UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1324

September Term, 2015

MAHESH MITTAL

v.

COUNCIL OF UNIT OWNERS OF UNIVERSITY ONE CONDOMINIUM, ET AL.

Eyler, Deborah, S.,
Kehoe,
Shaw Geter,
JJ.

Opinion by Kehoe, J.

Filed: November 3, 2016

Mahesh Mittal appeals a judgment of the Circuit Court for Baltimore City in favor of the Council of Unit Owners of the University One Condominiums and two members of its board of directors, Ronald Johnson and Jason Zaiderman. He presents two issues, which we have reworded slightly:

> 1. Whether the circuit court erred in granting appellees' motion to dismiss the complaint?
>
> 2. Whether the circuit court abused its discretion in denying Mittal's motion for leave to amend the complaint?

Our answer to both questions is "no," and we will affirm the judgment.

I. Background

Mittal owns 15 residential units in the University One Condominium. We gather that his relationship with the Council of Unit Owners (the "Council") has not been entirely amicable as the present case appears to be the third lawsuit between them. We will refer to these cases as *Mittal I, II,* and *III*.

We have very little information about *Mittal I,* other than that the circuit court entered judgment against Mittal and he filed an appeal with this Court. Mittal filed *Mittal II* while his appeal from *Mittal I* was pending. *Mittal II* arose out of a dispute between the Council and Mittal about modifications to some of his units. It appears that someone, either Mittal, his predecessor owners or a combination thereof, had added additional walls in some of the units to establish additional bedrooms. These walls were built with wooden studs, which violated Baltimore's Building Code. Additionally, Mittal had installed modular furniture dividers to create still more additional bedrooms. These were violations

of the condominium's regulations and the Board wanted Mittal to remove these alterations or, in some cases, to bring them up to current Baltimore Building Code standards by replacing wooden studs in the walls with metal ones. The Board refused to approve leases to his units until he did these things. Mittal sued the Board seeking an injunction requiring the Board to approve his leases. The circuit court denied Mittal's request for a preliminary injunction and the parties decided to settle the dispute.

To that end, the parties entered into a settlement agreement which provided that Mittal, according a schedule set out in the agreement, would (1) remove the modular furniture dividers; and (2) repair the walls in question to make them code compliant. In return, the Board would approve the leases for Mittal's units. The agreement also included the following provisions (emphasis added):

> 1. *Except for the terms set forth in this agreement*, Mittal . . . hereby *releases* the Council and their Board, and each of their respective officers, agents, board members, condominium owners, employees, and attorneys *from any and all claims*, demands, causes of action, damages, liabilities, obligations, costs, and attorney's fees *arising out of or in direct connection with the Lawsuit or the subject matter thereof*;
>
> . . .
>
> 3. Nothing set forth herein shall constitute a waiver by either party of any claims or damages, fees, or judgments arising out of [other case then pending with the Court of Special Appeals.] Further, nothing contained in this agreement constitutes a release by either party of the Bylaws, Condominium Declaration, Rules and Regulations, or other governing documents pertaining to the University One Condominium.
>
> . . .
>
> 10. Mittal hereby covenants and agrees that, henceforth, with respect to any units he owns or subsequently acquires… he shall abide by the existing governing requirements of the Council and the Condominium with respect to the construction

> of walls, dividers, partitions or other improvements, and that *he shall not in any manner contest the aforementioned existing governing requirements.*
>
> . . .
>
> 13. This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and there have been no representations or promises not expressly set forth herein . . . which have been made . . . to induce any other Party to enter into this Agreement.
>
> . . .
>
> 19. This Agreement has been mutually drafted by both parties, each of whom was represented by legal counsel. The terms herein were negotiated and approved by both parties. . . .

This brings us to *Mittal III*, which is the current case. In March of 2015, Mittal filed a complaint with the Circuit Court for Baltimore City against the Council of Unit Owners and Messrs. Johnson and Zaiderman, who were members of the Board. The complaint contained four counts labeled: (1) fraud and intentional misrepresentation, (2) constructive fraud; (3) bad faith, reckless and wanton action, and gross negligence; and (4) negligence. In essence, Mittal asserted that: (1) the Board mispresented material facts to him during the negotiation of the *Mittal II* settlement agreement; and (2) the Board and its members have a fiduciary duty to him and they have breached that duty by enforcing the Association's Rules and Regulations in an unfair and discriminatory manner. He sought compensatory and punitive damages of $150,000 as well as fees and any other proper relief.

In response to the suit, the Board filed a motion to dismiss for failure to state a claim, arguing that the release language in the settlement agreement prevented Mittal from asserting any of his claims. The trial court agreed, noting in its order that "the instant suit is plainly barred by both the release language and that of paragraph 10 of the Settlement

Agreement. The Court is unpersuaded by Plaintiff's arguments of fraud and duress regarding the validity of the Settlement Agreement." On the basis of those findings, the trial court dismissed the complaint.

Mittal subsequently filed a motion to alter or amend judgment and for leave to amend his complaint. Mittal sought to add additional facts to the complaint and to add a count of breach of contract. The trial court denied the motion. Mittal then brought this appeal.

II. Analysis

Our Standard of Review

A court should dismiss a complaint if the allegations of fact and permissible inferences from those allegations "would if proven, nonetheless fail to afford relief to the plaintiff." *O'Brien & Gere Engineers, Inc., v. City of Salisbury,* 447 Md. 394, 403–04 (2016) (quotation marks and citation omitted). We "must determine whether the trial court was legally correct, examining solely the sufficiency of the pleadings." *Id.* at 403 (quoting *Ricketts v. Ricketts,* 393 Md. 479, 492 (2006)). We accomplish this by considering the pleadings and the exhibits, taking all well-pleaded, material, and relevant facts in the complaint as true. *Id.* The concept of "well-pleaded facts" does not extend to "mere conclusory charges that are not factual allegations," *Shenker v. Laureate Education, Inc.,* 411 Md. 317, 335 (2009). Ambiguities are construed against the pleader. *Id.*

Finally, an appellate court may affirm the circuit court's dismissal "on any ground adequately shown by the record, whether or not relied upon by the trial court." *City Of Frederick v. Pickett*, 392 Md. 411, 424 (2006).

Count 1: "Fraud" (But Actually Fraudulent Concealment)

Mittal's fraud claim can be summarized as follows: the Board entered into the settlement agreement knowing that other unit owners, specifically Zaiderman, had walls in their units with wooden studs. Had he known this, Mittal alleged, he would not have entered into the settlement agreement. Although Mittal characterizes this claim as sounding in fraud, we look at the substance of the allegations, not the label chosen by a party. *See, e.g., Corapcioglu v. Roosevelt*, 170 Md. App. 572, 590-91 (2006). The tort Mittal describes is fraudulent concealment. The elements for a claim of 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)).

Mittal's fraudulent concealment claim fails because the Board was under no duty to disclose the fact it did not plan on taking enforcement actions against other units that had walls with wooden studs. To be sure, had Mittal known that the Board was acting inconsistently, he might have been able to use that fact to his advantage in the on-going

litigation. Mittal points to no authority for the proposition that adverse parties in a lawsuit are under an affirmative obligation to *sua sponte* disclose unfavorable information to opposing parties in settlement negotiations. We decline to impose such a duty on the Board and its legal counsel in this case. *See* Md. Rules of Professional Conduct, Comment 1 to Rule 4.1 ("A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts."). The Board's failure to inform Mittal about the scope of their enforcement plans or possible weaknesses in their case against him does not equate to fraudulent concealment.

Counts 2–4: Constructive Fraud, Bad Faith, Reckless and Wanton Action, Gross Negligence and Negligence

Mittal alleged that the defendants "treat[ed] Dr. Mittal differently from other unit owners and [sought] to harm Dr. Mittal's interests rather than by seeking to work for his best interest." Complaint ¶ 56. In Count 2, he asserted that this conduct gave rise to a claim for constructive fraud. In Count 3, he claimed that these actions made defendants liable for "bad faith," "reckless and wanton action," and "gross negligence." Finally, in Count 4, he asserts that the appellees' conduct was merely negligent.

The trial court concluded that these claims were barred by the settlement agreement. The court was correct. All of these claims were based on Mittal's allegations that the Board "breached their fiduciary duty to Dr. Mittal by demanding that he dismantle, relocate, or remove the modular furniture in his units and that his pre-existing walls comply with the Code . . . while not demanding the same obligations from other unit

owners." This conduct by the Board clearly fell in the category of claims "arising out of or in direct connection with the Lawsuit or the subject matter thereof" that were released by section 1 of the settlement agreement.

The Motion to Amend the Complaint

Mittal challenges the trial court's denial of his motion for leave to amend the complaint. His proposed amended complaint would have added a new count for breach of contract. The trial court did not abuse its discretion.

Mittal overlooks the fact that the Board's decisions in this matter are protected by the business judgment rule. Real Property Article § 11-109(d) provides that, with certain exceptions that aren't relevant to this case, the provisions of the Corporations and Associations Article ("CA") apply to unit owners associations. Among the applicable provisions is CA § 2-405.1, which is Maryland's codification of the business judgment rule. *Black v. Fox Hills North Community Ass'n*, 90 Md. App. 75, 81–82 (1992). Application of § 2-405.1 has several ramifications in the case before us.

First, with regard to corporate matters, directors are required to act: (1) "in good faith," (2) "in a manner that the director 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." CA § 2-405.1(a). Thus, contrary to Mittal's assertions in his complaint, the directors do not have a duty to act in Mittal's best interests but rather in the best interests of the council of unit owners as a whole.

Second, the actions of the board are presumed to be both reasonable and in the best interests of the corporation. CA § 2-405.1(e). Because of this presumption, a party challenging a board's decision must present "facts rebutting the presumption that the directors acted reasonably and in the best interests of the corporation." *Bender v. Schwartz,* 172 Md. App. 648, 667 (2007) (internal quotation marks and citation omitted).

The only fact that Mittal presented in his original complaint to demonstrate that the Board violated the standard of care was his assertion that the Board required him to correct his non-compliant walls, but did not requiring other unit owners to do so. While the wording in the amended complaint is a bit different, the substance is the same—the only specific action by the Board that Mittal points to is his assertion that the Board required him to correct violations of the regulations in his units while not pursuing other alleged violators. This is old wine in new bottles, and the trial court did not abuse its discretion when it denied the motion.

Mittal is correct that Rule 2-341(c) states that amendments "shall be freely allowed when justice so permits." But that is not the only public policy consideration at play in this case. Among its other purposes, the business judgment rule is designed to allow directors to manage corporations without fear of being held liable for decisions that, with the benefit of hindsight, appear to have been wrong. This consideration looms particularly large in cases such as the one before us. Serving on a condominium board can be—in fact, usually is—a thankless task, but someone must serve if the condominium

is to function. Board members should be allowed to serve without fear of incessant and meritless lawsuits filed by unit owners.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY COSTS.