Circuit Court for Baltimore County
Case No. 03-C-18-002569

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2244

September Term, 2018

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RICHARD PEAMON

v.

PEP BOYS, INC.

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Berger,
Nazarian,
Arthur,

JJ.

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Opinion by Berger, J.

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Filed: November 13, 2019

In the Circuit Court for Baltimore County, Richard Peamon, appellant, filed suit against Pep Boys, Inc.,[1] appellee, alleging, *inter alia*, that he was overbilled for repairs to his vehicle. Mr. Peamon appeals from the grant of Pep Boys's unopposed motion to dismiss his amended complaint, presenting two questions,[2] which we have rephrased as:

[1] The proper corporate name is "The Pep Boys – Manny, Moe & Jack."

[2] The questions as presented by Mr. Peamon are:

> (1) When a party to a cause of action file a pleading and have met all the qualifications or that action be denied a judgement under the law?
>
> In this instance case pursuant to rule 2-6-13 (F) Entry of Judgment If a motion was not filed under section (d) of the rule or was filed and denied, the court upon request may enter a judgement by default that includes a determination as to the Liability and all relief sought. If it is satisfied (1) that it has jurisdiction to enter the judgement and (2) that the notice required by Section (C) of the rule was mailed. If in order to enable the court to enter judgment, it is necessary to take in account or determine the amount of damages or establish the truth of any averment by affidavit conduct hearings, and if requested shall preserve the plaintiff that right to trial by jury.
>
> **Appellant Response** The written laws and procedure of the courts written must be complied and enforced if not said creditably
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> (2) And respect for our court system must be overhauled and our tax paying citizens should be informed of this as exactly what had occurred in this court below. the Defendant now appellee did not answer within 30 days nor 100 days made no attempt to file a discloser only motions to dismiss "every argument noted"

(continued)

I. Did the circuit err by denying Mr. Peamon's motion for an order of default?

II. Did the circuit court err by dismissing the amended complaint for failure to state a claim upon which relief may be granted?

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

## FACTS AND PROCEEDINGS

On March 12, 2018, Mr. Peamon filed a complaint against Pep Boys. The operative complaint is the amended complaint, filed on April 27, 2018, captioned, "Plaintiff seeks a Cause of action for Business Tort Pursuant to MD Law C.J.P. 3-304 injunctive Relief and Damages, Amended Complaint." The amended complaint is divided into four paragraphs.

In paragraph one, Mr. Peamon asserted that he was pursuing relief under Md. Code (1974, 2013 Repl. Vol.), section 3-304 of the Courts and Judicial Proceedings

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**Default properly granted**

"Circuit Court below did not err in granting a default judgement against the corporation under MD Rule 2-613 because there was no support for the corporation contention that a prerequisite to the entry of a default judgment, in the absence of any pleading from the defaulting party was that the trial court makes a determination as to liability. Franklin Credit Management Corp. vs Nefflen 208 MD app. 712,57 A3d 10/5/2012 MD app. Lexis 154-2012

(Emphasis in original.)

Article ("CJP") for a "tort action." In paragraph two, Mr. Peamon alleged that Pep Boys does not post "signs which designate the hourly labor rate which is required by law before said work is to be perform." He further alleged that he is an "advanced senior."

In paragraph three, Mr. Peamon alleged that on January 6, 2018, he brought his vehicle to a Pep Boys repair shop because his "power steering wheel was not functioning meaning hard to turn, leaking oil etc.!" The Pep Boys' Service Manager advised Mr. Peamon that the "power steering rack" needed to be replaced at an estimated cost of "$300.00 and 65 per hour labor." Mr. Peamon authorized that repair. Pep Boys did not return the defective auto parts to Mr. Peamon "for a lucrative refund which the customer can return to the dealer for the parts money." In addition to that authorized repair, Mr. Peamon alleges that Pep Boys also performed an unauthorized "wheel alignment" at a cost of $89.99 plus labor. He "paid in full $586.11 several days later." Mr. Peamon further alleged that he "paid again overbilling of $367.00 for a ti[]e rod replacement." Two Pep Boys' invoices, designated Exhibits A and B were incorporated by reference.[3] Mr. Peamon alleged that he wrote to Pep Boys by letter dated February 8, 2018,

[3] The exhibits were attached to the original complaint, but not to the amended complaint. We treat the exhibits as incorporated by reference in the amended complaint as well. *See* Md. Rule 2-303(d) ("A copy of any written instrument that is an exhibit to a pleading is a part thereof for all purposes.").

incorporated into his complaint as Exhibit C, to seek a compromise.[4] He alleged that Pep Boys engaged in a "habitual practice of outright cheating" and sought punitive damages.

In paragraph four, Mr. Peamon stated: "As a result of the overbilling by defendant and add in unauthorized service, claimant seeks at least $450.00 return of the $1,000.00 paid." In his *ad damnum* clause, Mr. Peamon asked the court to order an "investigation" by the Better Business Bureau; costs; attorneys' fees[5]; compensatory damages of $35,000; and any other appropriate relief.

The incorporated invoices reflected two dates of service: January 6, 2018 and January 26, 2018. The January 6, 2018 invoice reflects $586.11 in charges for tire installation, four new tires, and an oil change on Mr. Peamon's 2004 Chevrolet Impala. The January 26, 2018 invoice reflects $367.83 in charges, comprising $240.08 for parts and labor associated with the installation of a "prosteer outer tie rod end," $89.99 for a "computerized wheel alignment," a $30.45 "Shop fee," and $7.31 in taxes.[6]

[4] This exhibit likewise only was attached to the original complaint. We treat it as incorporated by reference in the amended complaint.

[5] Mr. Peamon was self-represented before the circuit court and is self-represented before us as well.

[6] A third invoice, designated Exhibit E, was not referenced in the complaint but was attached to it. That invoice reflects the same date and charges as Exhibit B, but each charge is discounted by 10%. It also reflects that Mr. Peamon tendered payment for the reduced charges, i.e. $331.05, on January 27, 2018.

On May 9, 2018, Pep Boys moved to dismiss the amended complaint for failure to state a claim upon which relief may be granted.[7] It argued that Mr. Peamon had not alleged any facts supporting a tort claim against Pep Boys and, to the extent he was pursuing a contract claim,[8] he had vaguely alleged overbilling but had not identified any specific breach of contract. Pep Boys emphasized that Mr. Peamon claimed he had been overbilled by $89.99 on January 6, 2018 for a wheel alignment, but the invoice from that date reflected no such charge. Pep Boys further asserted that Mr. Peamon was not entitled to any relief pursuant to CJP section 3-304, nor was he entitled to punitive damages. Mr. Peamon did not oppose the motion to dismiss.

By order dated July 9, 2018, the court granted the motion to dismiss the amended complaint with leave to amend within 20 days.[9] Mr. Peamon did not file a second amended complaint and, by order entered August 8, 2018, the court dismissed the first amended complaint. This timely appeal followed. We shall include additional facts as necessary to our resolution of the issues.

[7] Pep Boys previously had moved to dismiss the original complaint. That motion was rendered moot by the filing of the amended complaint.

[8] Pep Boys noted that Mr. Peamon had asserted in his opposition to the original motion to dismiss that his "cause of action involves no breach of contract."

[9] Because neither party requested a hearing on the motion to dismiss the amended complaint, the court was permitted to grant it without a hearing. *See* Md. Rule 2-311(f) (circuit court "may not render a decision that is dispositive of a claim or defense without a hearing *if one was requested*"). (Emphasis added.)

## DISCUSSION

I. *Denial of Request for Order of Default*

Mr. Peamon contends that the circuit court erred by denying his motion for an order of default. We disagree.

The complaint was filed on March 12, 2018. The docket entries are ambiguous as to whether Pep Boys was served with a copy of the complaint and the summons,[10] but, in any event, on April 20, 2018, Pep Boys moved to dismiss the complaint for failure to state a claim. Consequently, Pep Boys was not obligated to file an answer until 15 days after its dispositive motion was ruled upon. *See* Md. Rule 2-322(b)("The following defenses may be made by motion to dismiss *filed before the answer, if an answer is required*: . . . (2) failure to state a claim upon which relief can be granted . . . ."); Md. Rule 2-321(c) ("When a motion is filed pursuant to Rule 2-322 . . ., the time for filing an answer is extended without special order to 15 days after entry of the court's order on the motion . . . .").

Before that motion could be ruled upon Mr. Peamon filed his amended complaint, which he served upon Pep Boys by mail. Pep Boys' motion to dismiss was rendered moot by the filing of the amended complaint and it timely moved to dismiss the amended complaint. That motion to dismiss remained pending when, on June 7, 2018, Mr.

[10] The docket reflects that, on March 28, 2018, Mr. Peamon's affidavit of service was rejected because it was "missing information[.]" The "Service" section of the docket, however, reflects that Pep Boys was served on March 22, 2018 by private process.

Peamon moved for an order of default. Pep Boys was not obligated to answer the amended complaint until 15 days after the court ruled on the motion to dismiss the amended complaint. Md. Rule 2-321(c). The court did not err by denying Mr. Peamon's request for an order of default, as moot, at the same time that it granted Pep Boys' dispositive motion.

II. *Grant of Motion to Dismiss Amended Complaint*

We review the grant of a motion to dismiss for failure to state a claim for which relief can be granted *de novo*. *Clark v. Prince George's Cnty*., 211 Md. App. 548, 557 (2013). In so doing, "we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Corr. Med. Servs., Inc*., 359 Md. 238, 246 (2000). "[I]f the allegations and permissible inferences, if true, would not afford relief to the plaintiff," dismissal is warranted. *RRC Northeast, LLC v. BAA Md., Inc*., 413 Md. 638, 655 (2010).

"Pleadings must provide notice to the parties of the nature of claims, state the facts upon which the claims exist, establish the boundaries of the litigation, and afford the speedy resolution of frivolous claims." *Heritage Harbour, LLC v. John J. Reynolds, Inc*., 143 Md. App. 698, 710 (2002). Because the amended complaint does not satisfy this threshold, the circuit court did not err by granting the unopposed motion to dismiss the amended complaint. We explain.

Mr. Peamon reiterates in his brief that his claim against Pep Boys was "brought . . . pursuant to [CJP § 3-304] for Business Tort action." CJP section 3-304, in

conjunction with CJP section 3-303, permits a court to issue an attachment before judgment in a tort or contract suit under three enumerated circumstances: 1) when "the debtor is a nonresident individual, or a corporation which has no resident agent in this State," CJP § 3-303(b); 2) if "the debtor has absconded or is about to abscond from the State; or if an individual has removed, or is about to remove, from his place of abode in the State with intent to defraud his creditors," CJP § 3-303(d); and 3) in certain actions arising from home improvement transactions. CJP § 3-303(g). Mr. Peamon did not plead any facts alleging that any of these circumstances exist. Even if the statute were satisfied, CJP section 3-304 does not create a separate cause of action in tort and Mr. Peamon's allegation that he was overbilled by Pep Boys on two occasions does not state a claim in tort arising from the contractual relationship between them. *See generally Mesmer v. Md. Auto. Ins. Fund,* 353 Md. 241, 253 (1999) ("A contractual obligation, by itself, does not create a tort duty. Instead, the duty giving rise to a tort action must have some independent basis.").

Mr. Peamon also does not allege facts sufficient to state a claim in contract. *See RRC Northeast,* 413 Md. at 655 ("a complaint alleging a breach of contract 'must of necessity allege with certainty and definiteness facts showing a contractual obligation owed by the defendant[.]'") (citations omitted) (emphasis added). Mr. Peamon alleges he was overbilled on January 6, 2018 by $89.99 for a wheel alignment, but his invoice, from that date, which is incorporated by reference in the amended complaint, reflects no such charge. He further alleges that he was overbilled for a tie rod replacement but does not

allege any facts explaining why the amount billed for this repair was improper. Having failed to allege facts with sufficient particularity showing a contractual obligation owed to him by Pep Boys and the breach of that obligation, Mr. Peamon fails to state a claim for breach of contract.

Lastly, even if Mr. Peamon had stated a claim in tort or contract, which he has not, he would not be entitled to punitive damages. *See Schaefer v. Miller*, 322 Md. 297, 299-300 (1991) ("punitive damages are prohibited in a pure action for breach of contract" and in a tort claim arising from a contractual relationship, "actual malice is a prerequisite to the recovery of punitive damages"). We, therefore, hold that the circuit court did not err by dismissing the amended complaint for failure to state a claim upon which relief may be granted.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.**