims rejected. *Id.* The victims then reached a settlement with their own insurance company for $150,000, under the underinsured motorist provision of their policy. *Id.* In other words, the only part of the claim paid by the victims' insurance company was the amount by which the claim exceeded the defendants' insurance policy limits. The victims and their insurance company memorialized their settlement with a written agreement. *Id.* at 390-92. Among other things, the settlement agreement contained mutual releases and addressed the extent to which the insurance company stepped into the victims' shoes to bring claims against the defendant. *Id.*

When the victims filed suit against the defendant, the defendant moved to have the victims' insurance company joined as a plaintiff. *Id*. at 404. The defendant argued that because of the insurance company's payment to the victims, the insurance company was a real party in interest and, as such, was a necessary party. *Id*. at 388-89. We held that, based on the specific terms of the settlement agreement between the victims and their insurance company, the victims had the right to file suit for the entire amount of damages as long as they honored the insurance company's subrogation rights in dispersing any funds recovered by settlement or otherwise. *Id.* at 402-04. Thus, we concluded that complete relief could be granted, and, under principles of res judicata, the defendant was not at risk for multiple

suits for the same incident. *Id*. at 410. The victims were therefore permitted to pursue their claims without joining their insurance company. *Id.* at 413.

From a procedural standpoint, this case and *Poteet* are flip sides to the same coin. In both cases, the victim filed a lawsuit against the tortfeasor, and the underlying concern of the alleged tortfeasor was to avoid being subjected to multiple suits and exposed to multiple damages claims arising from the same incident. The difference between the two cases is that here, the subrogee already pursued and settled its claim against the alleged tortfeasor, therefore, the alleged tortfeasor sought to avoid multiple claims by moving to dismiss the suit filed by the victim; whereas in *Poteet*, the subrogee had not yet pursued a claim, and thus, to avoid multiple claims, the alleged tortfeasor moved to compel the joinder of the subrogee. Notwithstanding the slightly different procedural posture of the two cases, the analysis in *Poteet* applies with equal force here.

The resolution in *Poteet* turned on the specific terms of the settlement agreement between the victims and their insurance company. *Id.* at 402-03. Based on the terms of that agreement, the insurance company acquired partial subrogation rights, the victims retained the right to bring a claim against the defendant, and the victims incurred the obligation to satisfy the insurance company's subrogation interest out of any recovery, thus protecting the defendant from multiple findings of liability for the same injury. *Id.* at 403-04. The resolution of those issues would have been impossible if the record had not included the settlement agreement between the victims and their insurance company. *See id.* at 389. Here, however, the summary judgment record does not include the terms of the settlement agreement between the Owners and their insurance company. Thus, we don't

know to what extent the insurance company became subrogated to the Owners' claims, and we don't know whether and to what extent the Owners retained any rights to bring a claim against the Marina. Without such information, there is no way to determine whether the Release binds the Owners.

As we stated above, summary judgment is not appropriate unless, on the undisputed material facts, the movant demonstrates that it is entitled to judgment as a matter of law. Md. Rule 2-501(f). Here, because the Owners did not respond to the summary judgment motion, the facts established by the Marina's motion are deemed undisputed. Unfortunately for the Marina, the undisputed facts did not establish the terms of the Owners' settlement with their insurance company. Without those terms, the Marina cannot demonstrate its entitlement to judgment as a matter of law. Thus, if the Marina's motion was treated by the circuit court as a motion for summary judgment, it should have been denied.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEE.