Circuit Court for Montgomery County
Case No. 466705-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 496

September Term, 2021

JAY GECO, LLC, ET AL.,

v.

CITY PROPERTIES 3, LLC, ET AL.

Berger,
Arthur,
Reed,

JJ.

Opinion by Berger, J.

Filed: March 3, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from a failed real estate transaction between two real estate investors and two real estate agents for the sale of several properties. Appellants Jay Geco, LLC and Royal S. Dellinger are real estate investors. Patrick Rutledge and Grace Gichura are real estate agents licensed through Keller Williams Capital Properties. Appellee Brian Gormley acted as an escrow agent for the sale of several properties between Appellants and Jeffrey Skodak and GKL Recovery and Acquisitions Corp. (collectively referred to as "GKL").

Appellants brought an action in the Circuit Court for Montgomery County against Mr. Gormley, alleging that he was negligent and breached contractual obligations in his role as the escrow agent for the business transaction between Appellants and GKL. The motions court granted Mr. Gormley's motion to dismiss and dismissed Appellants' claims and causes of action with prejudice. Appellants filed this timely appeal.

Appellants pose one question for our review,[1] which we have rephrased, for clarity, as follows:

> Whether the motions court erred when it dismissed the Fourth Amended Complaint, with prejudice, on the grounds that Appellants had failed to plead sufficient facts to establish the causes of action for negligence and breach of contract.

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[1] Appellant's original question presented is as follows:

> Did the Circuit Court err in dismissing the Fourth Amended Complaint against Appellee Brian Gormley?

FACTS AND PROCEDURAL HISTORY

In 2017, Appellants were approached by Mr. Rutledge and Ms. Gichura with a proposal to purchase several properties from their client GKL. Before the properties could be sold to Appellants, GKL required that each Appellant deposit $130,000 dollars into an escrow account. Appellants agreed and entered into an Escrow Agreement with Mr. Gormley who would act as the escrow agent for the transaction. The Escrow Agreement contains the following relevant provisions:

> l. Appointment of Escrow Agent – For the purposes of receiving and/or distributing funds that [Mr.] Rutledge and/or [Appellants] are entitled to from business transactions and to facilitate said transactions, [Mr.] Rutledge and [Appellants] hereby appoint and designate the Escrow Agent [Mr. Gormley] as escrow agent for the proposes set forth herein, and the Escrow Agent does hereby accept such appointment under the terms and conditions set forth herein.
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> 4. Disposition and Termination – (a) [Mr. Gormley] shall wire only those funds that he is directed to wire based upon the written instructions of [Mr.] Rutledge received from time to time. Any and all such funds shall be wired at the earliest opportunity upon receipt of [Mr.] Rutledge's written instructions, but in no event later than 48 business hours.
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> 5. Limited Duties – [Mr. Gormley] undertakes to perform only such duties as are expressly set forth herein and no other or further duties or responsibilities shall be implied.

Under the Escrow Agreement, Mr. Gormley was required to disburse or receive funds via the escrow account to facilitate "business transactions" only as directed by Mr. Rutledge. Following the execution of the Escrow Agreements, Appellants deposited the

required funds into Mr. Gormley's escrow account. Shortly thereafter, Mr. Rutledge directed Mr. Gormley to wire Appellants' funds to GKL.

Appellants and GKL failed to close on the transaction. Appellants then demanded that the funds deposited into the escrow account be returned to them. When Appellants did not receive their deposited funds, they filed their first Complaint on May 10, 2019. Appellants then filed a series of amended complaints against Mr. Gormley, each of which was defeated by Mr. Gormley's motions to dismiss, or alternative, motions for summary judgment.

Appellants filed their Fourth Amended Complaint on March 12, 2020. The Fourth Amended Complaint alleged that Mr. Gormley was negligent in his role as the escrow agent and as an attorney, and further, that he breached his contractual obligations under the Escrow Agreement. A hearing on the Fourth Amended Complaint was held in the Circuit Court for Montgomery County on September 8, 2020.

Regarding the claim for negligence, the motions court found that Appellants had failed to show that Mr. Gormley breached any duties under the Escrow Agreement. The court further found that Appellants had failed to present any facts establishing that Mr. Gormley owed them a duty as an attorney. On the claim for breach of contract, the motions court found that Appellants had failed to plead any facts establishing that Mr. Gormley breached any obligations created by the terms of the Escrow Agreement. At the conclusion of the hearing, the motions court granted Mr. Gormley's motion to dismiss, and dismissed Appellants' claims with prejudice. Appellants filed this timely appeal.

DISCUSSION

Standard of Review

We will review a trial court's decision to grant a motion to dismiss to determine "whether the trial court was legally correct." *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018). Accordingly, "[w]e review the grant of a motion 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." *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 76 (2015) (internal citations and quotation marks omitted), *cert. denied*, *Sutton v. FedFirst Fin.*, 446 Md. 293 (2016). "[W]e give no deference to the trial court findings [when we] review the decision under a *de novo* standard of review." *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018). Lastly, "we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Correctional Medical Services, Inc.*, 359 Md. 238, 246 (2000).

I. The motions court did not err in dismissing the Fourth Amended Complaint with prejudice because Appellants failed to plead facts establishing that Mr. Gormley was negligent as an escrow agent.

The necessary threshold element in every action for negligence is establishing that the defendant owed a cognizable duty to the plaintiff. *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 495 (2011). "Duty in a negligence claim is an obligation to conform to a particular standard of conduct toward another." *Id.* at 496. The particular standard of conduct in this case is the standard of conduct that an escrow agent owes the depositors to

the escrow account. "[A]n escrow agent . . . acts subject only to the control of the conditions and specifications contained in the escrow or trust agreement." *Campen v. Talbot Bank of Easton*, 271 Md. 610, 616 (1974); *see also Roman v. Sage Title Grp., LLC*, 229 Md. App. 601, 613 (2016) (citing federal law) ("[E]scrow agents owe their depositors a fiduciary duty to disburse the deposits according to the terms of the escrow agreement.")).

Accordingly, Mr. Gormley's duty in this case was to abide by the terms governing the Escrow Agreement. The Escrow Agreement expressly required Mr. Gormley to disburse or receive funds for "business transactions" only as directed by Mr. Rutledge. The undisputed facts established that Mr. Gormley disbursed Appellants' funds to GKL as directed by Mr. Rutledge shortly after Appellants deposited their funds. The motions court, therefore, did not err in concluding that Mr. Gormley did not act negligently in carrying out his escrow duties because he abided by the express terms of the Escrow Agreement and disbursed the funds as directed by Mr. Rutledge.

In the face of this dispositive evidence, Appellants have presented three tenuous arguments that Mr. Gormley acted negligently. First, Appellants have argued -- despite the express terms of the Escrow Agreement -- that Mr. Gormley was required to obtain their consent prior to dispersing their funds to GKL. The Escrow Agreement provides otherwise: [Mr. Gormley] "shall wire only those funds that he is directed to wire based upon the written instructions of [Mr.] Rutledge received from time to time."

Second, Appellants have argued that Mr. Gormley acted negligently because he was aware of a Purchase Agreement between Mr. Rutledge and GKL which was allegedly

premised on a fraudulent transaction. The Purchase Agreement was made after the Escrow Agreement was executed and was entered into by Mr. Rutledge as the buyer and GKL as the seller. This Purchase Agreement was for the purchase of "notes" and "receivables." Appellants assert that because Mr. Gormley was aware that the Purchase Agreement was for "notes" and "receivables" -- and not the several properties that were the subject of the transaction -- he should have been alerted to potential fraudulent misconduct by Mr. Rutledge and GKL. Appellants argue, therefore, that Mr. Gormley should have notified Appellants that the transaction with Mr. Rutledge and GKL was suspicious or fraudulent as part of his duties as an escrow agent.

Mr. Gormley's only duty to Appellants under the Escrow Agreement was to disburse or receive funds at the sole direction of Mr. Rutledge. Appellants have not presented any evidence indicating that Mr. Gormley breached his duty as the escrow agent to the transaction. Indeed, the terms of the Escrow Agreement provide that Mr. Gormley's appointment as an escrow agent shall be "[f]or the purpose of receiving and/or distributing funds that [Mr.] Rutledge and/or [Appellants] are entitled to from *business transactions* . . ." Although the overall transaction between the parties was for the sale of several properties, the Escrow Agreement clearly allows the transfer of escrow funds for *business transactions*, and makes no particular requirement that the receipt or distribution of funds be only for the property transactions.

Furthermore, Mr. Gormley owed no additional duty to advise or notify Appellants of the effect or terms of any other agreements. The Escrow Agreement provides that Mr.

Gormley shall only undertake the duties expressly set forth in the agreement, and further, that no other duties or responsibilities shall be implied. Appellants' reliance on authority from California and Arizona to support the theory that Mr. Gormley had additional duties is not controlling on us. Further, the cases cited reinforce the proposition that an escrow agent's principal duty is to strictly comply with the terms of the escrow agreement.[2] In short, there is no Maryland authority to support the argument that Mr. Gormley's role as an escrow agent required him to advise Appellants on the terms of the Purchase Agreement.

Lastly, Appellants argue that Mr. Gormley owed them an additional duty in his capacity as an attorney. Appellants argue that Mr. Gormley's mere awareness of the Purchase Agreement and the fact that he was both an escrow agent and an attorney somehow created a duty to them as their attorney. This bald assertion is unsupported by any facts suggesting that Mr. Gormley was acting as an attorney for Appellants. There is no evidence that Mr. Gormley and Appellants had an express attorney-client relationship, and there is no evidence that there was an implied attorney-client relationship.

Although Mr. Gormley performed escrow services for Appellants, it does not automatically follow that this business relationship created an attorney-client relationship. *Attorney Grievance Comm'n of Md. v. Shaw*, 354 Md. 636, 650–52 (1999) (holding that a business relationship between a party and an attorney does not automatically form an

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[2] *See Diaz v. United Cal. Bank*, 139 Cal. Rptr. 314, 317 (Cal. Ct. App. 1977) ("[T]he duty of an escrow agent is to comply strictly with the instructions of its principal . . .").

attorney-client relationship, but rather, an attorney-client relationship "must[] be implied from the facts and circumstances of a given case.").

We hold that Appellants have failed to present facts establishing that Mr. Gormley took any action in his role as escrow agent that required legal skill or knowledge of legal principals. *See Att'y Grievance Comm'n of Md. v. Hallomon*, 343 Md. 390, 397 (1996) ("To determine whether an individual has engaged in the practice of law, the focus of the inquiry should be on whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent."). We further hold that Appellants have failed to present facts establishing that Mr. Gormley provided them legal advice, let alone communicated with them outside of his role as the escrow agent to the transaction. *Shaw*, *supra*, 354 Md. at 650–52 ("An important consideration of the determination [of an attorney client relationship] may be whether legal advice was being sought by the client."). Accordingly, the record is devoid of any facts indicating that Mr. Gormley took any action that created an attorney client relationship with Appellants.

Because the Appellants have failed to produce any facts establishing that Mr. Gormley breached any duty as an escrow agent or served as their attorney, we hold that the motions court properly granted Mr. Gormley's motion to dismiss the Fourth Amended Complaint with prejudice.[3]

[3] Appellants have also argued that Mr. Gormley was grossly negligent because the language of the Purchase Agreement was "so clearly fraudulently worded and so bereft of any information as to what was being purchased as to be one under which no reasonable person, much less an attorney, and certainly not a fiduciary, would ever have disbursed

II. The motions court did not err in dismissing the Fourth Amended Complaint with prejudice because Appellants failed to plead facts establishing that Mr. Gormley breached his contractual obligations under the Escrow Agreement.

We further hold that the motions court did not err in dismissing the Fourth Amended Complaint with prejudice because Appellants failed to properly state a claim for breach of contract.

"[I]n order to state a claim for a breach of contract, a plaintiff need only allege the existence of a contractual obligation owed by the defendant to the plaintiff, and a material breach of that obligation by the defendant." *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 658 (2010).

Mr. Gormley had a contractual relationship with Appellants, and was therefore required to abide by the terms of Escrow Agreement in his capacity as the escrow agent to the transaction. The undisputed facts clearly established that Mr. Gormley abided by his contractual duties when he properly disbursed Appellants' funds to GKL at the direction of Mr. Rutledge. Mr. Gormley was not required to obtain Appellants' consent to take this action. Indeed, Mr. Gormley would have breached the Escrow Agreement had he instead refused to disburse Appellants' funds to GKL according to Mr. Rutledge's specific directions. In short, Appellants cannot properly state a claim for breach of contract when the defendant has complied with the express terms of the contract.

money to the 'seller' GKL." In light of our holding that Mr. Gormley did not act negligently, we further hold that Appellants have failed to properly state a claim for gross negligence.

Appellants again argue that Mr. Gormley breached his contractual obligation under the Escrow Agreement because of his awareness of the allegedly fraudulent Purchase Agreement between Mr. Rutledge and GKL. Even assuming that the Purchase Agreement was somehow suspicious, Mr. Gormley and Appellants are not parties to the Purchase Agreement. Appellants cannot establish a breach of contract claim arising under the terms of the Escrow Agreement by relying on an agreement unrelated to Appellants and Mr. Gormley.

In sum, we hold that the motions court properly dismissed Appellants' Fourth Amended Complaint with prejudice. Appellants failed to plead facts to establish a cause of action for negligence and breach of contract. There is no evidence presented before us which establishes that Mr. Gormley either acted negligently as an escrow agent, or breached his contractual obligations under the Escrow Agreement. We, therefore, affirm.

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