Circuit Court for Baltimore City
Case No. 24-C-15-002225

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2550

September Term, 2015

STACEY J. HAWKINS

v.

REGIONAL MANAGEMENT, INC.

Woodward, C.J.,
Graeff,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 19, 2018

Appellant, Stacey J. Hawkins, filed a class action lawsuit in the Circuit Court for Baltimore City against appellee, Regional Management, Inc. (RMI). The complaint alleged that RMI violated the Maryland Consumer Debt Collection Act (MCDCA) and the Maryland Consumer Protection Act (MCPA) by routinely seeking collection of "extra unjustified charges" at the expiration or termination of a residential lease. RMI moved to dismiss all counts for failure to state a claim. Following a hearing, the circuit court granted RMI's motion to dismiss, without leave to amend. Hawkins' motion for reconsideration was summarily denied.

On appeal, Hawkins presents two questions for our review, which we have recast for clarity:[1]

1. Did the circuit court err in dismissing her complaint for failure to state a claim?

2. Did the circuit court abuse its discretion in dismissing her complaint without leave to amend?

For the reasons discussed below we answer both questions in the negative and shall affirm the judgment of the circuit court.

[1] Appellant phrased the questions as follows:

1. Does a complaint that alleges constructive knowledge of facts that, if assumed to be true would establish that the creditor was attempting to collect more than it was actually owed adequately allege a violation of the Maryland Consumer Debt Collection Act and the Maryland Consumer Protection Act?

2. Should a circuit court that dismisses a complaint for a pleading defect afford the plaintiff an opportunity to amend the complaint and to correct the defect?

BACKGROUND

On February 4, 2013, Hawkins entered into a one-year residential lease agreement with RMI, a property management company, for an apartment located at 4418 Franconia Drive in Baltimore City. In February 2014 Hawkins renewed the lease for a second year, but was evicted a few months later.[2]

Following the eviction, RMI sued Hawkins in the District Court for Baltimore City for damages including: unpaid rent; carpet replacement; painting; replacing locks and keys; and trash and eviction charges. The matter proceeded to trial on the merits in the District Court, following which, judgment was rendered in favor of RMI and against Hawkins for $2,509.06, plus counsel fees and court costs. The court excluded from RMI's claim $158.78, representing the cost of painting and replacement of locks and keys. Hawkins appealed the District Court judgment, but did not appear for the scheduled trial in the circuit court, resulting in dismissal of the appeal and entry of a final judgment.

The Class Action Litigation[3]

[2] The record does not provide an exact date for Hawkins's eviction. Hawkins' class action complaint asserts that "she was evicted by [RMI] after 15 months of residing at the leased premises," or about May 2014.

[3] Since this appeal is based on the propriety of the circuit court's grant of a motion to dismiss for failing to state a claim, "the relevant facts are those alleged in the complaint[.]" *Advance Telecom Process LLC (Advance Telecom) v. DSFederal, Inc.*, 224 Md. App. 164, 168 (2015). However, as we will discuss, *infra*, the complaint contained little in the way of relevant background or procedural facts, and was not timely amended to accurately reflect the necessary procedural history or the relevant facts as adjudicated in the initial District Court proceeding.

On May 4, 2015, while the District Court matter was still pending, Hawkins filed a class action lawsuit in the circuit court, alleging that RMI violated Md. Code (1975, 2013 Repl. Vol.) Commercial Law Article (C.L.), §§ 14-201 – 14-204, the Maryland Consumer Debt Collection Act (MCDCA), and C.L. §§ 13-101 – 13-501, the Maryland Consumer Protection Act (MCPA), by routinely charging former tenants "unjustified fees for damages not in excess of ordinary wear and tear" after the lease term has ended or the tenant has been evicted. Hawkins averred that RMI violated C.L. § 14-202(8) of the MCDCA, and C.L. § 13-301(14)(iii) of the MCPA by "knowingly attempting to collect rent from [her] by suing her in the District Court of Maryland for Baltimore City when it knew that such 'damages' did not exist beyond ordinary wear and tear." Concurrently with the class action filing, Hawkins filed a motion to stay the proceedings in the District Court collection action, which the District Court denied on May 14, 2015, the day of trial.

On June 12, 2015, prior to answering the class action complaint, but after judgment had been entered in the District Court action, RMI responded to the class action complaint by moving to dismiss all counts for failing to state a claim. Hawkins responded, opposing the motion and contending she had adequately pleaded her causes of action. The circuit court heard oral arguments on the motion to dismiss and opposition thereto on August 7, 2015, after which the court entered a Memorandum and Order granting RMI's motion to dismiss the complaint, finding that Hawkins had failed to allege sufficient facts to support a cause of action under either the MCDCA or the MCPA.

On August 24, 2015, Hawkins moved for reconsideration, attaching a proposed amended complaint. She argued that the court, in dismissing the complaint, relied on grounds that were not offered by RMI and were not supported by its motion to dismiss, or the related responses. Hawkins contended that her initial pleading had in fact sufficiently alleged that RMI had "acted with actual knowledge or at a bare minimum, reckless disregard" and restated sections of her complaint for support.

Alternatively, Hawkins asserted that her proposed amended complaint included supplemental factual assertions sufficient to show that RMI "knew that the paint was not damaged beyond ordinary wear and tear," and that it "knew it could not charge [Hawkins] for 'Locks & Keys' when [she] left the keys in [RMI's] possession." The circuit court summarily denied Hawkins' motion for reconsideration.

DISCUSSION

MOTION to DISMISS

Maryland Rule 2-322(b)(2) permits a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." However, when "matters outside the pleading are presented to, and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501[.]" Rule 2-322(c). We have said that the purpose of that provision is that, "[w]hen moving to dismiss, a defendant is arguing that even if the pleaded facts are true, the plaintiff is not entitled to recover under the law. . . . [and because of that,] [t]here should be no need to refer to matters that are not in the complaint." *N. Am. Specialty Ins. Co. v. Boston Med. Group*,

170 Md. App. 128, 135 (2006) (quoting *Hrehorovich v. Harbor Hosp. Ctr., Inc*., 93 Md. App. 772, 784 (1992)).

The circuit court recognized in its memorandum and order, and as the parties acknowledged, that the class action complaint was filed prior to the final adjudication of the District Court collection proceeding. However, the relevant information for the circuit court to consider in assessing the sufficiency of Hawkins' complaint was the status of the District Court proceeding with respect to the alleged "bogus" charges, as central to the assertions of her complaint. Had the District Court concluded that RMI was entitled to all of the additional damages it sought, the doctrine of *res judicata* would have precluded Hawkins from relitigating the issue of their legitimacy in the class action and would have required the class action complaint to be dismissed. Alternatively, had the District Court determined that RMI could not seek any, or only some, of the additional damages, as was the case here, then the circuit court could take the next step to address the sufficiency of the factual support for the claims Hawkins asserts.

Much of the factual and procedural averments the court included in its memorandum and order were not found within the four corners of the complaint, as the full factual basis had not yet been developed at the time of the filing of the class action. However, in its analysis and decision, the circuit court addressed what was absent from Hawkins' complaint to support the elements of an MCDCA claim and a derivative MCPA claim, not the extraneous facts proffered with respect to the District Court proceeding. The court's consideration of these facts merely supplemented those in the complaint and did not convert the motion to dismiss into one for summary judgment. *See*

Advance Telecom, 224 Md. App. at 175 (finding that consideration of material outside of the pleading does not convert a motion to dismiss when it "merely supplements the allegations of the complaint"). *See also Smith v. Danielczyk*, 400 Md. 98, 105 (2007) (regarding "exhibits and the additional averments as simply supplementing the allegations in the complaint and consider[ed] the relevant facts pled in the complaint, as so supplemented").

We will review the grant of a motion to dismiss *de novo*. *Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 753 (2013) (citing *Reichs Ford Road Joint Venture v. State Roads Comm'n of the State Highway Admin.,* 388 Md. 500, 509 (2005)). We next address the sufficiency of Hawkins' complaint. In so doing, we

> must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may be reasonably drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.,* the allegations do not state a cause of action for which relief may be granted.

Finch, 212 Md. App. at 754 (quoting *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 193 (2012)). As such, the "grant of a motion to dismiss is proper if the complaint does not disclose, on its face, a legally sufficient cause of action." *Monarc Const., Inc. v. Aris Corp.*, 188 Md. App. 377, 386 (2009) (quotation and citation omitted). Additionally, "we will affirm the circuit court's judgment 'on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015) (quoting *Monarc*

Constr., 188 Md. App. at 385), *cert. denied sub nom. Sutton v. FedFirst Fin.*, 446 Md. 293 (2016).

Sufficiency of the Pleading

The MCDCA[4], as relevant to our inquiry, expressly prohibits, "in collecting or attempting to collect an alleged debt a collector may not . . . [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist." C.L. § 14–202(8). When successfully pleading a cause of action under this provision of the statute, based on an alleged right or lack thereof, a party must adequately set forth three essential elements: 1) the conduct occurs by a collector in its collection of, or attempt to collect, an alleged debt;[5] 2) the collector asserted, threatened, or claimed a right when one did not exist; and, 3) that it did so with knowledge that no right existed. C.L. § 14–202(8).

Circuit Court Findings

[4] The Maryland Consumer Debt Collection Act (MCDCA) has been codified within the Commercial Law Article (C.L.) of the Maryland Code under §§ 14-201 to 14-204.

[5] This Court has clarified the threshold questions for the applicability of the MCDCA in lawsuits, finding that "[s]ections 14-202 and 14-203 apply only when a 'collector' is attempting to collect 'an alleged debt.' A 'collector' is 'a person collecting or attempting to collect an alleged debt arising out of a consumer transaction.' [C.L. §] 14-201(b). A 'consumer transaction' is 'any transaction involving a person seeking or acquiring real or personal property, services, money, or credit for personal, family, or household purposes.' [C.L. §] 14-201(c)." *Dick v. Mercantile-Safe Deposit & Tr. Co.*, 63 Md. App. 270, 278 (1985). The circuit court in the present appeal disposed of the threshold questions in its memorandum and order in footnote 1, where it "decline[d] to rule on the issue of whether [RMI's] filing of the District Court lawsuit qualifie[d] as debt collection. . . . [and] assume[d] . . . [that] action qualifies as debt collection under the MCDCA," and in footnote 2, where it declined to determine if landlords are debt collectors and "assume[d] [RMI] qualifies as a debt collector under the MCDCA." The court's threshold determinations were not contested and, therefore, are not subject to our review.

At this point in our review, we address the findings of the circuit court and make our own evaluation of each element required for an MCDCA violation under this particular subsection and, consequently, the derivative MCPA violation. In so doing, we consider the sufficiency of the facts proffered by Hawkins in support of her claim. However, as we have noted, *supra*, Hawkins' complaint is devoid of important and necessary background and procedural facts.

For whatever reason, Hawkins appears to have belatedly attempted to backtrack and change the legal theory to support her cause of action, or at least change the perception of her legal theory. Because of the dearth of relevant information, this approach caused confusion of the issues at hand, namely, what lack of right RMI was charged with having asserted in alleged violation of the two statutes.

Despite the deficiencies of the complaint, the circuit court undertook an analysis of the issues and the case law provided by the parties.[6] The court determined that the element found lacking was the assertion of the requisite knowledge, either actual or

[6] The parties, as did the circuit court, utilized several federal district court cases in their arguments and analyses, some of which were unreported decisions. In our review, "we may consider persuasive the opinions of federal courts[,]" *French v. Hines*, 182 Md. App. 201, 262 n. 21 (2008), but we "are not obligated to follow the decisions of the lower federal courts, even as to questions of federal law." *Id*. However, even though an appellate court "may not prohibit a party from citing an unpublished opinion of a federal court for its persuasive value or any other reason[,]" *Kendall v. Howard County*, 204 Md. App. 440, 445 n. 1 (2012), *aff'd*, 431 Md. 590 (2013), "[u]nreported opinions do not constitute law, even in the jurisdictions whose courts issued them[.]" *Thompson v. UBS Fin. Services, Inc*., 443 Md. 47, 62–63 (2015). As such, "it is the policy of this Court in its opinions not to cite for persuasive value any unreported federal or state court opinion." *Wagner v. State*, 220 Md. App. 174, 181 n. 12 (2014) (quotation and citation omitted), *aff'd*, 445 Md. 404 (2015).

constructive, that the right to collect or attempt to collect the additional charges did not exist. The court began its analysis underscoring that "[t]o establish a claim under the MCDCA, [Hawkins] must set forth sufficient factual allegations tending to establish: (1) [RMI] did not possess the right to collect the amount of the debt sought and (2) [RMI] attempted to collect the debt knowing it lacked the right to do so." (Quotation and citation omitted).

The court addressed the existence of a right to collect, together with the knowledge requirement, by analyzing whether there were sufficient facts to support a claim of RMI's knowledge of a lack of right. It first elaborated the two aspects of knowledge: "actual knowledge that there is no right to collect a debt" or "constructive knowledge of the debt, including a reckless disregard as to the falsity of the right." The court discussed the two ways to show constructive knowledge of a lack of right: first, a "parallel violation of a statute [that] qualifies collection of the debt as a right that does not exist and imputes constructive knowledge that the right does not exist," or second, through "circumstantial evidence [that] can tend to show that a debt collector had constructive knowledge, including a reckless disregard as to the falsity, that the collector did not have the right to collect a debt."

In its analysis, the court determined that Hawkins' class action complaint failed to sufficiently plead a cause of action under the MCDCA and, consequently, the MCPA. The court noted that the MCDCA "is not a mechanism for attacking the validity of the debt and thus does not allow recovery based on errors or disputes in the process or procedure of collecting legitimate undisputed debts." It found that there were "absolutely

no facts on the record, consisting of any more than bald assertions, to indicate that [RMI] had actual knowledge of the lack of right to enforce a debt."

Based on that finding, the court determined that Hawkins could rely only on a theory of constructive knowledge, which it stated could be shown by a parallel statutory violation or by circumstantial evidence. The court observed that Hawkins "failed to allege sufficient facts to show the debt collector attempted to enforce a right with knowledge, or reckless disregard that the right to do so did not exist." The court concluded that "[a]bsent any facts indicating a parallel statutory violation, or circumstantial evidence of constructive knowledge, there are no facts before this Court to infer the disputed charges to [Hawkins] are a right that did not exist."

On appeal, Hawkins contends that her complaint "adequately alleged that RMI was attempting to enforce a right to collect excessive charges for damage to her apartment with a reckless disregard as to the existence of a right to collect the damages." She argues that "constructive knowledge can be pled by alleging that the creditor had knowledge of facts that tended to show that the creditor was seeking payment for an amount that was not due." In support of that position, Hawkins relies on several federal cases, arguing that "[t]he common thread in these constructive knowledge cases is that the debt collector or creditor is charged with knowing all information within its control." Based on that proposition, Hawkins avers that "RMI is charged with knowing the information that was within its control, specifically that [she] had actually returned her keys and that there was no need to repaint the apartment." Hawkins asserts that her complaint contained adequate factual allegations to support that proposition and was,

therefore, "sufficient to establish the constructive knowledge necessary to allege of [sic] violation of MCDCA § 14-202(8)."

In response, RMI contends that the "prosecution of a civil action in the District Court of Maryland is not an improper method of collecting an alleged debt prohibited under section 14-202(8) of the MCDCA and that statute cannot form the basis of a claim challenging the validity of an alleged debt." Additionally, it argues that "[e]ven if a MCDCA claim could be asserted based upon the prosecution of a civil action, Hawkins failed to allege that RMI lacked a good faith basis for bringing the District Court action and failed to allege that she has suffered any discernible damages as a result of the District Court action."

Satisfaction of the Elements

In order to adequately plead that RMI knowingly asserted a right that did not exist or that it did not have, the complaint must have clearly defined the right being asserted, as well as why that right did not exist. As we have discussed, the right at issue – of RMI to collect – although ambiguously pleaded, appears to have been RMI's alleged right to seek collection of additional damages beyond unpaid rent.

A right to collect, or the lack thereof, can be established in various ways – through agreement between the parties, or through a contract, like the lease agreement between RMI and Hawkins,[7] or by statute that provides, prohibits, or limits a legal right.

[7] Although the parties provided the circuit court with factual assertions from the District Court proceeding, it does not appear from the record that the circuit court was provided with the lease agreement reflecting the rental.

Similarly, knowledge of a lack of right can be imputed through a provision in a contract or through the existence of a law related to or controlling it. *See Allstate Lien & Recovery Corp. v. Stansbury*, 219 Md. App. 575, 591 (2014), *aff'd*, 445 Md. 187 (2015) (holding that "[b]ecause appellants did not have a [statutory] right to include processing fees in the lien, the jury could [and did] properly find that appellants violated the MCDCA by including those costs in the amount of the lien [the debtor] was required to pay to redeem the vehicle"); *Finch*, 212 Md. App. at 762 (finding support for its holding that a judgment obtained by an unlicensed debt buyer is void, with the proposition that "filing a collection action without the requisite license under the MCALA constitutes an 'action that cannot legally be taken'" (quoting *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719, 728 (D. Md. 2011))).

A lease agreement typically contains provisions that establish the rights and duties of both the landlord and the tenant. *See* Real Property Article §§ 8-203; 8-208; 8-212.2. Despite Hawkins' assertion, offered for the first time at the hearing on the motion to dismiss, that the lease did not permit RMI to charge for replacement locks and keys that had not been returned, the complaint contains no mention of this fact. Maryland Rule 2-303 provides that pleadings "shall contain only such statements of fact *as may be necessary to show* the pleader's entitlement to relief." Rule 2-303(b) (emphasis added). *See also* Rule 2-305. The information relating to a lack of contractual right is presumed to have been available to Hawkins at the time she filed her class action, as she had executed the original lease and renewal thereof. In that she did not include support for

her claim that RMI lacked a right to collect that fee, she failed to allege facts necessary to show her entitlement to relief. *See id*.

Hawkins' complaint challenges RMI's right to collect the additional damages, but primarily relies on bald assertions, lacking factual support or related authority. The foundation of the entire complaint rests on her assertion that "[w]hen a tenant vacates their apartment at the end of a lease or due to eviction, a landlord is only permitted to charge a tenant for physical damage in excess of ordinary wear and tear." Notwithstanding the importance of this assertion to her entire MCDCA claim, and the MCPA claim, Hawkins fails to provide sufficient factual support or legal authority. In fact, neither a contractual limitation on, or an assertion of a lack of the right to collect, were factually pleaded in the complaint, despite the fact that Hawkins later asserted at the hearing on the motion to dismiss that the lease did not permit RMI to seek damages for replacing the locks and keys.

The only factual support for her assertion is that she "left the apartment in good condition and left her keys in the apartment." The statement that "Exhibit B to [RMI's] lawsuit acknowledged that the carpet was only 2 months old when [she] moved in and still had roughly 80 percent of its life left[,]" became moot to her claim when the District Court awarded damages to RMI for the replacement of the carpet. Her *de novo* appeal was dismissed, thereby finalizing the District Court judgment that awarded those damages. At no point in her complaint does Hawkins provide any factual support for the remaining "bogus" charge for painting the walls nor does she provide any authority for her proposition that landlords can only collect damages "beyond ordinary wear and tear."

In sum, Hawkins has failed to sufficiently plead that RMI did not have a right to collect, or attempt to collect, the additional charges for the alleged damages.

Assuming, *arguendo*, adequate pleading that no right existed for RMI to seek collection of the charges for painting and replacement of the locks and keys, Hawkins would still have had the burden of showing that RMI had knowledge of its lack of a right to collect. The level of knowledge required under this statute has been defined in *Spencer v. Hendersen-Webb, Inc.*, 81 F. Supp. 2d 582 (D. Md. 1999), wherein the District Court explained that the knowledge requirement under the MCDCA means "with actual knowledge or reckless disregard as to the falsity of the information or the existence of the right." 81 F. Supp. 2d at 595.

In our independent appraisal of the complaint, we agree with the circuit court that there are very few factual assertions presented within the four corners of the complaint to support either actual or constructive knowledge of a lack of right. Having failed to demonstrate a lack of right to collect the additional damages, Hawkins also fails to demonstrate knowledge of the lack of right. By failing to timely amend the complaint, Hawkins was left to rely on her assertion that "[o]n information and belief, [RMI] did not actually incur any of these charges." However, because the District Court found that RMI was entitled to collect all but the painting and key and lock replacement fees, that assertion would then be limited to only those two charges. Without providing support for a lack of legal or contractual right, where knowledge can be imputed, and without providing factual support that RMI did not actually incur the charges, thereby

demonstrating fraudulent claims for damages, there is nothing in the complaint to demonstrate RMI had knowledge of a lack of right to attempt collection.

The MCPA Claim

The MCPA[8] prohibits "unfair or deceptive trade practices in . . . [t]he *collection* of consumer debts." C.L. §13-303(5) (emphasis added). Within the context of the instant case, Hawkins asserted a claim against RMI for a violation of the MCPA as a result of its alleged violation of the MCDCA. A violation of the MCDCA is defined as an "unfair or deceptive trade practice" pursuant to the Maryland Consumer Protection Act (MCPA); thus, a violation of the MCDCA also constitutes a violation of the MCPA. C.L. §§ 13–301(14)(iii), 13–303. Consequently, in view of our finding that Hawkins failed to sufficiently plead a claim for a violation of the MCDCA, the purely derivative MCPA claim also fails.

Leave to Amend

Hawkins alleges that "the Circuit Court abused its discretion in not granting [her] leave to file an amended complaint because the proposed amended complaint demonstrated that [her] claim was meritorious." She argues that "the proposed amended complaint easily demonstrated that the Circuit Court's concern with the adequacy of the manner in which the MCDCA count was plead [sic] could be easily remedied by asserting the additional specific factual allegations of constructive knowledge[.]"

[8] The Maryland Consumer Protection Act is codified as Title 13 of the Maryland Commercial Law Article, §§ 13-101 to 13-501.

RMI responds that "the MCDCA only prescribes debt collection methods, and filing a civil action is a proper method of enforcing a disputed debt. . . . Thus, no amount of amendment to Hawkins [sic] claims based upon RMI's filing of the District Court Suit could lead to a viable claim under either the MCDCA or MCPA." And, "no amount of amendment to Hawkins [sic] claims can alter the fact that she has not suffered any damages as the result of an alleged violation of either statute."

The Maryland Rule governing motions to dismiss provides that "if a court dismisses a complaint for failure to state a claim an amended complaint may be filed only if the court expressly grants leave to amend." Rule 2-322(c). *See also Mohiuddin v. Doctors Billing & Mgmt. Sols., Inc.*, 196 Md. App. 439, 451-56 (2010). The determination of whether "'to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge.'" *A.C. v. Maryland Comm'n on Civil Rights*, 232 Md. App. 558, 579 (2017) (quoting *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002)). A circuit court's rulings on such motions will be overturned only upon a showing of a clear abuse of that discretion. *Id.* (quoting *Schmerling*, 368 Md. at 444). We find no such clear abuse in the instant case.

Hawkins was first put on notice of the potential need to amend her class action complaint when the District Court entered judgment against her for some, but not all, of the contested charges. At that time, she could have filed an amended complaint without leave of court, because RMI had not yet filed a responsive pleading, nor had a scheduling order been issued. *See* Rule 2-341(a) ("A party may file an amendment to a pleading

without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date."). She did not.

The class action lawsuit was filed on May 4, 2015 and the District Court judgment was entered against Hawkins on May 14, 2015. At that point, she was on notice that an amendment would be necessary to accurately reflect the claims adjudicated against her by the District Court if she were to fail on appeal. The need to file an amended complaint was further apparent when her *de novo* appeal was dismissed and Hawkins had failed to move to vacate the dismissal as allowed under Rule 7-112(f)(3).[9] At that point, the District Court judgment became enrolled and Hawkins ought to have known that an amended complaint would be required to save her claims, if for no other reason than to correct and update the assertions made in the original complaint to reflect the District Court judgment. She failed to do so.

Even though, generally, "[a]mendments shall be freely allowed when justice so permits[,]" Rule 2-341(c),[10] "an amendment should not be allowed if it would result in

[9] The Rule provides in pertinent part that when an appeal from the District Court is dismissed for the appellant's failure to appear, "[o]n motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper." Rule 7-112(f)(3).

[10] Rule 2-341 allows amendments that:

> (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs

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prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 673-74 (2010).

Moreover, as we review her proposed amended complaint, it is apparent that Hawkins failed to remedy the deficiencies of the original complaint. The proposed amended complaint fails to assert the reason for RMI's underlying District Court lawsuit or to clearly articulate RMI's lack of right to collect the additional damages and provide authority for the lack of right.

It is because a "'[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[,]'" *Parker v. Hamilton*, 453 Md. 127, 133 (2017) (quoting *Bobo v. State*, 346 Md. 706, 709 (1997)), that we "'must determine whether the trial court was legally correct, examining solely the sufficiency of the pleading.'" *Id*. (quoting *Bobo*, 346 Md. at 709). In our review of Hawkins' class action complaint, within the context of the procedural posture of the District Court proceeding, we find her complaint premature and the pleadings deficient. The circuit court did not abuse its discretion when it denied Hawkins leave to amend and, ultimately, her motion for reconsideration. Accordingly, "we must and do hold that litigants cannot be encouraged in the practice of failing to

(continued)

> and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change.

Rule 2-341(c).

allege material facts in a complaint." *Boston Med. Group*, 170 Md. App. at 148 (quoting *Moodhe v. Schenker*, 176 Md. 259, 269 (1939)).

JUDGEMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.