UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1013

September Term, 2014

2720 SISSON STREET, LLC, ET AL.

v.

BRETHREN MUTUAL
INSURANCE COMPANY

Wright,
Reed,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 20, 2015

On January 8, 2014, appellants, 2720 Sisson Street LLC, Baltimore Motor Sport LLC ("BMS"), Daniel Hicks, and Timothy Hicks (collectively, "appellants"), filed a complaint in the Circuit Court for Baltimore City, alleging breach of contract (Count I) and statutory bad faith (Count III) against appellee, Brethren Mutual Insurance Company ("Brethren Mutual"), as well as negligence (Count II) against P.S.A. Insurance, Inc. ("PSA"). On February 18, 2014, Brethren Mutual filed a motion to dismiss pursuant to Md. Rule 2-322(b)(2). Following a hearing on April 11, 2014, the circuit court granted Brethren Mutual's motion and dismissed the counts against it. The court directed the case to proceed as to PSA, which had filed an answer to appellants' complaint.

On April 17, 2014, appellants filed a motion to reconsider, alter or amend, and/or to revise judgment "based on newly discovered evidence" that they received in the course of conducting discovery with PSA. On May 5, 2014, the circuit court granted appellants' motion to reconsider only for the limited purpose of correcting its previous order to dismiss the proper counts against Brethren Mutual.[1]

On May 13, 2014, appellants filed a motion for leave to file a first amended complaint seeking to add new claims against Brethren Mutual based on the "evidence obtained through discovery" with PSA. On May 27, 2014, Brethren Mutual filed an

[1] In its previous order, the circuit court dismissed Counts II and III of appellants' complaint. In partially granting appellants' motion to reconsider, the court dismissed "Only Counts I and III of [appellants'] Complaint" and reinstated Count II against PSA.

opposition, and on June 17, 2014, the circuit court denied appellants' motion. On July 22, 2014, appellants timely appealed.[2]

Questions Presented

We have combined, renumbered, and reworded appellants' questions for clarity, as follows:[3]

1) Did the circuit court err in granting Brethren Mutual's motion to dismiss?

2) Did the circuit court abuse its discretion in denying appellants' motion for reconsideration?

[2] On July 18, 2014, appellants and PSA filed a stipulation of dismissal without prejudice as to Count II of the complaint.

[3] In their brief, appellants asked:

1) Did the Circuit Court err by denying the Sisson Street Parties' Motion for Leave, which motion was based on newly-discovered evidence previously unavailable to the Sisson Street Parties that established that the parties intended for Sisson Street LLC to be listed as an additional insured under the Property Policy?

2) Did the Circuit Court err by denying the Sisson Street Parties' Motion for Reconsideration, which motion was based on newly-discovered evidence previously unavailable to the Sisson Street Parties that established that the parties intended for Sisson Street LLC to be listed as an additional insured under the Property Policy?

3) Did the Circuit Court err by granting Brethren's motion to dismiss the claims filed by Sisson Street LLC, Daniel Hicks, and Timothy Hicks since there is a factual dispute as to whether they are third-party beneficiaries under the Property Policy?

4) Did the Circuit Court err by granting Brethren's motion to dismiss the claims filed by BMS since there is a factual dispute as to whether BMS had an insurable interest in the entire building?

3) Did the circuit court abuse its discretion in denying appellants' motion for leave to amend?

For the reasons stated below, we affirm the circuit court's judgment in part, reverse in part, and remand the case for further proceedings not inconsistent with this opinion.

Facts

On May 1, 2013, a fire damaged a building located at 2720 Sisson Street, Baltimore, Maryland ("Building"). The Building, was owned and leased by 2720 Sisson Street LLC, Lt., houses BMS, an auto body shop, in Suite 1, in addition to closely-related, but separate, businesses such as an automobile paint shop and an automobile glass shop. Daniel Hicks was the owner and sole member of 2720 Sisson Street LLC, while his son, Timothy Hicks, was the owner and sole member of BMS.

BMS obtained property insurance coverage with Brethren Mutual, with the assistance of PSA, its broker, effective October 8, 2012 ("Policy"). BMS, "DBA BALTIMORE BODY & SERVICE" was the only entity "NAMED INSURED" on the Common Policy Declarations Form. Under a Commercial Property Coverage Part Declarations Form ("Commercial Policy Form"), the "DESCRIPTION OF PREMISES" was listed as follows:

Prem. No.	**Bldg. No.**	**Location, Construction and Occupancy**
1	1	2720 SISSON STREET BALTIMORE MD 21211 JOISTED MASONRY AUTOMOBILE REPAIR OR SERVICE SHOPS – MAJOR ENGINE/BODY REPAIR

The Commercial Policy Form provided insurance coverage for the "BUILDING" for up to $3,043,432.00 and reflected a total annual premium of $7,987.00.

Pursuant to the Policy's Building and Personal Property Coverage Form for Commercial Property, Brethren Mutual specified:

> **A. Coverage**
>
> We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.
>
> **1. Covered Property**
>
> Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.
>
> a. **Building**, meaning the building or structure described in the Declarations . . . .
>
> * * *
>
> **D. Deductible**
>
> * * *
>
> **4. Loss Payment**
>
> * * *
>
> d. *We will not pay you more than your financial interest in the Covered Property*.

(Emphasis added).

On or about September 30, 2013, BMS submitted a claim to Brethren Mutual for damage sustained to the entire Building and its contents totaling $2,812,438.87. On October 8, 2013, Brethren Mutual attempted to revise the Policy by endorsement, as follows:

> Revise the building limit of insurance for premises #1 building #1 to $1,681,992. That building limit of insurance is revised based on the area occupied by the named insured. The named insured occupies Suite 1 which comprises 21,564 square feet. Replacement cost of Suite 1 is calculated at $78 per square foot.

The endorsement also reflected a premium adjustment of – "$4,650.00," to be returned to BMS.

By letter dated December 5, 2013, Brethren Mutual asserted that BMS had a "limited insurable interest" that only extended to "the damage to Suite 1, 2720 Sisson Street, per the Commercial Lease Agreement between [BMS] and 2720 Sisson Street LLC" and, thus, contended that the value of BMS's claim, to their limited insurable interest, was $889,026.88. In addition, Brethren Mutual stated that it would be "returning the premiums for the balance of the [B]uilding under separate cover."

On January 8, 2014, appellants filed their complaint in circuit court, alleging breach of contract and statutory bad faith, pursuant to Md. Code (1973, 2013 Repl. Vol.), § 3-1701 of the Courts & Judicial Proceedings Article, against Brethren Mutual. On February 18, 2014, Brethren Mutual filed its motion to dismiss, asserting that only BMS, as the named insured, can bring a breach of contract claim. In addition, Brethren Mutual contended that BMS cannot recover more than its insurable interest; appellants' bad faith claim fails as a matter of law; and appellants' complaint was premature. On March 4, 2014, appellants filed an opposition to Brethren Mutual's motion, wherein they argued that the Policy undisputedly covers the entire Building; all of the appellants were proper parties; and that the action was not premature.

On April 11, 2014, the circuit court held a hearing on Brethren Mutual's motion. In part, counsel for appellants argued:

> Well, the understanding of the parties as to the language of the terms by Brethren's own admission, Your Honor, is that it covered the entire building otherwise they wouldn't have amended the policy and they wouldn't have tried to refund the difference between the original premium and what they say should be the actual premium.
>
> There's no other insurance that covers this building. Everyone understood this policy to cover this whole building . . . .

In response, counsel for Brethren Mutual argued, in pertinent part:

> They emphasize the fact that Brethren Mutual agreed to insure the entire building. Well, Your Honor, if every time an insurance company was, shall we say, tricked or somehow based upon an error ended up insuring the entire building when the insurable interest was limited to a portion thereof, it would never be able to rely upon the insurable interest language in the policy. That's why it's there for this very situation where a carrier ends up on a risk for an entire building for named insurer who doesn't have an interest in the entire building.

After hearing from the parties, the circuit court announced its ruling, explaining as follows:

> Interesting. Interesting. It is. It's really interesting. I was, well, led with a different understanding. My intent was to interpret the contract based on the operation of the parties which is my surprise, to this Court's surprise, is that the prior contracts were not between these two parties, but a third entity.
>
> And so, therefore, the Court cannot rely upon that as a determination of the language or the interpretation of the language to discuss the intent of the policies or the parties in contracting in this case.
>
> The Court must conclude is that the question is that under the circumstances what the agreement is and the standard application is the insurable interest of the policyholder or insurer. That insurable interest is

> and, generally speaking, that which is within the confines of the premises of the actual contract and identified as such.
>
> Here, the identification of the premises, [Brethren Mutual] argues, was mistakenly referring to the entirety of the building rather than the limited leasehold area, meaning the actual [Suite] 1, and that its response afterwards was to clarify the actual contract was for only the leased area.
>
> It is true that if there were improvements outside of the unit in question for the purpose of the use and benefit of the insured, it would be reasonably argued by the tenant to be its insurable interest. The problem of that is define it as such.
>
> Simply say that we all benefitted from our existence in close proximity is not in and of itself sufficient in this Court's mind . . . .
>
> * * *
>
> While I appreciate [appellants'] interpretation and the basis for its argument, the Court is lacking a basis, a fact to support the argument in this case. [Brethren Mutual's] motion is granted . . . .

On April 17, 2014, appellants filed a motion to reconsider, alter or amend, and/or to revise judgment "based on newly discovered evidence" that they received in the course of conducting discovery with PSA. Specifically, appellants asserted that a few days after the motions hearing, PSA provided them with e-mails dated October 8, 2012, prior to Brethren Mutual's issuance of BMS's Policy, indicating that Christy Sweigert of Brethren Mutual asked PSA whether "2720 Sisson Street LLC owns this location." In response, representatives of PSA stated, "Yes, I forgot to include them as an Additional Insured (property)." According to appellants, "[t]his certainly gave Brethren [Mutual] notice of the parties' intent, and, arguably, imposed a duty on Brethren [Mutual] to issue the proper coverage to include [2720] Sisson Street LLC as an additional insured."

After the circuit court rejected the merits of appellants' argument in their motion to reconsider, appellants filed a motion for leave to file a first amended complaint on May 13, 2014, seeking to add a claim of negligence against Brethren Mutual. In addition, appellants asked the court to "interpret and/or reform the Brethren Policy as naming [] 2720 Sisson Street LLC as an Additional Insured, consistent with the intent of the [sic] all of the parties." On May 27, 2014, Brethren Mutual filed an opposition to appellants' motion for leave to file a first amended complaint "on the identical grounds [that the circuit court] previously considered and rejected in [appellants'] prior Motion to Reconsider."

On June 17, 2014, without holding a hearing, the circuit court denied appellants' motion for leave to file a first amended complaint, "finding that [appellants] hav[e] no insurable interest in property beyond Suite 1 of the 2720 Sisson Street building." This appeal followed.

Additional facts will be included as they become relevant to our discussion, below.

Discussion

I. Motion to Dismiss

Appellants argue that the circuit court erred in granting Brethren Mutual's motion to dismiss. Specifically, appellants contend that there was a factual dispute as to whether all four of them (the two corporate entities and father and son) had an interest in the Building. In addition, they aver that BMS had "an insurable interest in the Building apart from Suite 1." As such, they ask us to reverse.

In response, Brethren Mutual argues that the circuit court properly dismissed the case because the insurance contract "was clear and unambiguous as to the party insured, and the limited interest insured." According to Brethren Mutual, only BMS, as the named insured, was a proper plaintiff for the breach of contract claim. Moreover, Brethren Mutual avers that BMS cannot recover more than its insurable interest. As to this issue, we agree with Brethren Mutual.

Maryland Rule 2-322(b)(2) permits a defendant to seek dismissal of a complaint if it "fail[s] to state a claim upon which relief can be granted[.]" "We review *de novo* a trial court's granting of a motion to dismiss, to determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Andrulonis v. Andrulonis*, 193 Md. App. 601, 612 (2010) (internal citations and quotation marks omitted); *see also Clark v. Prince George's Cnty.*, 211 Md. App. 548, 557 (2013), *cert. denied*, 434 Md. 312 (2013). "In conducting our analysis, we . . . accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Andrulonis*, 193 Md. App. at 612-13 (citations and internal quotation marks omitted). "Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven." *Higginbotham v. Pub. Serv. Comm'n of Maryland*, 171 Md. App. 254, 264 (2006) (citation omitted). "'In sum, because we must deem the facts to be true, our task is confined to determining whether the trial court was legally correct in its decision to dismiss.'" *Monarc Constr., Inc. v. Aris Corp.*, 188

Md. App. 377, 384 (2009) (quoting *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000)).

In this case, it is undisputed that BMS was the only listed named insured on the Policy declaration forms. Because "[i]t is a broad general principle of the law of contracts that suits thereon may ordinarily be brought only by the parties thereto[,]" we agree with Brethren Mutual that only BMS could bring a breach of contract claim. *Tubize Chatillon Corp. v. White Transp. Co.*, 11 F. Supp. 91, 98 (D. Md. 1935); *see also Seigman v. Hoffacker*, 57 Md. 321, 325 (1881) ("In a matter of simple contract, a promise to one for the benefit of another, may be enforced by the *person for whose benefit* the promise was made") (citation omitted) (emphasis in original). Although the remaining appellants could sue on the contract if "the policy contain[ed] general language inclusive of the party to be benefited[,]" *Tubize Chatillon Corp.*, 11 F. Supp. at 98, there is nothing in the *Policy* reflecting the parties' intent to benefit 2720 Sisson Street LLC, Daniel Hicks, or Timothy Hicks. *See Parlette v. Parlette*, 88 Md. App. 628, 637-38 (1991). Instead, 2720 Sisson Street LLC is listed as an "ADDITIONAL INSURED – MORTGAGEE, ASSIGNEE, OR RECEIVER" only for purposes of the Commercial General Liability coverage and not for purposes of the property coverage.

Alternatively, BMS argues that their suit should not have been dismissed because BMS has an insurable interest in the entire Building. Md. Code (1995, 2011 Repl. Vol.), § 12-301 of the Insurance Article, which addresses "insurable interest," provides, in pertinent part:

> **Insurable interest defined**
> (a) In this section, "insurable interest" means an actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance against loss, destruction, or pecuniary damage or impairment to the property.
>
> **In general**
> (b) A contract of property insurance or a contract of insurance of an interest in or arising from property is enforceable only for the benefit of a person with an insurable interest in the property at the time of the loss.
>
> **Measurement of insurable interest**
> (c) An insurable interest in property is measured by the extent of possible harm to the insured from loss, injury, or impairment of the property.

Here, it is undisputed that BMS had no ownership interest in the Building. In the appellants' complaint, their allegation as to damages is as follows:

> 14. In addition to the automobile body shop located in Suite 1 of the 2720 Sisson Street building, the building houses an auto glass shop and artist studios, among other things, all of which sustained damage as a result of the May 1, 2013 fire.

Even when viewed in the light most favorable to appellants, there is nothing in the complaint to indicate that BMS had an economic interest in the preservation of the remainder of the Building against loss, destruction, damage, or impairment. Thus, the circuit court did not err in granting Brethren Mutual's motion to dismiss.[4]

[4] Appellants cite cases from other jurisdictions to support their argument, but we decline to give weight to those cases as they are not binding upon this Court. *Cates v. State*, 21 Md. App. 363, 372 (1974) ("The rulings of courts of other states are classified not as binding, but as persuasive authority. If the reasoning which supports them fails to persuade, they are no authority at all."). In any event, the cases relied upon by appellants are distinguishable. *See Scottsdale Ins. Co. v. Glick*, 397 S.E.2d 105, 107 (Va. 1990) (evaluating a tenant's insurable interest in the context of *liability coverage* and noting that "[t]he nature of the required insurable interest in a liability insurance policy is (continued…)

II. Motion to Reconsider

Next, appellants argue that the circuit court abused its discretion in denying their motion for reconsideration. According to appellants, the motion "should have been granted, particularly in light of the newly-discovered communication between PSA and Brethren [Mutual]." We disagree.

"[T]he ruling on a motion for reconsideration is ordinarily discretionary, and . . . the standard of review in such a circumstance is whether the court abused its discretion in denying the motion." *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008). "The 'abuse of discretion' standard of review is premised, at least in part, on the concept that matters within the discretion of the trial court are 'much better decided by the trial judges than by appellate courts[.]'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 436 (2007) (citations omitted). A ruling reviewed under an abuse of discretion standard will not be reversed unless "[t]he decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). "Thus, an abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case." *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

(…continued)
different from the type of interest necessary to support a property insurance policy"); *Asmaro v. Jefferson Ins. Co. of New York*, 574 N.E.2d 1118, 1121 (Ohio Ct. App. 1989) (holding that grocery store had insurable interest in the building as it was the *sole tenant* and the building was owned by the grocery store's sole shareholder).

When appellants filed their motion to reconsider, they based it upon "newly discovered evidence" that they received in the course of conducting discovery with PSA. Specifically, appellants asserted, in their motion, that prior to Brethren Mutual's issuance of BMS's Policy, Brethren Mutual had "a separate legal obligation" – to 2720 Sisson Street LLC to provide coverage for the May 1, 2013 fire extending to the entire 1720 Sisson Street Building. This argument, however, has no bearing on the viability of appellants' breach of contract and statutory bad faith claims. As we previously stated, only BMS was a named insured on the Policy, and as the only proper plaintiff in the lawsuit, it had no insurable interest beyond the damage to Suite 1 and, therefore, could not recover more from Brethren Mutual than what had already been paid. The purported newly discovered communication between PSA and Brethren Mutual does not alter this equation. Accordingly, the circuit court did not abuse its discretion in denying appellants' motion to reconsider.

III. Motion for Leave to Amend

Finally, appellants argue that the circuit court abused its discretion when it denied their motion for leave to amend. Appellants note that Maryland has a "liberal amendment policy" and, as such, they contend that the court should have permitted them to file an amended complaint. Moreover, appellants aver that the court abused its discretion by denying their motion without an explanation. In response, Brethren Mutual contends that the court "appropriately supported its discretionary decision to deny appellants' motion for leave to amend."

Maryland Rule 2-322(c) provides that, "[i]f the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend." "[A]llowance of leave to amend is within the sound discretion of the trial court and . . . the lower court's ruling will not be disturbed in the absence of a clear showing of an abuse of discretion." *Wockenfuss v. Kasten Const. Co.*, 258 Md. 541, 546 (1970) (citations omitted). "Nevertheless, under Maryland Rule 2-341(c), amendments to pleadings are allowed 'when justice so permits.'" *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010). To that end, the Court of Appeals has stated:

> Although it is well-established that leave to amend complaints should be granted freely to serve the ends of justice and that it is the rare situation in which a court should not grant leave to amend, *see Hall v. Barlow Corp.*, 255 Md. 28, 40-41, 255 A.2d 873, 879 (1969), an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably. *See Robertson v. Davis*, 271 Md. 708, 710, 319 A.2d 816, 818 (1974).

Id. at 673-74.

In this case, appellants' motion for leave to amend sought to add a claim of negligence against Brethren Mutual and asked the circuit court to "interpret and/or reform the Brethren Policy as naming [] 2720 Sisson Street LLC as an Additional Insured." In support of their motion, appellants cited the October 8, 2012 e-mails between Brethren Mutual and PSA as evidence that "the parties intended for [2720] Sisson Street LLC to be listed as an additional insured under the Property Policy." Brethren Mutual notes that the e-mails demonstrated that Brethren Mutual only asked PSA whether "2720 Sisson Street LLC owns this location" and, in response, a representative of PSA stated, "Yes, I forgot

to include them as an Additional Insured (property)." We shall address each of appellants' requests in turn.

A. Negligence

"In order to maintain a tort cause of action based on negligence, the plaintiff must first establish that the defendant was under a duty to protect the plaintiff from injury." *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 653 (1999) (citation and internal quotation marks omitted). "[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." *Id.* at 654 (citations omitted). "This principle is applicable even when the failure to perform the contract results from the defendant's negligence." *Id.* (citations omitted).

As to appellants' negligence claim, we agree with Brethren Mutual that any error, *if proven*, in failing to add 2720 Sisson Street LLC to the Policy was the responsibility of PSA, in its capacity as appellants' agent. *Compare Lowitt v. Pearsall Chem. Corp. of Md.*, 242 Md. 245, 254-55 (1966) ("'An insurance agent who undertakes to secure a specified coverage is liable in damages to the applicant for failure to procure such insurance, and this liability extends to negligence as a result of which the specified risk is not included in the policy.'"), *with United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 497 (4th Cir. 1998) (rejecting argument that insurance company's "failure to notify its insured justified a detrimental reliance by the insured sufficient to extend coverage" because it would "impos[e] a new affirmative duty on insurance companies to notify insureds that their property might not be insured whenever it has such a suspicion"). For this reason,

appellants' proposed amendment adding negligence would have been futile, and the circuit court did not abuse its discretion in denying it. *RRC Northeast, LLC*, 413 Md. at 673-74 ("an amendment should not be allowed if it . . . would be futile because the claim is flawed irreparably").

B. Reformation

Reformation of a contract is appropriate "only when there is a mutual mistake of fact, or a mistake is made by one of the parties accompanied by fraud, duress or other inequitable conduct practiced on the person making the mistake by another party[.]" *Flester v. Ohio Cas. Ins. Co.*, 269 Md. 544, 556 (1973).

> To prevail on a claim for reformation of a written instrument, the plaintiff must allege and prove:
>
> 1) There was a mutual mistake of fact, or the instrument or contract was induced by fraud, duress, undue influence, or misrepresentation;
>
> 2) The written agreement or instrument was not the agreement or instrument intended by the parties; and
>
> 3) The intention of the parties as originally contemplated at the time the agreement or instrument was executed, which must be shown by clear and convincing evidence.

Paul Mark Sandler & James K. Archibald, *Pleading Causes of Action in Maryland* § 2.23, at 126 (5th ed. 2013) (citations omitted). "Before granting the high remedy of reformation, the proof must not only establish that the written agreement was not the agreement intended by the parties, but also what was the agreement contemplated by them at the time it was executed." *Painter v. Delea*, 229 Md. 558, 564 (1962).

Here, appellants' proposed amended complaint cited the e-mails between Brethren Mutual and PSA as evidence of Brethren Mutual's intent to insure the entire Building and not just Suite 1. In addition, appellants alleged that "Brethren's assessment and collection of premiums for the entire 2720 Sisson Street property is consistent with the parties' intent that Plaintiff 2720 Sisson Street LLC be named as an additional insured on the [] Policy." Taken together, these allegations were sufficient to show that appellants' proposed amendment as to reformation would not have been prejudicial to Brethren Mutual, nor would it have caused undue delay, as it would not have changed the nature of the cause to be litigated (*i.e.*, breach of contract). *Cf. Board v. Baltimore Cnty.*, 220 Md. App. 529, 567-68 (2014) ("Asserting a new constitutional claim based on a federal law would change the nature of the cause that was litigated, which was based on alleged tort violations under state law. This would result in undue delay and prejudice.").

For the foregoing reasons, we affirm the circuit court's judgment granting Brethren Mutual's motion to dismiss and denying appellants' motion to reconsider. We, however, reverse the court's judgment denying appellants' motion for leave to file a first amended complaint and, therefore, we remand the case for further proceedings.

Specifically, on remand, the circuit court should grant appellants' motion for leave for the limited purpose of allowing them *to file an amended complaint asking the circuit court to reform the Policy* and not to add a count of negligence against Brethren Mutual.[5]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART. CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID AS FOLLOWS: ¾ BY APPELLANTS AND ¼ BY APPELLEE.

[5] We should make clear that, in directing the circuit court to grant appellants' motion for leave in part, as to the issue of reformation, we are not directing it to automatically reform the Policy after proceedings consistent with this opinion.