UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2260

September Term, 2014

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MICHELE EDWARDS

v.

BANK OF AMERICA, N.A et al.

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Hotten,
Berger,
Nazarian,

JJ.

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Opinion by Hotten, J.

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Filed: December 17, 2015

The instant appeal arises from a decision of the Circuit Court for Prince George's County, granting a Motion for Summary Judgment in favor of appellees, Bank of America, N.A. ("BOA") and Nationstar Mortgage, LLC ("Nationstar"). Appellant filed a complaint against appellees alleging a myriad of breach of contract, negligence, and fraud claims, resulting from a four-year long dispute with BOA, the mortgagee under her Deed of Trust. The parties' dispute involved the application of casualty insurance proceeds she received from her insurance company to repair her damaged townhouse ("Unit 573") and the application of casualty insurance proceeds issued to the owners of the adjoining townhouse Unit 571, owned by Aretha Jones-Brown and Vincent Brown ("the Browns") after both units sustained structural damage due to a fire that originated in Unit 571.

Appellees filed a Motion for Summary Judgment in response, alleging that they were under no obligation to repair either unit. Following a hearing, the circuit court granted appellees' motion, concluding that based upon the evidence of the record, appellees did not owe appellant a duty in contract or in tort. Appellant noted a timely appeal and presents four questions for our review:

1. Did the [c]ircuit [c]ourt err in granting summary judgment based on its determination that [BOA] owed [appellant] no duty that would support her breach of contract or negligence claims?

2. Did the [c]ircuit [c]ourt err in granting summary judgment based on its determination that there is no legal basis for [appellant's] fraud claims?

3. Did the [c]ircuit [c]ourt err in granting summary judgment based on its determination that [appellant's] remittance of her casualty insurance funds to [BOA] is a condition precedent to [BOA's] duty of good faith and fair dealing?

4. Did the [c]ircuit [c]ourt err in granting summary judgment based on its determination that the only question in this case is whether [BOA] was title holder of Unit 571?

For the reasons that follow, we shall affirm the judgment of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

In March 2008, the Browns obtained a loan in the amount of $302,044 from Centex Real Estate Corporation ("CTX Mortgage Company"), to purchase Unit 571, located in Landover, Maryland, pursuant to a Deed of Trust. In September 2011, the Browns' Deed of Trust was assigned to BOA. Thereafter, in November 2012, the Deed of Trust was assigned to Nationstar. On July 16, 2009, the Browns filed for bankruptcy and were subsequently discharged from their mortgage obligation in November 2009. On February 28, 2013, Nationstar filed a "Certificate of Release," which released the lien it secured on Unit 571. On September 12, 2013, the Browns sold Unit 571 to Prospect Mortgage, LLC ("Prospect Mortgage"). In June 2008, appellant obtained a loan in the amount of $291,000 from CTX Mortgage Company to purchase Unit 573, pursuant to a Deed of Trust. On March 16, 2012, the Deed of Trust was assigned to BOA.

Units 571 and 573 are townhouses that are part of a condominium community known as the Residences at Victory Promenade C.A.[1] The units are adjoined and share a

[1] On October 19, 2005, CTX Mortgage Company filed a Declaration of Covenants, Conditions and Restrictions at Victory Promenade Community Association ("Association's Declaration of Covenants"). The Declaration does not explicitly state that members of the Association were covered under a general casualty insurance policy for common areas, such as an adjoining wall or a roof. Although the Association was required to maintain a blanket insurance policy, the stipulation was waivable provided that the borrower maintained separate and adequate insurance coverage.

party wall and a roof. On December 14, 2010, a fire that originated in Unit 571, spread to Unit 573 and resulted in structural damage to both units. Thereafter, appellant filed a claim with her insurance company, USAA Casualty Insurance Company ("USAA"). In February 2011, appellant engaged Mr. Richard Faltz ("Mr. Faltz"), a contractor employed by Champion Remodeling & Design to repair her unit. Mr. Faltz was previously hired by the Browns for the repair of their unit.

Thereafter, on June 3, 2011, after conducting an assessment of appellant's property, USAA issued a check to appellant and BOA for $113,363.33 to facilitate repairs. During that same month, an affidavit proffered by Mr. Faltz indicated that he participated in a phone call with a representative of BOA, who informed him that the insurance proceeds for Unit 571 would not be released for repairs of that unit. Mr. Faltz informed appellant that unless the damages to Unit 571 were repaired, appellant's adjoining unit could not be repaired.

On June 25, 2012, Mr. Joseph R. Jones, Jr. ("Mr. Jones"), a property inspector with the Property Standards Division of the Department of Environmental Resources of Prince George's County ("the County") inspected units 571 and 573. As a result of his findings, Mr. Jones issued a series of violation notices to both appellant and the Browns, pursuant to Section 13-115(b) of the County's Housing Code and Sections 4-119 and 4-120 of the County's Building Code.[2]

[2] *See* Prince George's County Housing Code Sec. 13-115(b) and Prince George's County Building Code Sec. 4-119 and Sec. 4-120.

In June 2011, a series of correspondence between BOA representatives and appellant regarding the repairs of her unit ensued. The repairs were predicated upon appellant's remittance of the $113,363.33 insurance check to BOA. However, since receipt of the check, appellant did not submit the insurance proceeds to BOA as requested and the check remained in her possession. As a result, repairs to Unit 573 did not transpire.

On or about March 2013, appellant and the Browns were approached by Prospect Mortgage about purchasing and renovating their units. Appellant also received two other offers from third parties to purchase her unit. However, appellant declined all offers. Since receipt of the violation notices issued in June 2012, appellant conducted no repairs to Unit 573. On April 13, 2013, the District Court for Prince George's County issued a Consent Order granting appellant seventy days to abate the conditions, otherwise the property would be demolished.

On July 1, 2013, Mr. Jones issued a notice to appellant that the County would demolish Unit 573 on or after July 11, 2013 due to her failure to repair pursuant to the April 2013 Consent Order. Subsequently, on April 1, 2014, Mr. Jones issued another notice informing appellant that the County planned to abate the unsafe conditions and remediate the mold present in the unit.[3] Notice of the projected repairs was provided to appellant's counsel. On or about April 2014, the County conducted structural repairs to Unit 573 at

[3] Mr. Jones' deposition testimony revealed that the County opted to abate the unsafe conditions on Unit 573 rather than demolish it because it was "a middle unit of a condominium," and demolishing the unit "would be almost impossible to do."

an estimated cost of $25,000 to $30,000. As a result, Mr. Jones revealed in his deposition testimony that Unit 573 was in a livable condition and that the remaining repairs were only cosmetic in nature.

In appellant's deposition testimony, she revealed that she stopped making payments on the mortgage in 2012 because of the pending dispute with BOA. As a result of her delinquency, on September 24, 2012, BOA issued a "NOTICE OF INTENT TO FORECLOSE" on Unit 573. The dispute between appellant and BOA relative to the remittance of the insurance proceeds remained unresolved. As a result, on May 3, 2013, appellant filed a seven-count Complaint against appellees' as individual entities,[4] alleging breach of contract, breach of fiduciary duties, and negligence.

On December 11, 2013, appellant filed an Amended Complaint, adding claims for breach of the implied covenant of good faith and fair dealing, breach of the Association's Declaration of Covenants, gross negligence, and fraud. On March 31, 2014, appellees filed a Motion for Summary Judgment on all claims, asserting that they did not have an obligation to appellant in contract or tort because they were never title owners of Unit 571 or Unit 573, and that appellant failed to mitigate her damages. On April 15, 2014, appellant filed a motion in opposition. In an Order dated May 23, 2014, the circuit court denied appellees' motion and held that genuine issues of material fact existed. After extensive discovery, appellees filed a second Motion for Summary Judgment on August 18, 2014.

[4] Nationstar is not, and has never been in contractual privity with appellant. However, appellant assigns error to Nationstar because they acquired all rights and obligations under the Browns' Deed of Trust through the assignment from BOA.

On September 15, 2014 appellant filed a second motion in opposition. Thereafter, on December 3, 2014, a hearing on appellees' second Motion for Summary Judgment was held before the circuit court.

After considering the evidence and arguments presented, the court issued an Opinion and Order granting appellees' motion. The circuit court concluded that summary judgment was proper because 1) remittance of the insurance proceeds was a condition precedent to the exercise of BOA's obligations under appellant's Deed of Trust, however the condition was never satisfied; 2) appellant does not have an independent legal basis to support her contract claims and appellees owed no duty to her under the Browns' Deed of Trust because they were not record title holders obligated to repair the same; and 3) appellees owed no duty in tort that would support her negligence or fraud claims. Appellant filed a timely appeal to this Court. Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

**STANDARD OF REVIEW**

"We review a [circuit] court's grant of a motion for summary judgment *de novo.* [In resolving a motion for summary judgment,] [t]he [circuit] court will not determine any disputed facts, but rather makes a ruling as a matter of law. The standard of appellate review, therefore, is whether the [circuit] court was legally correct." *Law Offices of Taiwo Agbaje, P.C. v. JLH Properties, II, LLC*, 169 Md. App. 355, 367 (2006) (internal citations and citation omitted). Thus, "[i]n reviewing [the circuit court's] decision to grant a motion for summary judgment, we evaluate 'the same material from the record and decide[ ] the

same legal issues as the circuit court.'" "We 'uphold the grant of a summary judgment only on the grounds relied on by the [circuit] court.'" *Id*. at 367-68 (internal citations and citation omitted).

## DISCUSSION

### *I. Breach of Contract Claims*[5]

Appellant asserts a myriad of breach of contract claims against BOA and contends that "[a]mong the obligations assigned to [BOA] [from CTX Mortgage Company] under [her] Deed of Trust [was] the duty to refrain from interfering with [her] ability to perform her contractual obligation to repair and to comply with the law." In contrast, appellees argue that "[appellant] mistakenly interpreted [her] Deed of Trust to impose on [a]ppellees an absolute obligation to make repairs in the event of fire[,]" because "[t]he terms of the Deed of Trust simply do not impose an absolute or unconditional obligation on [BOA] to provide for the repairs to her home." We reluctantly agree.

"To prevail in an action for breach of contract, *a plaintiff must prove that the defendant owed the plaintiff a contractual obligation* and that the defendant breached that obligation." *Taylor v. NationsBank, N.A*., 365 Md. 166, 175 (2001) (emphasis added). The record does not reflect that BOA owed appellant an express duty relative to repairs under her Deed of Trust. Although appellant concedes the existence of the option clause outlining

[5] As the circuit court acknowledged, "[t]he best chance for [appellant] to succeed against [ ] [appellees] is under the [contract] both parties were party to, that is [ ] [appellant's] Deed of Trust between BOA and [appellant]. . . ." We agree. Accordingly, we limit our analysis of appellant's breach of contract claims to the relevant terms in her Deed of Trust.

the manner in which appellees may apply insurance proceeds, she misconstrues its effect. Section four of appellant's Deed of Trust provides:

> In the event of loss, . . . [a]ll or any part of the insurance proceeds may be applied by [l]ender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph [three], and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. . . .

The clause does not imply that appellees had an absolute obligation to repair her unit. Of import here, are the words "may," "either," and "at its option" in her Deed of Trust, which indicates that there was no express condition that BOA must repair the property. Appellant's interpretation of the option clause would, in effect, impose an *unqualified* obligation upon BOA, beyond what they were required to do under the terms of her Deed.[6] *See Parker v. Columbia Bank*, 91 Md. App. 346, 366 (1992) (concluding that *Columbia Bank* did not have a contractual obligation to the *Parkers* where they "merely alleged that *[Columbia Bank]* failed to take certain actions that [they] [were] clearly *not* required to take" under the parties' loan agreement) (emphasis in original).

Moreover, as appellees noted, "[BOA's] obligation to facilitate repairs to Unit 573 is qualified and only applies upon the receipt of the insurance proceeds[,]" however, appellant "failed to meet this clear condition precedent[.]" Similarly, the circuit court concluded:

[6] In light of this conclusion, we decline to address appellant's argument that pursuant to the severability clause outlined in Section fourteen of her Deed of Trust, subsection (a) of the option clause should be given no legal effect because it conflicts with the County law, which mandates prompt repair of damaged property.

> The clear language of the contract is that once the lender receives the insurance payment it has the option to repair or reduce the indebtedness. In this case, [appellant] never paid the insurance money so the [l]ender never had a chance to exercise either of its options.
>
> The receipt of the check by BOA is a condition precedent to the exercise of the option by BOA. Once the check is received, the action then taken will trigger the covenant of good faith and fair dealing thus starting the statute of limitations on that covenant. . . .

In *Aronson & Co. v. Fetridge*, 181 Md. App. 650, 682 (2008), we defined a "condition precedent," relative to the conduct of the parties to a contract "as 'a fact, other than mere lapse of time, which, unless excused, must exist or occur before a duty of immediate performance of a promise arises[.]' . . . The question whether a stipulation in a contract constitutes a condition precedent is one of construction dependent on the intent of the parties to be gathered from the words they have employed and, in case of ambiguity, after resort to the other permissible aids to interpretation[.] Although no particular form of words is necessary in order to create an express condition, such words and phrases as 'if' and 'provided that,' are commonly used to indicate that performance has expressly been made conditional, as have the words 'when,' 'after,' 'as soon as,' or 'subject to[.]'" (quoting *Chirichella v. Erwin*, 270 Md. 178, 182 (1973)). Thus, "[w]hen a condition precedent is unsatisfied, the corresponding contractual duty of the party whose performance was conditioned on it does not arise." *Aronson & Co*., 181 Md. App. at 682 (quoting *B & P Enterprises v. Overland Equip. Co.*, 133 Md. App. 583, 606–07 (2000)).

Applying those principles here, appellant's remittance of the insurance check made payable to her and BOA had to be tendered to BOA before they could exercise their option.

We are sympathetic to the dilemma faced by appellant, who sought some assurance from BOA that said proceeds would go towards the repair of her townhouse. Unfortunately, we cannot ignore the language of her Deed of Trust.

Appellant's breach of contract claims under the Browns' Deed of Trust similarly fail due to a lack of contractual privity between appellant and appellees relative to the damage of Unit 571. The parties dispute whether the fact that appellees' respective security interests in Unit 571 also meant that they were record title holders of the property, thereby creating a duty to repair same. However, appellees were never record title holders of Unit 571, and thus, did not have such a duty. Prior to the sale of the property to Prospect Mortgage, the parties to the Browns' Deed of Trust were: 1) the Browns, as grantors/debtors (*i.e.*, record title holders); 2) Timothy M. Bartosh and William B. Naryka, as grantees/trustees holding legal title to the property in trust; and 3) CTX Mortgage Company, then BOA, and Nationstar, respectively, as creditors, who possessed only a security interest secured by a lien on the property until the mortgage was satisfied. Neither of the parties who held title to Unit 571 (the Browns and Prospect Mortgage) are parties to this case.

Additionally, appellant's argument that she has third-party standing under the Browns' Deed of Trust because she is an adjoining property owner to Unit 571, is misplaced. *See 120 W. Fayette St., LLLP v. Mayor of Baltimore*, 426 Md. 14 (2012) ("*Superblock III*") (distinguishing between a violation of law and a breach of a contractual provision for purposes of adjoining property owner standing, in which only the former

constituted a "land use decision" conferring standing). *Accord State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 524-26 (2014). *See generally Anne Arundel Cty. v. Bell*, 442 Md. 539, 569-75 (2015) (narrowing the scope of property owner standing enunciated in *State Ctr.*).

Moreover, the evidence does not demonstrate that appellant was an intended or incidental third-party beneficiary to the Browns' Deed of Trust. *See CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 457 (2012) (acknowledging an intended third-beneficiary's right to sue on a contract between two other parties' despite the lack of privity). *But see id*. at 457-62 (rejecting the tenants' "third party's reliance interest" because the fact that the towers were intertwined, did not demonstrate "that the parties intended to make each [t]enant a third-party beneficiary of the other's ground lease.").

Accordingly, in absence of a duty owed, appellant's breach of contract claims asserted against appellees must fail. *See RRC Ne., LLC v. BAA Maryland, Inc*., 413 Md. 638, 655 (2010) ("[i]t is well-established in Maryland that a complaint alleging a breach of contract 'must of necessity allege with certainty and definiteness facts showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant.'") (citation and emphasis omitted). Additionally, because appellant does not have a viable breach of contract claim, her arguments relative to appellees' implied duty of good faith and fair dealing also fails. *See Mount Vernon Properties, LLC v. Branch Banking And Trust Co*., 170 Md. App. 457, 472 (2006) ("[a] breach of the implied duty of good faith and fair dealing is better viewed as an element of another cause of action at law,

*e.g.*, breach of contract, than as a stand-alone cause of action . . . and we conclude that no independent cause of action at law exists in Maryland for breach of the implied duty of good faith and fair dealing."). *Accord, Cutler v. Wal-Mart Stores, Inc*., 175 Md. App. 177, 195 (2007); *Magnetti v. Univ. of Maryland*, 171 Md. App. 279, 285, n. 3 (2006).

### *II. Tort Claims & Fraud Claims*

Appellant further contends that BOA owed her a duty in tort. Specifically, appellant asserts that "[BOA] had a duty [to] act fairly and reasonably, to approve the release of the Unit 571 repair funds or to at least secure [same], and to refrain from interfering with or preventing [appellant] from promptly removing the unsafe, hazardous public safety threat on her property[,]" which she alleges BOA "knowingly and unreasonably breached . . . by failing to respond, cooperate, or take any action of any kind with regard to this matter." As a result, appellant further asserts, she "suffered actual injury and loss, including being unlawfully and permanently evicted from her townhome. . . ." We reluctantly disagree.

To prevail on a negligence claim, a plaintiff must demonstrate the existence of the following four elements: "(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." *Davis v. Stapf*, 224 Md. App. 393, 406 (2015) (citations omitted). Moreover, an "[a]nalysis of whether a defendant owes a plaintiff a duty is a critical first step in a negligence claim; [because] without a legal duty, there can be no conduct that

breaches a duty that causes harm. *Id.* (citing *Muthukumarana v. Montgomery County*, 370 Md. 447, 457–58 (2002)).

In light of the foregoing, we conclude that the circuit court's grant of summary judgment in favor of appellees as to all of appellant's claims was appropriate.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.**