Circuit Court for Montgomery County
Case No. 461010-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2262

September Term, 2019

SDS TITLE, LLC, et al.

v.

DARLENE ARNOLD, et al.

Graeff,
Beachley,
Eyler, James R.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Graeff., J.

Filed: November 8, 2021

Steven D. Soto and SDS Title, LLC ("SDS Title"), appellants, filed a complaint in the Circuit Court for Montgomery County, alleging various torts against appellees, the Maryland Insurance Administration ("MIA") and its employee, Darlene Arnold. Appellees filed a motion to dismiss, which the circuit court granted.

On appeal, appellants present the following questions for this Court's review, which we have combined and rephased slightly, as follows:

> 1. Did the trial court err in dismissing appellants' claims based on quasi-judicial immunity?
>
> 2. Did the trial court err in making a finding of fact as to the duty element of negligence?
>
> 3. Did the trial court err in not recognizing the previous MIA civil proceedings as prior process?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Factual History

Steven D. Soto is an attorney and the sole owner of SDS Title. In 2016, he was employed by Evergreen Settlement Company, Inc. ("Evergreen"). His duties included, among other things, conducting title examinations and real estate settlements.

On April 29, 2016, Mr. Soto served as the closing agent for Evergreen on a residential real estate transaction. Mr. Soto gave a subordinate instructions to wire the proceeds of the sale to the seller. The seller's email address was hacked, and the subordinate received a fraudulent email directing the employee to wire the sellers' proceeds

from the sale, in the amount of $411,548.06, to a fraudulent bank account. Thereafter, the staff issued a wire recall, which resulted in the recovery of $51,623.00 of the sellers' proceeds.

On May 13, 2016, the sellers filed a complaint with the Maryland Insurance Commissioner alleging gross negligence on the part of Evergreen. They also filed a complaint in the Circuit Court for Montgomery County against Evergreen and Mr. Soto. Evergreen filed a third-party complaint against the sellers' realtor and the bank to which the settlement proceeds were wired.

Evergreen filed a claim with its insurance carrier, Houston Specialty Insurance Company ("Houston"), which was denied. In response, Evergreen filed a complaint with the MIA disputing Houston's denial of insurance coverage.[1]

On June 19, 2017, all parties to the sellers' action in the circuit court entered into a confidential settlement agreement and executed a joint tortfeasor release. Nevertheless, the sellers' complaint with the MIA remained. Appellants allege that, in this administrative action, appellees submitted a falsified finding of facts, which resulted in disciplinary action against Mr. Soto, Evergreen, and Evergreen's president and licensed insurance producer, Susan L. Chang.

In an order dated October 31, 2017, the MIA made detailed factual findings, including the following:

> 38. On April 29, 2016, the scheduled settlement date, [appellants] received an e-mail allegedly from the Consumers' realtor with instructions to void the

[1] On March 8, 2017, the MIA determined that Houston was obligated to treat Evergreen's claim as covered under the insurance policy and to offer a legal defense.

wire information received from the Consumers on April 28, 2016, stating that the Consumers closed that account and that the Consumers by fax will provide new bank account information to wire their settlement proceeds.

39. Shortly after receiving the e-mail from the realtor, [appellants] received a facsimile allegedly from the Consumers, revising the wire instructions and providing new bank account information. [Appellants] overlooked the numerous typographical errors in the facsimile transmission, including the misspelling of the Consumers' names and the realtor's name. Other red flags including the fact that the fax came from a (760) area code (Southern California), and the time of the fax is listed as GMT (United Kingdom time) were overlooked.

40. Nevertheless, [appellants] wired the Consumers' settlement proceeds on April 29, 2016, in the amount of $411,548.06 to the bank account provided in the facsimile. At no time during this real estate, [sic] transaction had the Consumers ever communicated with [appellants] via facsimile.

41. [Appellants] failed to closely examine and independently verify the accuracy of the revised disbursement instructions. [Appellants] also failed to have the Consumers execute a new or an Amended Affidavit to ensure:

1) That the Consumers did intend to revise the original executed Affidavit,

2) That the fax was sent by the Consumers, and

3) That the settlement proceeds were wired to the correct bank account.

42. [Appellants] did not contact the Consumers to confirm the change to the wiring instructions in writing with the initials or signatures from the Consumers.

* * *

47. By the conduct described herein, [Ms.] Chang violated §§ 10-126(a)(1), (2), (3), (12), (13), and 10-126(f) of the Insurance Article. [Appellant] Soto's conduct violated §§ 10-126(a)(1) and (13).[2] Evergreen's conduct violated

[2] Md. Code Ann., Insurance Article ("Ins.") § 10-126(a)(1), (13) provides, in pertinent part, that the Commissioner "may deny a license to an applicant" or "suspend,

> §§ 10-126(a)(1), (2), (3), (12), (13), (b) [sic] and 10-126(f). As such, [appellants] are subject to disciplinary action under the Insurance Article.

The MIA ordered, among other things, that Mr. Soto, Evergreen, and Ms. Chang pay, jointly and severally, an administrative penalty of $2,500, that their title insurance producer licenses be suspended for a period not to exceed six months, and that they pay, jointly and severally, restitution to the sellers in the amount of $34,925.06. Mr. Soto, Evergreen, and Ms. Chang requested a hearing on that order.

In early November 2017, Mr. Soto formed a new title company named SDS Title. On January 23, 2018, he submitted to the MIA an application for an entity title insurance producer license for SDS Title. Mr. Soto alleges that the MIA deliberately withheld processing the license to pressure him to resolve his claim against the MIA.

On April 30, 2018, Mr. Soto notified the Treasurer of the State of Maryland and counsel for the MIA of his intent to file suit against the MIA, its Chief Enforcement Officer, Darlene Arnold, and its Assistant Chief Enforcement Officer, Stephanie Zeigler-Palmer. Mr. Soto asserted that, after the settlement was reached with the sellers, Ms. Palmer requested that Evergreen pay the sellers "an additional amount of approximately $34,000.00," but Evergreen refused because it had settled the case with the sellers and obtained a release from them. He alleged:

> 6. After Evergreen, based on its full release, refused to pay the requested payment to the Seller, acting with malice and ill will, Palmer and Arnold submitted an altered and falsified proposed finding of facts to a second commissioner, Erica J. Bailey, who was not aware of the original

revoke, or refuse to renew or reinstate a license after notice and opportunity for hearing" if the applicant or license holder willfully violates a provision of the Insurance article, or "has otherwise shown a lack of trustworthiness or competence to act as an insurance producer."

order, in order to obtain a retaliatory ruling against Evergreen, its owner, Susan Chang, and its counsel, myself. This order was signed on October 31, 2017. (See MIA v. Susan Chang, Steven Soto and Evergreen Settlement, MIA No. 2017-10-036)

7. Despite having personal knowledge that I had no personal involvement in the change of wire instruction, Palmer and Arnold submitted a false finding of facts stating that I was personally involved in the change of wire instructions (See Id. paragraphs 38-42), that I "willfully" violated MD insurance laws (See Id. paragraph 47) and that I have "shown a lack of trustworthiness or competence."

8. In an attempt to obtain a putative Order from the second commissioner, Palmer and Arnold deliberately and purposefully omitted crucial exculpatory information from this second finding of facts, including that multiple emails were received by Evergreen from the account of the Agent which had been "verified" on "several prior occasions," the phone call Evergreen received confirming the wire instructions and that the fax had the correct contact information of the Seller. As a direct result of these deliberate omissions, the finding of facts in the second order state that, "[Appellants] failed to closely examine and independently verify the accuracy of the revised disbursement instructions" which directly contradicts the previous ruling stating that Evergreen, "fully verified the accuracy of the wire transfer changes." (Id.)

9. This second order, which is awaiting a hearing pursuant to § 2-210 of the Insurance Article and Code of Maryland Regulations 31.02.01.03, orders that, inter alia, I individually pay an administrative penalty of $2,500.00, that my Maryland title insurance producer license be suspended for a period not to exceed 6 months, that I pay $34,925.06 to the Clients and that I take a Maryland Pre-Licensing Course.

10. The undersigned has and will continue to be forced to disclose this administrative action on all license and insurance applications in perpetuity, which has already resulted in higher premium payments and other irreparable harm.

11. On or about January 23, 2018, the undersigned submitted a license application with the MIA for an entity title insurance producer license for SDS Title, LLC. It has been over three months and this license has not been processed by the MIA. It is my belief that members of the MIA are deliberately impeding the licensing of SDS Title, LLC. This breach of due

> process has resulted in the inability to operate the business and irreparable economic harm.

On May 17, 2018, the MIA issued an entity title insurance producer license for SDS Title. The following day, the MIA issued a consent order, which included the following finding of fact:

> 18. Further investigation since the initial order has lead [sic] the MIA to determine that proceeding against Steven D. Soto for violations outlined in the initial order is not warranted. As a result, the Order as to Mr. Soto will be rescinded.

The consent order was executed by Erica Bailey, Associate Commissioner of Compliance & Enforcement, and Susan Chang on behalf of Evergreen and herself.

II.

Complaint

On December 26, 2018, Mr. Soto and SDS Title ("appellants") filed a complaint in the Circuit Court for Montgomery County against the MIA, Darlene Arnold ("appellees"), and the Estate of Stephanie Zeigler-Palmer.[3] They alleged that Ms. Palmer and Ms.

[3] Ms. Palmer passed away in June 2018. The docket entry for March 5, 2019 provides, "Plaintiff's notice of dismissal as to Defendant Estate of Stephanie Zeigler-Palmer without prejudice – filed." The parties have not provided us with a copy of the notice of dismissal. In its written opinion and order granting the motion to dismiss, the circuit court noted that on March 5, 2019, SDS Title, LLC "voluntarily dismissed without prejudice its claims against the Estate," but there was no indication in the record that Mr. Soto voluntarily dismissed his claims against the Estate. The record does not indicate that the Estate was served, and the Estate did not participate in the underlying action or this appeal. A "named defendant who has not been served is not a party for the purpose of determining a final judgment." *Turner v. Kight*, 406 Md. 167, 172 n.3 (2008) (quoting *State Highway Admin. v. Kee*, 309 Md. 523, 529 (1987)). Because the judgment entered below disposed of all claims against all persons over whom the circuit court acquired jurisdiction,

Arnold, on behalf of the MIA, requested that Evergreen pay the sellers "an additional amount of approximately $34,000.00" despite having actual knowledge that the sellers had settled their claims and released Evergreen. When Evergreen refused to make the payment, Ms. Palmer and Ms. Arnold, acting with malice and ill will, "submitted an altered, and falsified, finding of facts to a second commissioner, Erica J. Bailey and others outside" the MIA.[4]

The complaint further alleged that Ms. Palmer and Ms. Arnold failed to advise Commissioner Bailey about the MIA's ruling in the insurance coverage matter "in order to obtain a retaliatory, disciplinary ruling" against Evergreen, Ms. Chang, and Mr. Soto. It alleged that, based on the "falsified finding of facts" made by Ms. Palmer and Ms. Arnold, Commissioner Bailey signed the October 31, 2017 order, which "falsely stated Mr. Soto was personally involved in the change of wire instructions, that he personally sent the wire, that he 'willfully' violated MD insurance laws and that he had 'shown a lack of trustworthiness or competence.'" (Internal citations omitted).

Appellants alleged that Ms. Palmer and Ms. Arnold "deliberately and purposefully omitted crucial exculpatory information from" the statement of facts and acted with actual malice because, at the time they submitted the statement of facts to the commissioner, they "knew of its falsity because they had investigated and compiled the first statement of facts,

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the judgment appealed from was final and appealable. *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254. 265 (2006).

[4] As indicated, the first MIA proceeding, before a different Commissioner, involved Evergreen's complaint disputing the denial of insurance coverage. The second MIA proceeding involved the sellers' complaint against Evergreen and Mr. Soto.

which stated the exact opposite." They alleged that, despite obtaining information that Mr. Soto did not have the ability to send wires, they did not release the order as to him, but Ms. Palmer and Ms. Arnold "maintained the case against him in order to exert leverage during the appeal process and to pressure [him] into entering into a Consent Order that would require an Evergreen license suspension." They further maintained that the MIA deliberately withheld processing the entity title insurance producer license for SDS Title in order to pressure Mr. Soto to enter into a consent order.

The appellants' complaint contained six counts. Count I alleged negligence against the MIA based on the misstatements of facts and omissions of material facts in the statement of facts, failing adequately to supervise its employees, and continuing to pursue administrative sanctions against Mr. Soto after receiving "clear exculpatory evidence that he did not do what he was accused of" doing.

Count II alleged defamation against all the defendants based on false statements that Mr. Soto "was personally involved in the change of wire instructions, that he himself sent the wire, that he broke Maryland insurance laws and that he showed 'a lack of trustworthiness or competence.'" Count III alleged gross negligence against Ms. Arnold and Ms. Palmer for conducting an investigation and submitting a statement of facts that purposefully included misstatements of facts and omitted material facts and for continuing to pursue administrative sanctions against Mr. Soto after they had "clear exculpatory evidence."

Count IV alleged interference with economic relationship by intentionally opening a second investigation of Mr. Soto and intentionally delaying the review of his application

for a title insurance producer license for SDS Title. Count V alleged abuse of process based on the defendants' use of civil proceedings against Mr. Soto to influence Evergreen "by suspending its sole attorney's license, thereby making it unable to conduct business." Count VI alleged malicious use of civil process against all the defendants, which caused Mr. Soto and his companies to suffer irreparable harm to their business.

III.

Motion to Dismiss

On February 4, 2019, appellees filed a motion to dismiss or, in the alternative, motion for summary judgment. They argued that, because the Commissioner sits in a quasi-judicial capacity with respect to actions taken against insurance producers and investigations into applications for new licenses, the MIA and its employees were entitled to absolute quasi-judicial and quasi-prosecutorial immunity.

Alternatively, appellees argued that the complaint should be dismissed because none of the six counts stated a claim upon which relief could be granted. Specifically, they argued that appellants' negligence counts (I and III) did not allege or explain any duty owed to appellants by appellees. With respect to the defamation count (II), appellees proffered that they had not made any false statements concerning appellants. Appellees further asserted that the interference with economic relationship claim (count IV) must be dismissed because, in addition to the fact they had not waived immunity on this issue, appellants had failed to sufficiently allege malicious or wrongful conduct. Finally, with respect to appellant's claims of abuse of process (count V) and malicious use of civil process (count VI), appellees argued, among other things, that the MIA's October 2017

order did not constitute "process" for the purpose of those torts. In the alternative, appellees requested that the court grant summary judgment in their favor.

On February 19, 2019, appellants filed their opposition motion. They argued, among other things, that quasi-judicial immunity was inapplicable because their claims arose solely from the investigative phase of the proceedings, prior to any judicial or quasi-judicial proceedings. They also asserted that they were not afforded the due process protections required for appellees to benefit from absolute immunity. Moreover, they argued that appellees had waived immunity under the Maryland Tort Claims Act ("MTCA"), and in any event, MTCA immunity would apply only to their malicious use of process count.

With respect to the substance of their claims, appellants stated that appellees failed to show that dismissal was appropriate. They argued that their complaint sufficiently alleged that the MIA owed a duty to Mr. Soto. With respect to the defamation claim, they asserted that their complaint "clearly articulate[d] that [appellees] made false statements" with actual knowledge of their falsity. For count IV, appellants argued that malice, as defined under the MTCA, is not a necessary element of interference with an economic relationship. Finally, with respect to counts V and VI, they asserted that administrative actions were "process" because the scope of that term is not limited to civil courtroom proceedings.

A.

Motions Hearing

On April 24, 2019, the circuit court held a hearing on the motions. The assistant attorney general representing appellees argued that the case should be dismissed because appellees' actions were protected by quasi-prosecutorial immunity under Maryland law. Moreover, the complaint failed to adequately state any valid tort claims upon which relief could be granted.

Specifically, counsel argued that the negligence counts were barred because appellants failed to plead a "legally cognizable duty owed by either" appellee to the appellants, noting that a State agency does not owe a broad public duty to the individuals that it regulates. With respect counts V and VI, he argued that the administrative order at issue in this case did not qualify as "court process," and even if it did, the necessary elements of both torts were absent. Counsel argued that appellants had failed to sufficiently plead interference with economic relationship (count IV) because they did not show that appellees intended any interference, and with respect to defamation (count II), appellants failed to plead any facts to support the allegations that the statements were made public.

Mr. Soto, representing both himself and SDS Title, argued that the motion to dismiss should be denied. With respect to appellees' defense of quasi-prosecutorial immunity, he argued that such immunity applies only to judicial process, not the investigative phases of a proceeding. Additionally, he argued that he was not afforded the proper due process protections required for immunity to apply.

With respect to the negligence claims, Mr. Soto argued that the MIA has a "unique relationship" with the professionals it regulates, which exceeds a simple relationship with the public. He argued that the defamation claim "clearly articulates that the [appellees] made false statements," asserting that there were two investigations, and it was clear that appellees had actual knowledge of the falsified information in the second ruling because they conducted the first investigation. With regard to malice, he stated that SDS Title's license was issued the day after the consent order resolving the violations, thereby supporting his theory that appellees intentionally withheld the license.[5]

B.

Opinion and Order

On December 27, 2019, the circuit court issued a written opinion and order granting appellees' motion to dismiss and dismissing the complaint with prejudice. The court found that the MIA and its employees were entitled to absolute immunity from suit for conduct arising from the performance of quasi-judicial functions. It rejected Mr. Soto's argument that he was not afforded the necessary due process protections to allow immunity, finding, in part, that Mr. Soto "was afforded the procedural safeguards to which he was entitled." Accordingly, it found that appellant's complaint failed to state a claim upon which relief could be granted.

[5] In response to this point, counsel for appellees proffered that the MIA had waited to issue the license until the consent order was executed because it did not "deem it appropriate to give [Mr. Soto's] new company, of which he was sole owner and operator, a license" while the investigation into previous violations was ongoing.

The court next addressed the individual counts. It found that dismissal was appropriate with respect to Counts I (negligence by the MIA) and III (gross negligence by Ms. Arnold) because appellants failed to sufficiently allege that appellees owed them a duty. It stated that the allegations set forth in the complaint were "merely general averments, lacking any true nexus to the alleged wrongful conduct." With respect to counts V (abuse of process) and VI (malicious use of civil process), the court found that there was no allegation that any criminal or civil process was issued or civil proceeding instituted. Accordingly, these counts failed to state a claim upon which relief could be granted, and this was an additional reason to grant appellees' motion to dismiss with prejudice.

This appeal followed.

STANDARD OF REVIEW

The Court of Appeals has explained the analysis required with respect to a trial court's consideration of a motion to dismiss, as follows:

> Considering a motion to dismiss a complaint for failure to state a claim upon which relief may be granted, a court 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 reasonably be 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. Consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.

State Ctr., LLC v. Lexington Charles Ltd. P'ship, 438 Md. 451, 496–97 (2014) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643–44 (2010)). *Accord*

Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP, 451 Md. 600, 609 (2017).[6]

When an appellate court reviews the grant of a motion to dismiss, "the appropriate standard of review 'is whether the trial court was legally correct.'" *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (quoting *Blackstone v. Sharma*, 461 Md. 87, 110 (2018)). "Therefore, we review the grant of a motion to dismiss de novo. 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." *D.L.*, 465 Md. at 350 (cleaned up).

DISCUSSION

Appellants contend that the circuit court erred in finding that appellees were protected from suit by quasi-judicial immunity. Specifically, they argue that the causes of action set forth in their complaint arose from "the investigative phase of a proceeding," not a quasi-judicial proceeding, and quasi-judicial immunity is limited to "the Commissioner" and does not extend to "other persons such as investigators." They further argue that the proceedings did not offer procedural safeguards necessary to make quasi-judicial immunity available.

Appellees contend that the circuit court properly dismissed the case. They assert that the court properly found that (1) their actions were "quasi-prosecutorial," and

[6] Although appellees filed a motion to dismiss and for summary judgment, the circuit court stated in its written order that it was treating the motion "as one for dismissal for failure to state a claim upon which relief can be granted, and not for summary judgment." Accordingly, we limit our review to that ground.

therefore, they were entitled to immunity pursuant to Maryland law; and (2) "the administrative process provided sufficient safeguards to protect [a]ppellants' due process rights."

Before addressing the specific immunity argument, we address relevant Maryland law regarding the regulation of insurance producers and immunity.

I.

Relevant Insurance Regulations

In order to sell, solicit, or negotiate insurance in Maryland, insurance producers must obtain a license from the MIA and comply with the provisions of the Insurance Article. *See* Md. Code Ann., Insurance Article ("Ins.") § 10-103 (2017 Repl. Vol.). The MIA, which is headed by the Insurance Commissioner, is tasked with enforcing the provisions of the Insurance Article. *See generally*, Ins. §§ 2-103, 2-108, and 10-103.

The licensing provisions exist for the protection of the public. *Nuger v. State Ins. Comm'r*, 238 Md. 55, 69 (1965). "When advisable to determine compliance with [the Insurance Article], the Commissioner may examine the accounts, records, documents, and transactions that relate to the insurance affairs or proposed insurance affairs of . . . an insurance producer[.]" Ins. § 2-206(1). The Commissioner is specifically authorized to take disciplinary action against licensed insurance producers, including suspending or revoking licenses, refusing to renew a license, assessing monetary penalties, and ordering restitution if the licensee has committed any of the acts specified in Ins. § 10-126(a). *See* Ins. §§ 10-126(a), (c), and (d).

Ins. § 2-212(a) provides for hearings as follows:

> (a)(1) Except as provided in paragraph (2) of this subsection, a demand for a hearing stays an order of the Commissioner pending the hearing and an order resulting from it if the Commissioner receives the demand:
>
> (i) before the effective date of the order; or
>
> (ii) within 10 days after the order is served.
>
> (2) Paragraph (1) of this subsection does not apply to an action taken or proposed under an order:
>
> (i) resulting from a hearing;
>
> (ii) resulting from a final decision of the Insurance Commissioner on a complaint in an emergency case under § 15-10A-04 of this article; or
>
> (iii) based on impairment of assets or unsound financial condition of an insurer.

License revocations, assessments of an administrative penalty, and orders of restitution may be ordered by the Commissioner upon an opportunity for a hearing conducted by the MIA pursuant to the Administrative Procedures Act. *See* Ins. § 10-126(a) and §§ 2-210 through 2-214. Ins. § 2-214(a) specifically provides that, "[i]n holding a hearing under this subtitle the Commissioner sits in a quasi-judicial capacity."

The Commissioner also is authorized to conduct a review of applications for insurance producer licenses and to deny a license to an applicant if any producer, officer, director, member, manager, partner, owner, or individual with direct control over the fiscal management of the business entity that applied for licensure has violated any provision of Title 10, Subtitle 1 of the Insurance Article or had any professional license suspended or revoked for a fraudulent or dishonest practice. *See* Ins. § 10-126(b)(1) and (2). The

Commissioner's denial of a license to an individual or entity is subject to the same hearing provisions as actions involving the discipline of licensees. *See* Ins. § 10-126(a) and (b).

Here, in its Order dated October 31, 2017, the Commissioner determined that Mr. Soto had violated Ins. § 10-126(a)(1) ("willfully violated this article or another law of the State that relates to insurance") and (13) ("has otherwise shown a lack of trustworthiness or competence to act as an insurance producer"). The issue before us is whether appellees had absolute immunity for claims pertaining to the preparation of the statement of facts upon which those determinations were based.

B.

Quasi-Judicial and Quasi-Prosecutorial Immunity

In Maryland, it is well established that "judges have absolute privilege from suits arising out of their judicial acts," and "[p]rosecutors in judicial hearings are afforded the same privilege." *Eliason v. Funk*, 233 Md. 351, 356 (1964). This absolute privilege extends to statements made in court, "statements contained in pleadings, affidavits, and other documents filed in a judicial proceeding or directly related to the case," and "documents prepared for use in connection with a pending judicial proceeding . . . even if they have not yet been filed." *Odyniec v. Schneider*, 322 Md. 520, 527 (1991). *Accord Adams v. Peck*, 288 Md. 1, 4 (1980) ("[O]rdinarily an absolute privilege applies to a defamatory statement published in a document which is prepared for possible use in connection with a pending judicial proceeding but which has not been filed in that proceeding.").

The Court of Appeals has explained:

> The evaluation and investigation of facts and opinions for the purpose of determining what, if anything, is to be raised or used in pending litigation is as integral a part of the search for truth and therefore of the judicial process as is the presentation of such facts and opinions during the course of the trial, either in filed documents or in the courtroom itself. Such evaluation and investigation, and the documents which these activities generate, are directly related to the pending litigation and occur during the course of the judicial proceeding. The people who engage in these activities and who generate such documents must be able to do so without being hampered by the fear of private suits for defamation. Accordingly, any defamatory statement which appears in a document prepared for possible use in connection with a pending judicial proceeding should be accorded an absolute privilege, regardless of whether the document has been filed.

Odyniec, 322 Md. at 527–28 (quoting *Adams*, 288 Md. at 8).

In *Butz v. Economou*, 438 U.S. 478, 512–13 (1978), the United States Supreme Court extended the absolute immunity afforded to judges and prosecutors to adjudication before a federal administrative agency. In that case, Mr. Economou and two corporations he headed filed suit "against a number of officials in the [United States] Department of Agriculture claiming that they had instituted an investigation and an administrative proceeding against [them] in retaliation for [Mr. Economou's] criticism of that agency." *Id.* at 480. The District Court dismissed the action on the ground that the individual defendants, as federal officials, were entitled to absolute immunity for all discretionary acts within the scope of their authority. *Id.* at 483–84. On appeal, the Supreme Court explained why those participating in an adjudicatory process are entitled to absolute immunity, stating:

> Judges have absolute immunity not because of their particular location within the Government but because of the special nature of their responsibilities. This point is underlined by the fact that prosecutors – themselves members of the Executive Branch – are also absolutely immune. "It is the functional comparability of their judgments to those of the judge that has resulted in

> both grand jurors and prosecutors being referred to as 'quasi-judicial' officers, and their immunities being termed 'quasi-judicial' as well."
>
> The cluster of immunities protecting the various participants in judge-supervised trials stems from the characteristics of the judicial process rather than its location. . . . [C]ontroversies sufficiently intense to erupt in litigation are not easily capped by a judicial decree. The loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus. Absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation.

Id. at 511–12 (internal citations omitted).

The Court went on to explain that certain features of the judicial process provide safeguards:

> At the same time, the safeguards built into the judicial process tend to reduce the need for private damages actions as a means of controlling unconstitutional conduct. The insulation of the judge from political influence, the importance of precedent in resolving controversies, the adversary nature of the process, and the correctability of error on appeal are just a few of the many checks on malicious action by judges. Advocates are restrained not only by their professional obligations, but by the knowledge that their assertions will be contested by their adversaries in open court. Jurors are carefully screened to remove all possibility of bias. Witnesses are, of course, subject to the rigors of cross-examination and the penalty of perjury. Because these features of the judicial process tend to enhance the reliability of information and the impartiality of the decision making process, there is a less pressing need for individual suits to correct constitutional error.

Id. at 512 (footnote omitted).

The Supreme Court determined that "adjudication within a federal administrative agency shares enough of the characteristics of the judicial process that those who participate in such adjudication should also be immune from suits for damages." *Id.* at 512–13. It observed that many of the safeguards available in the judicial process are also provided for by federal administrative law, and that "the risk of an unconstitutional act by

one presiding at an agency hearing is clearly outweighed by the importance of preserving the independent judgment of these men and women." *Id.* at 514. The Court therefore concluded that both those performing adjudicatory functions and those performing functions analogous to those of a prosecutor are entitled to claim absolute immunity with respect to those acts. *Id.* at 514–15.

In *Maryland Bd. of Physicians v. Geier*, 241 Md. App. 429, 519 (2019), this Court concluded that *Butz* was persuasive on the question whether an agency official has absolute immunity from suit in an action under Maryland law. We held that, "under Maryland common law, state officials are absolutely immune from suit for common-law, nonconstitutional torts based on conduct for which those officials would enjoy absolute immunity under the principles stated in *Butz*." *Id.* The only difference was that, "where the Supreme Court examined the existence of safeguards that 'tend to reduce the need for private damages actions as a means of controlling unconstitutional conduct,'" we examine "whether the proceeding affords safeguards to control otherwise unlawful acts by agency officials." *Id.* at 519–20.

In *Geier*, we addressed whether state agency officials should have absolute quasi-judicial immunity from tort claims based on their roles in administrative hearings. *Id.* at 511–20. The Maryland Board of Physicians (the "Board") suspended Dr. Geier's medical license and issued formal charges against him pursuant to the Medical Practice Act,

accusing him of various violations of ethical and professional standards.[7] *Id.* at 456. While those charges were pending, the Board notified Dr. Geier of a complaint that someone in his medical practice had authorized prescription refills after his license had been suspended. *Id.*

The Board issued a public cease-and-desist order against Dr. Geier. *Id*. The order, which included information about medications prescribed to Dr. Geier, his wife, and his son, was published on the Board's website and links to the document were included on the website. *Id.* at 456–57. Dr. Geier objected to the publication of that information, and in response, the Board amended the cease-and-desist letter to delete the challenged information, and it re-posted the order on the website. *Id.* at 458. The Board's website, however, "continued to host the page showing the PDF document for the original order," and that order "continued to appear in internet search results involving Dr. Geier." *Id.*

The Board issued formal charges against Dr. Geier, who contested both the cease-and-desist order and the formal charges. *Id.* at 459. Ultimately, the Board found that someone other than Dr. Geier had authorized the prescription refills. *Id.* The charges against Dr. Geier were dismissed, and the cease-and-desist order was terminated. *Id.*

The Geiers subsequently filed suit seeking damages against 20 members of the Board, including the executive director, a deputy director, two staff members, and the administrative prosecutor. *Id.* at 461. All of the claims "centered on the disclosure of

[7] The Maryland Medical Practice Act governs the licensing and disciplining of physicians in Maryland. *See* Md. Code Ann., Health Occupations Article ("HO") §§ 14-101 to 14-702 (2014 Repl. Vol.). The Board of Physicians is a state regulatory agency charged with carrying out the provisions of the Medical Practice Act. *See* HO § 14-404.

'private medical information' in the original cease-and-desist order, 'including the names of the drugs prescribed to [the Geiers] and the specific conditions those prescriptions were intended to treat.'" *Id.*

The defendants sought dismissal of the suit on the ground that they were entitled to absolute quasi-judicial immunity, but the trial court denied the motions to dismiss. *Id.* at 463. After a bench trial, the Geiers were awarded $1.25 million in compensatory damages, the same amount in punitive damages, and attorneys' fees. *Id.* at 449. The defendants appealed, arguing that they were entitled to absolute immunity as to all claims. *Id.* at 450.

This Court agreed. *Id.* at 544. In recognizing absolute immunity for agency officials from Maryland tort claims, we explained:

> "[I]n defining and applying judicial immunity," the Court of Appeals has "adopted the functional approach taken by the Supreme Court" in absolute immunity cases. *Gill v. Ripley*, 352 Md. at 770. This approach examines "'the nature of the function performed, not the identity of the actor who performed it[.]'" *Keller-Bee v. State*, 448 Md. at 310 (quoting *Forrester v. White*, 484 U.S. at 229). Maryland cases emphasize that, in deciding whether to extend judicial immunity beyond judges, a "critical determination" is whether the official "is exercising judgment similar to that of a judge." *D'Aoust v. Diamond*, 424 Md. at 598–99 (citing *Gill v. Ripley*, 352 Md. at 762 (quoting *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436 (1993))). Finally, in the related context of absolute privilege in defamation actions, the Court of Appeals endorsed the basic logic of *Butz v. Economou*: "the immunity available in court trials c[an] safely be extended" to administrative adjudications, as long as "the protections afforded in [the] adjudicatory hearing" are adequate to restrain unlawful acts. *Gersh v. Ambrose*, 291 Md. at 193.

Id. at 519. We determined that, "[b]ecause absolute immunity attaches to functions rather than offices, it reaches not only medical board members but also support staff who perform functions closely related to the medical disciplinary process." *Id.* at 503–04.

Applying this reasoning to the present case, we conclude that the circuit court correctly found that the functions performed by appellees were the functional equivalent of those performed by prosecutors. As in *Geier*, 241 Md. App. at 498, where there was "a strong need" for Board personnel to engage in "their core public protection function without the constant threat of harassment and intimidation by aggrieved parties," there is the same need for the Insurance Administration when its personnel engage in their public protection function. Appellant's claims here involve a statement submitted by appellees to the second commissioner, which appellants alleged was an "altered, and falsified, finding of facts." This conduct was covered by quasi-judicial immunity in the same way as the conduct of the staff member who had written the investigative report recommending the order in *Geier*, 241 Md. App. at 503–04. The act of setting forth and presenting facts after the investigation was completed constituted quasi-prosecutorial conduct. *See id.* at 519–20.

Moreover, the circuit court properly rejected the argument that there were not adequate procedural safeguards to allow absolute immunity. As we stated in *Geier*:

> The doctrine [of quasi-judicial immunity] rests on generalizations that "safeguards built into the judicial process tend to reduce the need for private damages actions," and that certain agency proceedings share "enough of the characteristics of the judicial process" that "the importance of preserving the independent judgment" of agency officials outweighs "the risk of an unconstitutional act" by an official.

Id. at 503 (internal citations omitted).

Here, the process provided adequate procedural safeguards. As discussed *supra*, the Insurance Article afforded appellants an opportunity to request a hearing. They had the

right to be represented by counsel, to inspect documentary evidence, and to all the other rights provided by the Administrative Procedures Act. *See* Ins. § 2-213.

Accordingly, the circuit court properly found that appellees had absolute quasi-prosecutorial immunity and could not be held civilly liable. The court properly granted appellees' motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.