UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1029

September Term, 2015

TIFFANI BOUDREAUX, ET AL.

v.

MICROS SYSTEMS, INC., ET AL.

Wright,
Berger,
Reed,

JJ.

Opinion by Wright, J.

Filed: August 19, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

On June 23, 2014, MICROS Systems, Inc. ("MICROS"), a Maryland corporation headquartered in Columbia, Maryland, announced that it had entered into an Agreement and Plan of Merger ("Merger Agreement") to be acquired by Oracle Corporation ("Oracle") in a $5.3 billion all-cash tender offer ("Tender Offer"), followed by a short-form merger (collectively, the "Transaction"). Under the Transaction, which closed on September 8, 2014, Oracle paid for all MICROS shares at a price of $68.00 per share, thereby extinguishing the stockholders' ownership. Soon thereafter, several complaints were filed in the Circuit Court for Howard County alleging that the price approved by MICROS's Board of Directors ("Board") and the process used to negotiate that price were unfair.

On October 8, 2014, appellants,[1] Tiffani Boudreaux, Shiva Y. Stein, Joel Rosenfeld IRA, Brenda Scott, and Newspaper and Magazine Employees Union and Philadelphia Publishers Pension, filed a consolidated amended complaint ("Complaint") seeking monetary relief against appellees, MICROS, its former directors, and Oracle, along with an Oracle subsidiary. In the first count, appellants alleged that MICROS's directors "knowingly, recklessly, and/or in bad faith breached their fiduciary duties . . . including but not limited to, their fiduciary duties to maximize stockholder value and to disclose all information necessary for MICROS stockholders to make a fully informed decision whether or not to tender their shares." In the second count, appellants alleged

[1] Appellants, who claim to be former MICROS stockholders, attempted to bring the action on behalf of themselves and all public stockholders of MICROS.

that MICROS, Oracle, and an Oracle subsidiary aided and abetted that breach of fiduciary duty.

On November 7, 2014, appellees filed a motion to dismiss, which appellants opposed. Following a motions hearing on April 20, 2015, the circuit court granted appellees' motion, then entered an order on May 4, 2015, dismissing the Complaint with prejudice. Appellants filed a motion to alter or amend the circuit court's decision, which the court denied on or about June 24, 2015. On July 20, 2015, appellants noted this appeal.[2]

Questions Presented

We have reworded appellants' questions for clarity, as follows:[3]

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[2] On April 29, 2016, appellees filed a Line Regarding Statutory Amendment with this Court, to which appellants responded. After reviewing those documents, we have determined that the statute at issue, which would affect, in part, Md. Code (1975, 2014 Repl. Vol.), Corporations & Associations Article § 2-405.1, effective October 1, 2016, is prospective only and would not have any bearing on this case.

[3] In their brief, appellants asked:

> 1. Did the Circuit Court err in dismissing with prejudice the Complaint's First Cause of Action ("Count One") for negligence (breach of fiduciary duty) and holding that Appellants' claims that the Directors breached their common law fiduciary duties to maximize stockholder value and of candor in connection with the Transaction are subject to §2-405.1, including the business judgment rule codified in subsection (a) thereof?
>
> 2. Did the Circuit Court err in holding that, pursuant to MD. CODE ANN., CTS. & JUD. PROC. ("CJP") §5-418 ("§5-418"), the Directors are immune from liability for the claims set forth in Count One?

(continued…)

1. Did the circuit court err in dismissing with prejudice appellants' first cause of action for breach of fiduciary duty?

2. Did the circuit court err in barring appellants' claims against the individual directors for damages?

3. Did the circuit court err in dismissing with prejudice appellants' second cause of action for aiding and abetting?

4. Did the circuit court err in denying appellants' motion to alter or amend?

Finding no error or abuse of discretion on the circuit court's part, we affirm its judgment.

Facts

Throughout the course of each year, similar to what happens in many large corporations, the MICROS Board ("Board") and senior management have in the past held meetings to discuss financial business strategies, often with the interest of maximizing shareholder profit. Several months before the Transaction took place, MICROS and Oracle discussed the possibility of a strategic transaction between the two companies. These interactions failed to result in an agreement.

Between December 2012 and August 2013, MICROS and a third party ("Party A") shared information and conducted in-person meetings leading to an informal proposal from Party A which demonstrated an interest in acquiring MICROS for $58.00

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3. Did the Circuit Court err in dismissing with prejudice the Complaint's Second Cause of Action ("Count Two") for aiding and abetting?

4. Did the Circuit Court err in denying Appellants' Motion to Alter or Amend Court Order On Defendants' Motion to Dismiss including by refusing to allow amendment of the Complaint?

per share. After reviewing the proposal, the Board and management decided not to accept the offer, ending negotiations with Party A in September 2013.

Talks with Oracle began anew in late March 2014 when an Oracle representative arranged a meeting to discuss a potential acquisition of MICROS. MICROS consulted with Centerview Partners LLC ("Centerview"), a financial advising company that MICROS had been working with since early 2013.

The following is an excerpt from MICROS's Schedule 14D-9, detailing the timeline of events from April 7, 2014 to May 22, 2014:

> On April 7, 2014, a representative of [MICROS] received a telephone call from a representative of Oracle. The representative from Oracle indicated that Oracle was committed to pursuing an acquisition of the company.
>
> In early April 2014, senior management of [MICROS] had multiple informal discussions with various members of the Board regarding the contacts with Oracle.
>
> On April 12, 2014, the Company entered into a non-disclosure agreement with Oracle.
>
> On April 16, 2014, representatives of [MICROS] and representatives of Oracle held a meeting in New York City to discuss further [MICROS's] business and financial performance. Following this meeting, representatives of Oracle requested and received additional information about [MICROS] and continued conducting due diligence during the remainder of April 2014 and into early May 2014.
>
> On April 29, 2014, the Board held a regularly-scheduled meeting, at which time members of [MICROS's] senior management updated the board on the status of discussions with Oracle.
>
> On May 15, 2014, a representative of a financial sponsor (which we refer to as Party B) contacted a representative of [MICROS]. The Party B representative indicated that Party B had an interest in acquiring

> [MICROS], and asked for an introductory meeting with [MICROS] representatives. The discussions were preliminary in nature and the representatives agreed to continue the dialogue.
>
> In May 2014, there were multiple informal discussions with various members of the Board regarding the contacts with Party B and ongoing discussions with Oracle.
>
> May 22, 2014, [MICROS] entered into a non-disclosure agreement with Party B.

As MICROS continued negotiations with Oracle and Party B in the following weeks, the Board held meetings with financial and legal advisors from Centerview and the law firm of Morgan, Lewis & Bockius LLP, to discuss financial strategy and legal compliance during the negotiation process. Three separate meetings were held on June 2, 2014, June 4, 2014, and June 5, 2014, before MICROS entered into exclusive negotiations with Oracle on June 6, 2014. Thereafter, between June 9, 2014 to June 17, 2014, MICROS and Oracle worked through the due diligence process of finalizing the Transaction to which both parties agreed to sign off on June 22, 2014.

According to MICROS's Schedule 14D-9:

> Bloomberg published a news article speculating that Oracle was nearing a transaction to acquire [MICROS] for more than $5 billion. The price of [MICROS's] common stock on NASDAQ increased from $57.71 at the close of the market on June 16, 2014 to $66.33 per share at the close of the market on June 17, 2014.

Also, on June 17, 2014:

> [A] representative of [MICROS] received voicemail messages from a representative of Party B. The representative's messages stated that Party B had read the Bloomberg article and wanted to talk with [MICROS] about a potential transaction. Party B subsequently provided an unsolicited, non-binding written indication of interest to

> acquire [MICROS], contemplating an all-cash transaction at a purchase price range of $67.00 to $70.00 per share. ***However, Party B's indication of interest, and the proposed purchase price range contemplated by the indication of interest, was subject to a number of assumptions and contingencies. In particular, the indication of interest was subject to obtaining the required approval of Party B's governing body and contemplated a 30 day period in which Party B would need to conduct due diligence on [MICROS]. In addition, the indication of interest contemplated that Party B would need to obtain third party financing from one or more lenders to finance the transaction.***

(Emphasis added).

In the days following, Oracle and MICROS continued to negotiate the terms of the definitive merger agreement and tender and support agreements. On June 18, 2014, each Board member was informed of the circumstances of both proposals and the Bloomberg article. After consulting, once again with Morgan, Lewis & Bockius LLP legal advisors and Centerview financial advisors, the Board determined that the most sound decision would be to continue finalizing the Transaction with Oracle, at a purchase of $68.00 per share, considering the consequences of withdrawing from an exclusivity agreement and the variables of the offer from Party B. Oracle, and MICROS executed the Transaction in the evening of June 22, 2014, and in the morning of June 23, 2014, a press release publicly announced the merger.

On October 8, 2014, a consolidated amended complaint was filed in the circuit court by appellants, alleging that MICROS Board members: Peter A. Altabef, A. L. Giannopoulos, Louis M. Brown, Jr., Gary Dando, F. Suanne Jenniches, John G. Puente and Dwight S. Taylor, along with MICROS, OC Acquisition LLC, Oracle, and Rocket

Acquisition Corporation "violated applicable law by directly breaching and/or aiding and abetting the Individual Defendants' breaches of their fiduciary duties owed to Plaintiffs and the Class in connection with the Transaction."

Appellees filed a Motion to Dismiss the Consolidated Amended Complaint on November 7, 2014. On April 23, 2015, the circuit court granted the motion, ordering that the Complaint be dismissed with prejudice.

First, the circuit court looked to *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 336 (2009), where the Court of Appeals held that "in the context of a cash-out merger transaction, where the decision to sell the corporation already has been made, corporate directors owe their shareholders common law duties of candor and good faith efforts to maximize shareholder value, and that allegations of breach of those duties may be pursued through a direct suit by shareholders." The court ruled that the Complaint failed to allege any facts that could show that MICROS's directors failed to take reasonable steps to maximize shareholder value or failed to disclose all material facts about the Transaction.

According to the circuit court:

> "The [appellants] have been vague as to the specific information that is missing both in complaint and in argument. Merely stating that the shareholders should have been provided the same information as the financial advisor or the shareholder should have been given access to all of the information as the Board is nothing more than assertion and not an allegation of facts."

The circuit court then went on to detail numerous instances where there was an exchange of information between the Board and shareholders regarding the merger. The court also noted that, during that time, there was an increase in the sale price per stock.

Second, as an alternative ground for dismissal, the circuit court concluded that MICROS's stockholders ratified the Board's actions when they overwhelmingly supported the Transaction by tendering their shares.

Finally, again as another alternative, the circuit court found that the claim for damages from MICROS's directors was barred by an "exculpatory" provision that, as permitted by Maryland statute, was included in MICROS's Articles of Incorporation.

The circuit court dismissed Count One with prejudice "because this is the second filing of this case." With regard to aiding and abetting, the court found that without a primary violation (*i.e.*, Count One), the claim for aiding and abetting failed and, thus, dismissed Count Two with prejudice as well. In any event, the court noted that the Complaint lacked any facts that could show that the entities knowingly participated in the alleged breaches of fiduciary duty.

Additional facts will be included as they become relevant to our discussion, below.

Discussion

I. Breach of Fiduciary Duty

Appellants argue that the Board breached its fiduciary duty to maximize shareholder profits and duty of candor. They allege that as a result of a "flawed process" of personal incentive, the Board members approved the Transaction at an inadequate

price. Appellants also contend that the Board intentionally omitted financial information to prohibit the ability of appellants to appropriately assess Oracle's offer.

Maryland Rule 2-322(b)(2) permits a defendant to seek dismissal of a complaint if it "fail[s] to state a claim upon which relief can be granted." "We review *de novo* a trial court's granting of a motion to dismiss, to determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Andrulonis v. Andrulonis*, 193 Md. App. 601, 612 (2010) (citations omitted); *see also Clark v. Prince George's Cnty.*, 211 Md. App. 548, 557 (2013). "In conducting our analysis, 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." *Id.* at 612-13 (citation omitted). "Further, although the words of a pleading will be given reasonable construction, when a pleading is doubtful and ambiguous, it will be construed most strongly against the pleader in determining its sufficiency." *Lapides v. Trabbic*, 134 Md. App. 51, 56 (2000) (citing *Hixon v. Buchberger*, 306 Md. 72, 75 (1986)).

"Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven." *Higginbotham v. Pub. Serv. Comm'n of Maryland*, 171 Md. App. 254, 264 (2006) (citation omitted). "'In sum, because we must deem the facts to be true, our task is confined to determining whether the trial court was legally correct in its decision to dismiss.'" *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 384 (2009) (quoting *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000)).

In this case, appellants assert that the Board breached its duty of candor and duty to maximize shareholder value when it finalized the Transaction with Oracle. An agent has "a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency." RESTATEMENT (SECOND) OF AGENCY §387 (1958). Maryland courts have held that among the duties of directors of Maryland corporations is a responsibility to maximize shareholder value. *See, e.g., Shenker*, 411 Md. at 337. "It long has been established . . . that directors of Maryland corporations stand in a fiduciary relationship to the corporations that they manage and the shareholders of those corporations, a relationship that imposes on directors duties of care, loyalty, and good faith." *Id*. (citations omitted). In *Shenker*, the Court of Appeals adopted reasoning from the Delaware Supreme Court, extending the meaning of fiduciary duties to go beyond Md. Code (1975, 2014 Repl. Vol.), Corporations & Associations Article ("C&A") § 2-405.1 with respect to the role of directors during the sale of a corporation. *Id*. at 338-39 (citing *Revlon, Inc. v. MacAndrews & Forbes Holding, Inc.*, 506 A.2d 173, 182 (Del. 1986).

That duty to maximize shareholder value is triggered "(1) when a corporation initiates an active bidding process seeking to sell itself or to effect a business reorganization involving a clear break-up of the company, (2) where, in response to a bidder's offer, a target abandons its long-term strategy and seeks an alternative transaction involving the break-up of the company, or (3) when approval of a transaction results in a 'sale or change of control.'" *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46,

86 (2015) (quoting *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1289-90 (Del. 1994)) (internal citations omitted).

When parties assert that the selling price of a company is inadequate, courts require a "showing of lack of diligence, failure to exercise judgment, lack of good faith or the existence of such conflicting interests . . . as to raise doubts of the ability of the trustee to live up to the duty of loyalty he owes to the beneficiaries." *Madden v. Mercantile-Safe Deposit & Trust Co.*, 27 Md. App. 17, 29 (1975). The adopted Delaware standard for the duty to maximize shareholder value requires that "in a sale of corporate control the responsibility of the directors is to get the highest value reasonably attainable for the shareholders." *Mills Acquisition Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1288 (Del. 1989) (citing *Revlon*, 506 A.2d at 182).

Since 1928, Maryland courts have recognized that fair value is a variable sum, dependent on a multitude of factors that is not required to be exceeded in order for a corporation to withstand a complaint for inadequacy of price. *See Homer v. Crown Cork & Seal Co. of Baltimore City*, 155 Md. 66, 84 (1928). In *Homer*, the Court of Appeals stated that "[t]he fair value of the stock of a manufacturing business is necessarily uncertain and largely a matter of opinion, since the factors upon which that value depends are uncertain, contingent, and prospective." *Id.* A price cannot be determined unreasonable "unless falsified by something more tangible than the unverified and unsupported book value of the corporation, especially when those in control, with their

intimate knowledge of the present and prospective affairs of the corporation, were willing to part with that control and sell their stock at the price offered." *Id*.

Appellants analogize the law as applied to trusts and beneficiaries with the law applied to the board of directors and shareholders. It is true that our courts have established that "[a] trustee undertaking to sell trust property has the duty to secure the fair market value of the property and to employ that a degree of care, skill and judgment that a reasonably prudent man would exercise in the conduct of a similar sale." *Bourne v. Lloyd*, 100 Md. App. 575, 585 (1994). In *Bourne*, we determined the reasonableness factors to be considered in "determining whether the trustee exercised the requisite degree of diligence and care" as (1) efforts to determine the value of the property sold, (2) method of offering the property, and (3) whether the sale was closed without pursuing better bids. *Id*.

However, arguments by appellants that the duties owed to stockholders are comparable to those owed to beneficiaries of trusts are misplaced. While it is well-established law that the board of directors have responsibilities with regard to individual stockholders, because they are not trustees for the stockholders, a distinction must be made. *Waller v. Waller,* 187 Md. 185, 194 (1946). In the case of *Wittman v. Crooke*, we found that the law of trusts did not apply to the relationship between a board of directors and its stockholders. 120 Md. App. 369, 375 (1998) ("The duty of loyalty owed by trustee to his beneficiaries . . . is more intense than that owed . . . by a corporate director to the corporation.").

In the present case, appellants claimed that the Board "knowingly, recklessly, and/or in bad faith breached [its] fiduciary duties owed to [appellants] in connection with the Transaction, including but not limited to, their fiduciary duties to maximize shareholder value and to disclose all information necessary for MICROS stockholders to make a fully informed decision whether or not to tender their shares . . . ." But, as the circuit court correctly concluded, appellants failed to state any specific information to show that MICROS's directors failed to take reasonable steps to maximize shareholder value or failed to disclose all material facts about the Transaction. Appellants pleaded that there was a tentative offer from Party B that, at best, proposed $70.00 per share. Stating that an offer of such nature existed is not nearly sufficient to constitute breach of fiduciary duty, especially considering its variability and proximity to the price per share agreed to in the Transaction ($68.00).

Moreover, several statements made by appellants in their Complaint subverted the stated $70.00 per share price, thus making that value speculative. For example, instead of factually stating that a higher price was readily available, appellants merely asserted that based on "investor and analyst criticism," "press releases, [] financial results, and management's comments, . . . long term prospects were improving and [MICROS] was well positioned for continued future growth," to imply that MICROS could have been sold for a higher price. Accordingly, the allegation of a tentative offer of $70.00 per share was doubtful and ambiguous. In addition, appellants were unable to support their

claim that "the Board actively favored its preferred bidder, Oracle, from the outset," and they cannot point to any deal protection that prevented another company from bidding.

In sum, because appellants' Complaint contained only conclusory allegations, lacking any evidence to overcome the presumption that appellees acted in good faith and in the best interest of the corporation, we affirm the lower court's ruling, granting appellees' motion to dismiss.

II. Claims Against the Individual Directors

Appellants next argue that MICROS's exculpatory provision does not bar individual directors from being liable for their non-managerial behavior. To determine the duties owed by a director to his or her stockholders, Maryland courts have held that the fiduciary relationship requires a duty to maximize profit and a duty of candor. *See Shenker*, 411 Md. at 347-351. C&A § 2-405.1 states the standard of care required of directors for corporations and associations:

> (a) A director shall perform his duties as a director, including his duties as a member of a committee of the board on which he serves:
> (1) in good faith;
> (2) in a manner he reasonably believes to be in the best interests of the corporation; and
> (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances.

In *Shenker*, 411 Md. at 350, we recognized that "the standard of care provided by § 2-405.1(a), which otherwise would immunize directorial actions from judicial scrutiny, is inapplicable to decisions made outside the purely managerial context, such as negotiating the price shareholders will receive in a cash-out merger transaction."

Appellants defend their claims of breach of fiduciary duty and candor by distinguishing between managerial and non-managerial responsibilities of directors. Appellants cite *Shenker*, arguing that the duty of candor and maximization of shareholder value does not fall under the protection of managerial immunity afforded by the "exculpatory provision" in MICROS's Articles of Incorporation. While appellants argue valid precedent to support the argument that the lower court erred in supporting its ruling that "exculpation provision" protects the immunity of the Board, the circuit court did not rely wholly on this ground for dismissal of the complaint.

In their Complaint, appellants' only claims against the individual directors were one and the same as those against the Board. Likewise, their claims against the individual directors were supported by the same speculative allegations as those lodged against the Board. Because, as previously explained, appellants' Complaint failed to state a valid claim as to the Board, it follows that their claims against the individual directors also fail.

III. Aiding and Abetting

Next, appellants contend that the Board, MICROS's representatives, and Oracle representatives "knowingly participated" in the Board's alleged breach of candor and duty to maximize shareholder profits.

Maryland courts have held that the requirements for a plaintiff stating a claim for aiding and abetting a breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) a breach of duty owed by the fiduciary to the beneficiary, and (3) harm

resulting from the breach. *See Pease v. Wachovia SBA Lending, Inc.*, 416 Md. 211, 247 n.13 (2010). "One of the requirements for tort liability as an aider and abettor is that there be a 'direct perpetrator of the tort,' [which] requires that there exist underlying tortious activity in order for the alleged aider and abettor to be held liable." *Alleco Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 340 Md. 176, 200-01 (1995).

Appellants assert that the Board agreed to Oracle's exclusivity conditions, regarding termination fees and non-solicitation of acquisition proposals, and omitted material information from the stockholders. Further, appellants allege that such deal protection devices constitute an aiding and abetting claim strong enough to withstand a motion to dismiss. We disagree.

As discussed above, appellants' claims fail under the second prong because there was no breach of a duty owed to appellants. Even assuming there was a fiduciary breach and the second prong was satisfied, appellants' second count, alleging that MICROS, Oracle, and an Oracle subsidiary aided and abetted a breach of fiduciary duty would fail because the Complaint lacked any non-conclusory allegations that the MICROS or Oracle defendants *knowingly* participated in the alleged breaches of fiduciary duty. Accordingly, we find no error in the circuit court's dismissal of appellants' claims against MICROS and Oracle for aiding and abetting.

IV. Motion to Alter or Amend

Finally, appellants argue that the circuit court improperly denied their motion to alter or amend the complaint to include information that was unavailable at the time the Complaint was originally filed.

Maryland Rule 2-322(c) provides that, "[i]f the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend." "[A]llowance of leave to amend is within the sound discretion of the trial court and . . . the lower court's ruling will not be disturbed in the absence of a clear showing of an abuse of discretion." *Wockenfuss v. Kasten Const. Co.*, 258 Md. 541, 546 (1970) (citations omitted). "Nevertheless, under Maryland Rule 2-341(c), amendments to pleadings are allowed 'when justice so permits.'" *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010) (citation omitted). To that end, the Court of Appeals has stated:

> Although 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, *see Hall v. Barlow Corp.*, 255 Md. 28, 40-41 [ ] (1969), an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as ***where amendment would be futile because the claim is flawed irreparably***. *See Robertson v. Davis*, 271 Md. 708, 710, 319 A.2d 816, 818 (1974).

Id. at 673-74 (emphasis added). "A trial court should not grant leave to amend if the amendment would result in prejudice to the opposing party or undue delay." *Hartford Acc. and Indem. Co. v. Scarlett Harbor Associates Ltd. Partnership*, 109 Md. App. 217, 248 (1996) (citations omitted).

Noting that this is the second filing of this case, which was originally filed on October 8, 2014, the circuit court did not abuse its discretion when it denied appellants' motion to alter or amend. Finally, appellants were already given a chance to file a proper pleading and they were unable to do so. As appellants' argument on appeal has no merit, any amendment to the complaint would be futile. Thus, as there was no error in the circuit court's ruling on the merits, appellants' motion to alter or amend also fails.

For all of the foregoing reasons, we affirm the circuit court's judgment.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.