

Circuit Court for Prince George's County
Case No. CAL21-01696

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 0088

September Term, 2023

STANLEY C. FORD, SR.

v.

MARK A. RITTER

Wells, C.J.
Beachley,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: August 29, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Stanley Ford, Sr., filed suit in the Circuit Court for Prince George’s County against Mark A. Ritter, Avenue Settlement Corporation (“Avenue Settlement”),¹ Expert Management LLC (dba RE/MAX Preferred Realty), and its former owners, Kevin Havens and Henry J. McLaughlin, asserting claims of negligence, negligent misrepresentation, breach of fiduciary duty, and breach of contract, seeking to recover \$225,939.90 in funds lost in a wire fraud scheme. At the close of the evidence in a three-day jury trial, the defendants moved for judgment as a matter of law, which the circuit court granted.² Following trial, Ford dismissed his claims against all remaining defendants, except Ritter, and noted an appeal of the judgment in favor of Ritter.

Ford presents four questions for our review, which we distill into one:³ Whether the circuit court erred in granting Ritter’s motion for judgment.

¹ In his amended complaint, Ford substituted Avenue Settlement Corporation for Avenue Commercial Title Company, Inc.

² Avenue Settlement was dismissed from the action prior to trial, following a settlement with Ford.

³ Ford’s verbatim questions to us are:

- I. Was it error to hold that a real estate agent owes no duty of care for a wire transaction made pursuant to his instructions to the buyer?
- II. Was it error to conclude that a real estate agent owes no legal duty to the buyer where he communicates material false information?
- III. Does a real estate agent breach a fiduciary duty owed to his client when he fails to advise him to verify instructions prior to the buyer’s wiring of funds?

(continued)

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

FACTUAL AND PROCEDURAL BACKGROUND

In 2018, Ford retained Ritter, a licensed realtor, to assist him with the sale of his home and the purchase of a new home. Ford and Ritter signed an Exclusive Buyer/Tenant Representation Agreement (“Representation Agreement”). In March 2018, Ritter located a foreclosure property for sale in Upper Marlboro. Ford entered into a contract to purchase the property for \$534,000 from PNC National Association.

Ford emailed Mark Lobar at Avenue Title and requested that Lobar handle the closing on the Upper Marlboro property for him. Ford copied Ritter on his email to Lobar. Ford selected Lobar because he had “arranged many commercial closings and settlements through Mark Lobar” in the past. In response to Ford’s email to Lobar, he received an email message from David Helfrich at Avenue Settlement, whom Ford did not know, informing him that Lobar had passed away, and that Helfrich would assign an agent to handle the closing for Ford. On April 12, 2018, Ford received an email from Ritter, which included a forwarded message from Sarah Roscher at Avenue Settlement, confirming that Avenue Settlement would be managing Ford’s closing process. At the bottom of the message from Roscher, the following warning appeared in large print:

BEWARE! WIRE FRAUD IS ON THE RISE. Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Verify by calling the originator of the email using previously known contact information prior to sending funds.

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- IV. Was it error to hold that the exclusive agency agreement imposes no contractual obligation on the agent in the case of a wire transaction?

According to Ford, he did not notice the fraud warning in the email from Roscher.

On April 18, 2018, Ford received an email from Ritter, which included a forwarded message from Roscher at Avenue Settlement requesting that Ford prepare to wire funds in the amount of \$525,939.30. Ford had no experience with wire transfers, as he had not used wire transfers in the course of his previous closings. Ford found the amount requested odd because Ritter had previously advised him that the total closing cost at settlement would include an additional three percent, which Ford calculated as totaling \$550,000. Ford called Ritter for clarification, and Ritter told him to “go ahead and pay that” figure. Ford advised Ritter that he would not be able to wire the funds that day and that he would wire the funds on the following Monday.

On April 18, 2018, Ford received another email from Ritter containing a message purportedly from Roscher at Avenue Settlement and an attachment with instructions for wiring the settlement funds. On April 23, 2018, pursuant to the wiring instructions, Ford wired \$225,939.30 from his Capital One account to Bank United.

On April 24, 2018, Ford learned from Avenue Settlement that no wire had been received, and that the funds had been lost or stolen. Ford spoke with Ritter on April 25, 2018, and Ritter informed him that he did not send or receive the email messages on April 18 and April 23, 2018. Ford reported the loss to Capital One and the FBI. The lost wire funds were never recovered.

At trial, Ford presented the testimony of two experts: Sarah Cline, Esq., a principal of Miles & Stockbridge, P.C., and Jared Luebbert, owner of Gateway Forensics. Ms. Cline

testified as an expert in the standard of care applicable to real estate brokers and agents. Ms. Cline testified that Ritter “had an obligation to be aware of the risk of wire fraud and be aware that communicating about wiring instructions via email was inherently dangerous.” In Ms. Cline’s opinion, Ritter was obligated to warn Ford of the dangers of wire fraud and advise him to be suspicious of any emails that he received about wiring instructions. Ms. Cline stated that Ritter was obligated to further advise Ford “that he should pick up the phone and call either [him] or the title company to verify the wiring instructions before he sent any wire, which was not done in this case.”

Mr. Luebbert testified as an expert in the field of digital forensics regarding the computer forensic analysis he conducted on the emails collected from the email accounts of Ford and Ritter. Mr. Luebbert stated that Ritter had failed to utilize an email security mechanism or secure portal to transfer personally identifiable information. In Mr. Luebbert’s expert opinion, Ritter’s email account had been compromised by cyber criminals, who fraudulently sent emails to Ford impersonating Sarah Roscher at Avenue Settlement, which led to the wire fraud transfer by Ford.

After Ford rested his case-in-chief, the defendants joined in a motion for judgment as to each of the claims of negligence, negligent misrepresentation, breach of fiduciary duty, and breach of contract. Defendants argued that although Ford presented evidence to support a claim for duty to warn, crucially, because he failed to plead duty to warn in his amended complaint, they were entitled to judgment as a matter of law. The defendants further argued that because Ford did not put forth sufficient evidence to establish

negligence, negligent misrepresentation, breach of fiduciary duty, and breach of contract, they were entitled to judgment as a matter of law on those claims as well.

In ruling on the defendants’ motion, the circuit court found that Ford’s amended complaint sufficiently pleaded a duty to warn. The court determined, however, that under the circumstances of the case, the real estate agent and brokers did not have a duty to warn Ford of the risk of wire fraud. For that reason, the court granted judgment in favor of the defendants.

STANDARD OF REVIEW

This Court reviews a trial court’s grant of a motion for judgment under a *de novo* standard, considering the evidence and any reasonable inferences from the evidence in the light most favorable to the non-moving party. *See* Md. Rule 2-519; *Torbit v. Baltimore City Police Dep’t.*, 231 Md. App. 573, 587 (2017); *White v. Kennedy Krieger Inst., Inc.*, 221 Md. App. 601, 635 (2015). In doing so, we “review the grant or denial of a motion for judgment by conducting the same analysis as the trial judge.” *Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 394 (2011).

DISCUSSION

Ford argues that the circuit court erred in concluding that Ritter owed no legal duty to warn him of the “well-known risks” of third-party wire fraud. He contends further that the circuit court failed to recognize that he had a special, professional relationship with Ritter, which gave rise to a special duty to prevent him from harm caused by third parties, and alternatively, in the absence of a special relationship, Ritter voluntarily assumed a duty

of care. Ford argues that the circuit court also erred in granting judgment in favor of Ritter on the claims of negligent misrepresentation, breach of fiduciary duty, and breach of contract.

Ritter responds that the circuit court did not err in concluding that he had no duty to warn Ford of the risk of wire fraud or other potential financial crimes, that he did not voluntarily undertake such a duty, and that all duties concerning the financial aspects of Ford's real estate purchase were the responsibility of Avenue Settlement, the title company selected by Ford. Ritter asserts that because he did not make a false statement to Ford, the elements of negligent misrepresentation were not proven at trial. Ritter further contends that the circuit court did not err in granting judgment in his favor on the breach of fiduciary duty and breach of contract claims because his fiduciary obligation to Ford pursuant to the Representation Agreement did not extend to the settlement process with Avenue Settlement.

A. The Circuit Court Did Not Err in Granting Judgment on the Negligence Claim

To prevail on his negligence claim, Ford was required to establish that: (1) Ritter was under a duty of care to him; (2) Ritter breached that duty; (3) that he suffered an actual loss, and (4) that the loss proximately resulted from Ritter's breach of the duty. *See Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 316 (2019); *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 293 (2018). Whether Ritter owed Ford a duty was a question of law for the court. *See Todd v. Mass Transit Admin.*, 373 Md. 149, 155 (2002) (citing *Valentine v. On Target, Inc.*, 353 Md. 544, 549 (1999)).

A legal duty is defined as an obligation “to conform to a particular standard of conduct toward another.” *Warr v. JMGM Group, LLC*, 433 Md. 170, 181 (2013) (internal quotation marks and citation omitted). In *Bd. of Cnty. Comm’rs for Cecil Cnty. v. Dorman*, 187 Md. App. 443, 454 (2009), this Court discussed the meaning of “duty”:

[W]hether a duty exists is not legitimately established by calling an expert witness to the stand, no matter how qualified that expert might be. The existence [or not] of the duty is a legal issue to be determined by the court, after ‘weighing the various policy considerations and reaching a conclusion that the plaintiff’s interests are or are not entitled to legal protection against the conduct of the defendant. . . . In establishing whether a duty exists, courts first apply a ‘foreseeability of harm’ test, which is based upon the recognition that duty must be limited to avoid liability for unreasonably remote consequences.’”

(internal quotation marks and citations omitted). In *Veytsman v. New York Palace, Inc.*, 170 Md. App. 104, 113-14 (2006), this Court set forth the following relevant factors for determining whether a duty exists:

[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered the injury, the closeness of the connection between the defendant’s conduct and the injury suffered, the moral blame attached to the defendant’s conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.

(quoting *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 627 (1986)).

The circuit court applied each of the factors to the facts of this case to determine whether the defendants had a duty to warn Ford. With respect to the first factor, foreseeability of the harm, the court noted that Ford argued that he required additional

warnings because he was a cash buyer. The court pointed out, however, that there were “large written warnings at the bottom of the email that [Ford] didn’t see.” For these reasons, the circuit court found that the foreseeability of harm was not a significant factor. The court found that there was no dispute that Ford had suffered an injury, and therefore, the second factor was met. In terms of the third factor, the closeness of the connection between the defendants’ conduct and the actual injury suffered, the court concluded that, in this case, it was the title company’s conduct that was closer to the cause of the injury than the conduct of the real estate agent and brokers.

Regarding the “moral blame” attached to the defendants’ conduct and the policy of preventing such future harm, the court noted the significance of the fact that “the real estate agent, just like the buyer, was misled.” The court questioned how attaching any moral blame to the defendants or imposing a duty on them would create a policy that would prevent future harm. The court concluded that any policy to prevent future harm should attach to the title companies for failing to take appropriate action to protect their clients.

Because the court found that the real estate agent, and not just the buyer, was deceived here, the court found that holding agents and brokers liable on these issues, “which their licenses don’t even regulate, would create a significant burden on the industry” and the consequences of imposing such a burden were too great. Finally, regarding the availability, cost, and prevalence of any insurance, the court found that, because it was not clear from the evidence whether the defendants’ professional insurance would actually cover the potential liability involved in this case, the availability of

insurance was not a factor that assisted the court’s analysis. Ultimately, the court found that “the duty to warn is not on the agent, it’s [on] the title company ... and the title insurance company.”

The circuit court thoroughly considered the relevant factors in determining that Ritter was under no duty to warn Ford of the potential for wire fraud in the course of Ford’s wire transfer to Avenue Settlement. We agree with the circuit court’s conclusion that Ritter was not negligent for failing to advise Ford of the potential for wire fraud and bogus wiring instructions, especially in light of the fraud warning visible on the emails from Avenue Settlement. As the court noted, Ritter, like Ford, was also duped by the fraud.

Ford contends that Ritter owed him an elevated duty of care to warn him of the risk of wire fraud due to the nature of their special relationship as realtor and client, though he provides no legal authority to support this contention. “[T]here is no duty to control a third person’s conduct so as to prevent personal harm to another, unless a ‘special relationship’ exists either between the actor and the third person or between the actor and the person injured.” *Remsburg v. Montgomery*, 376 Md. 568, 583 (2003) (quoting *Asburn*, 306 Md. at 628). Absent special circumstances, a realtor is under no special duty of care in assisting clients with the purchase of property. *See e.g., Lopata v. Miller*, 122 Md. App. 76, 94 (1998) (a real estate agent was under no obligation to ascertain the acreage of property to be purchased); *Md. Real Estate Comm’n, v. Garceau*, 234 Md. App. 324, 358 (2017) (real estate agent was not required to disclose existence of non-binding community association to buyers who had stated that they were only interested in properties with no

homeowner associations). There was no evidence to support Ford’s assertion that Ritter was under a special duty of care or that he voluntarily assumed a special duty of care to warn him against the risk of a fraudulent wire transfer. We see no error in the court’s determination that Ritter was under no legal duty to warn Ford of the risks of wire fraud.

B. The Circuit Court Did Not Err in Granting Judgment on the Negligent Misrepresentation, Breach of Fiduciary Duty, and Breach of Contract Claims

In Maryland, to establish a negligent misrepresentation claim, a plaintiff must first establish that “the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement[.]” *Ward Dev. Co. v. Ingrao*, 63 Md. App. 645, 654 (1985) (citing *Martens Chevrolet v. Seney*, 292 Md. 328, 337 (1982)). Ford argues that the wiring instructions sent from Ritter’s email constituted a false statement by Ritter and that he justifiably relied on that representation to his detriment. The circuit court found that Ritter and Ford were both deceived. Ritter did not know that fraud had occurred or that his email account had been hacked by a third party to send Ford fraudulent wire instructions. Because Ritter’s duties to Ford did not include a duty to advise him of the potential criminal acts of a third party, the court did not err in determining that Ritter did not breach his duty of care to Ford when cybercriminals hijacked his email account and used it to defraud Ford.

Ford further contends that the Representation Agreement imposed fiduciary and contractual duties that Ritter breached by failing to properly advise him to verify the wiring instructions before initiating the wire transfer to the title company. Specifically, Ford relies on paragraph 6C of the Representation Agreement, which required Ritter to represent

Ford’s interests in “all negotiations and transactions regarding the acquisition of real property.”

As we previously stated in this opinion, Ritter was not negligent in his dealings with Ford. The terms of the Representation Agreement imposed no additional obligation on Ritter to advise Ford of the risk of fraud. We conclude that the circuit court did not err in determining that Ritter’s contractual and fiduciary duties did not extend to warning Ford against wire fraud, where he was not the party responsible for delivering the wiring instructions and he had no control over the wiring transaction.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY AFFIRMED.
APPELLANT TO PAY THE COSTS.**