

Circuit Court for Baltimore County
Case No. C-03-CV-20-002735

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 648

September Term, 2022

VINCE'S CRAB HOUSE, INC., ET AL.

v.

JOHN A. OLSZEWSKI, JR., ET AL.

Friedman,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 7, 2023

* 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. R. 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Three separate but related protests together form the background for this case:

- *First*, in May 2020 in Minneapolis, Minnesota, George Floyd, a Black man, was murdered by a white police officer after being accused of passing a counterfeit \$20 bill. The event was captured on video by a bystander. The video, circulated online, incited nationwide large-scale protests against police brutality.¹
- *Second*, Vincent Meyer, II, a Middle River businessman, took to Facebook to disparage the protests and the protesters. Among other posts alleged to have been racist, Meyer suggested that the one place that the “protesters/rioters” would not damage were the government offices that provide social services, expressing his apparent view that the protesters were disproportionately the recipients of social services.² Meyer’s Facebook post went viral and resulted in a swift and angry backlash. Moreover, Meyer’s tepid video apology was not well-received.

¹ Law enforcement was criticized for responding to the protests—many of which were peaceful—with force, by spraying tear gas and shooting rubber pellets at protesters and conducting mass arrests. *How George Floyd Died, and What Happened Next*, N.Y. TIMES (July 29, 2022), <https://perma.cc/ZL3T-UMEN>. The extent to which the protests and protesters were violent was much debated at the time and afterwards. The United States Department of Homeland Security issued a report, which described “over 100 days of violence and destruction in our cities,” in which “[t]he co-opting of lawful protests led to destruction of government property and have turned deadly.” Zolan Kanno-Youngs, *Delayed Homeland Security Report Warns of ‘Lethal’ White Supremacy*, N.Y. TIMES (Oct. 6, 2020), <https://perma.cc/PJU8-EW3D> (describing DHS Report). Scientific research reported in the Christian Science Monitor, however, reflects that the protests were overwhelmingly peaceful. Tara Adhikari, *BLM and Floyd Protests Were Largely Peaceful, Data Confirms*, CHRISTIAN SCI. MONITOR (July 8, 2021), <https://perma.cc/6QDE-M5PK> (reporting that “from May 2020 to June 2021, 94% of protests involved no participant arrests, 97.9% involved no participant injuries, 98.6% involved no injuries to police, and 96.7% involved no property damage”). We do not purport to resolve the questions of whether and how violent the protests were, but merely acknowledge the existence of the debate.

² *Owner of Vince’s Crab [H]ouse Under Fire for Comments About Protests; Restaurants to Close for 9 Days*, CBS NEWS BALTIMORE (June 7, 2020), <https://perma.cc/4U9C-HEQS>.

- *Third*, a local group of protesters staged a 226-day protest of Vince’s Crab House, the Middle River restaurant that Meyer manages and that his parents own. The protesters, with the stated goal of putting Vince’s Crab House out of business, picketed the restaurant and urged potential patrons not to spend their money at an establishment whose owners espoused racist ideology. No physical damage to the restaurant was reported.³

At each of these three inter-related protests, the people involved had the constitutional right to speak, protest, and express themselves free from governmental interference.⁴ Freedom of speech does not mean, however, freedom from consequences. Here, each protest was a direct consequence of the protest that came before it.

But, there are also limits to those constitutional rights. A protester who violates the criminal law cannot use the fact that they were engaged in a protest as a defense to a criminal prosecution. Similarly, a protester who commits a tort while engaged in a protest may be sued civilly by the aggrieved party. Thus, a protester who, for example, commits

³ Although Vince’s Crab House did not suffer any physical damage, the Meyers incurred the expenses of tinting the restaurant’s windows and hiring private security to protect their patrons and staff. The Meyers also said that they did, indeed, lose business because of the protests, including economic loss from a nine-day shutdown of all of their restaurants at the request of the protest leaders “to show some respect to George Floyd.” CBS NEWS BALTIMORE, *supra* note 2.

⁴ Those rights to speak, publish, and assemble free from governmental interference are guaranteed by the First Amendment to the U.S. Constitution, which in pertinent part, provides that: “Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.” U.S. CONST. amend. I (1789). To the extent that the protest activities occurred within the State of Maryland, they are also protected from government interference by Article 40 of the Maryland Declaration of Rights, which provides:

That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write[,] and publish [their] sentiments on all subjects, being responsible for the abuse of that privilege.

MD. CONST., Decl. of Rts., art. 40; *see also* MD. CONST., Decl. of Rts, art. 6.

an assault, destroys property, or trespasses on private property may be charged criminally or sued civilly, or both.

In this case, however, Vince’s Crab House hasn’t sued a protester.⁵ Instead, it has sued Baltimore County—the county itself, its County Executive John A. Olszewski, Jr., its then-Chief of Police Melissa R. Hyatt, and three police officers dispatched to Vince’s Crab House during the protests—asserting that the county failed to protect its property rights. The circuit court dismissed the complaint because it failed to state a cause of action. We agree with the circuit court’s ruling and affirm. But we also explain why this must necessarily be so.⁶

⁵ Vince’s Crab House filed a separate lawsuit against some of the protesters. That matter was resolved, but for one defendant, on February 7, 2023. *See Vince’s Crab House, Inc. v. Darnell Williams*, Case No. C-03-CV-20-003005. We express no views on the merits of that lawsuit.

⁶ Our review of the grant of a motion to dismiss requires us to review only the complaint to determine whether it, on its face, states as a matter of law a claim upon which relief can be granted. *Bel Air Carpet, Inc. v. Korey Homes Bldg. Grp., LLC*, 249 Md. App. 109, 124 (2021). As a result, our review is ordinarily limited to the facts alleged in the complaint. *Id.* Because the amended complaint in this matter was so poorly drafted, however, and because our discussion requires more context, we have gone beyond the “four corners of the complaint.” *Id.* We have not, however, relied on any materials outside the complaint in our adjudication. *See McCauley v. Suls*, 123 Md. App. 179, 185-86 (1998) (treating ruling as the grant of a motion to dismiss where, even though the court looked at and commented on materials outside of the pleadings, the court based its decision strictly on the allegations in the pleadings).

PROCEDURAL HISTORY

Vince’s Crab House filed a rambling, 41-page polemic as its amended complaint.⁷ From it, we gather that Vince’s Crab House asserted that Baltimore County had failed to protect its property rights from the protesters because instead of intervening and arresting protesters, the county ordered the police to stand down. Vince’s Crab House sought monetary damages and an injunction to stop the protests. After procedural maneuvers that

⁷ Among the grounds on which the circuit court dismissed Vince’s Crab House’s complaint was its noncompliance with Maryland Rule 2-303, which requires, in pertinent part:

(a) Paragraphs, Counts, and Defenses. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each cause of action shall be set forth in a separately numbered count. Each separate defense shall be set forth in a separately numbered defense.

(b) Contents. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings are required. A pleading shall contain only such statements of fact as may be necessary to show the pleader’s entitlement to relief or ground of defense. It shall not include argument, unnecessary recitals of law, evidence, or documents, or any immaterial, impertinent, or scandalous matter.

Despite the fact that Baltimore County, on appeal, seems to have abandoned this as an alternative ground for affirmance, we decline to accept this abandonment and hold that the amended complaint violated Rule 2-303 (a) and (b). *See Manikhi v. Mass Transit Admin.*, 360 Md. 333, 342 (2000) (the plaintiff’s 60+ page “rambling” complaint containing “an assemblage of opinions, argument, recitations of evidentiary minutiae, and extraneous allegations” that made it difficult for the circuit court to discern a cause of action within the first 40 pages of the complaint, was properly dismissed). As a separate and independent basis for affirming the decision of the circuit court, we hold that the circuit court did not err in dismissing the complaint for violating the pleading requirements of Rule 2-303. *See Parks v. AlphaPharma, Inc.*, 421 Md. 59, 65 n.4 (2011) (appellate court may affirm dismissal on any ground adequately shown by the record, whether or not relied on by the circuit court).

don't concern us here, the circuit court dismissed Vince's Crab House's amended complaint.⁸ Vince's Crab House has noted a timely appeal, in which it argues that the circuit court erred in dismissing the amended complaint because—and we paraphrase here—governmental and public official immunity could not protect the county from liability, as Vince's Crab House sufficiently pleaded the existence of a special relationship between it and the police that created a duty to act, and the county knowingly and with malice failed to enforce the public safety laws of Baltimore County.⁹

STANDARD OF REVIEW

As we explained in *Holden v. Univ. Sys. of Maryland*, 222 Md. App. 360, 366 (2015):

⁸ Vince's Crab House moved to alter or amend, or for reconsideration of, the judgment, arguing that the circuit court, in summarily dismissing the amended complaint, did not provide "a legally sufficient opinion and analysis of the facts and law regarding this case." The circuit court denied the motion without a hearing.

⁹ Vince's Crab House also makes vague arguments, unsupported by facts or case law, that the county caused the "widespread deprivation" of their property, amounting to a taking, and committed a constitutional tort. The circuit court properly dismissed any such claims because: (1) a taking claim lies only when the government takes private property for public use, *Hardesty v. State Roads Comm'n of State Highway Admin.*, 276 Md. 25, 32-33 (1975) (cleaned up) ("The Constitutional prohibition against the taking of private property means taking the property from the owner, and actually applying it to the use of the public."); (2) a due process claim of deprivation of property can lie only when the government actor directly caused the loss, *see O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 787 (1980) ("[A]n indirect and incidental result of the Government's enforcement action ... does not amount to a deprivation of any interest in life, liberty, or property."); and (3) Vince's Crab House did not allege specific facts in its amended complaint that would constitute a civil action for a constitutional tort under Article 24 of the Maryland Declaration of Rights. *See Widgeon v. E. Shore Hosp. Ctr.*, 300 Md. 520, 535-36 (1984) (describing nature of constitutional torts). Thus, we affirm the dismissal of these claims as well.

Pursuant to Maryland Rule 2-322(b)(2), a party may seek dismissal of a complaint if the complaint fails to state a claim upon which relief can be granted. The standard for reviewing the grant of a motion to dismiss is whether the circuit court was legally correct. Upon review of the grant of a motion to dismiss, appellate courts must determine whether the complaint, *on its face*, discloses a legally sufficient cause of action. We presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom in a light most favorable to plaintiffs. Additionally, it is well established in Maryland that, in an appeal from a final judgment, the appellate court may affirm the court’s decision on any ground adequately shown by the record. Therefore, dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.

(cleaned up; emphasis in original).

ANALYSIS

1. The circuit court did not err in determining that there was not a “special relationship” between the police and Vince’s Crab House

A general principle of our law holds that police are not ordinarily liable in tort for torts committed by third parties. *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 628 (1986). That is, the police (or the governments by which they are employed) will not be liable for torts committed by other people. Thus, although the police will try to stop people from committing torts, they are generally not liable when they fail to stop other people from committing torts. It has to be this way. Otherwise, the police would, in effect, be providing insurance against third-party torts. We’d need police on every street corner, and it still wouldn’t be enough. The cost would be astronomical. As a result, in ordinary circumstances, police aren’t liable for third-party torts.¹⁰

¹⁰ We explained the rationale for this principle in *Howard v. Crumlin*:

Pursuant to this general rule, then, Baltimore County should not be liable for failing to prevent torts committed by protesters. Vince’s Crab House, however, argues that this case fits in an exception to that general rule, specifically, it asserts that Baltimore County entered into a “special relationship” with Vince’s Crab House. As a result of that “special relationship,” Vince’s Crab House continues, Baltimore County can be liable for torts committed by the protesters.

Vince’s Crab House is right that the existence of a “special relationship” might take a case out of the general principle of non-liability that we have discussed. Vince’s Crab House is, however, wrong that it has sufficiently pleaded the existence of a special relationship to take *this* case out of the general principle of non-liability. The exception that Vince’s Crab House seeks to invoke—for situations in which the police have entered into a “special relationship” such that they might be liable for third-party tortious conduct—is an exceedingly narrow exception in which the police “affirmatively acted to protect the specific victim or a specific group of individuals like the victim, thereby

Public officials involved in fighting crime make decisions in circumstances that are fraught with uncertainty and, therefore, must have broad discretion to proceed without fear of civil liability in the unflinching discharge of their duties. In such circumstances, the public interest is not served by allowing a jury of laypersons with the benefit of 20/20 hindsight to second-guess the exercise of a police officer’s discretionary professional duty. Such discretion is no discretion at all. To rule otherwise would raise the spectre of civil liability for failure to respond to every complaint, regardless of its credibility, and thus risk that decisions would be made not on the merits but to eliminate the threat of personal prosecution by the putative victim. Such a result historically has been viewed, and rightly so, as untenable, unworkable and unwise.

239 Md. App. 515, 522-23 (2018) (cleaned up).

inducing the victim’s specific reliance upon the police protection.” *Ashburn*, 306 Md. at 631.

The facts of the *McNack* case demonstrate just how narrow the “special relationship” exception is. *McNack v. State*, 398 Md. 378 (2007). In that case, the Dawson family was encouraged by a Baltimore City program to report neighborhood drug activity to the police. *Id.* at 386. Within a span of three years, the family made more than 100 calls to police reporting suspicious activity, and the police were dispatched to the Dawsons’ home on numerous occasions. *Id.* Unfortunately, the police presence at their home indicated to the neighborhood criminals that it was the Dawsons who were reporting their drug activity to the police. *Id.* After an attacker threw a Molotov cocktail at their home, the Dawsons were told by the police that they were placed on a “special attention list.” *Id.* at 387. Less than two weeks later, a criminal kicked down the front door of the Dawson house, doused the living room with gasoline, and set it ablaze, killing seven members of the family. *Id.*

The McNacks, relatives of the Dawson family, brought a lawsuit alleging that the actions of the Baltimore City Police created a special relationship between the police and the family. *Id.* at 399. The Supreme Court of Maryland (then known as the Court of Appeals)¹¹ found that none of those actions—the Dawsons’ numerous calls to the police,

¹¹ At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* MD. R. 1-101.1(a).

repeated police dispatch to their home, and the claim that the police had assured the family they would be protected—were sufficient to create a special relationship as an exception to the public duty doctrine that conferred tort immunity upon the police. *Id.* at 400-02. The Supreme Court of Maryland pointed out the absence of a sufficiently-pled allegation in the complaint that the police officers who responded to the Dawson home “affirmatively acted for the [family’s] benefit, that they did anything to induce the... family to rely on them, or that they acted in any way differently than they would act responding to any complaint of any other member of the general public.” *Id.* at 401. To the contrary, responding to a 911 call “was part of the police officers[’] public duty.” *Id.* Thus, even in that extreme situation, a special relationship was not created.

Vince’s Crab House argues that the police officers created a special relationship with it by providing a police presence during the protests and communicating with it about their concerns. Compared to *McNack*, Vince’s Crab House’s argument that it had a special relationship is not even close. The argument fails. Vince’s Crab House’s amended complaint—the document on which the circuit court was required to rely in deciding the motion to dismiss—reveals no allegation of a special relationship and no facts to support a finding that the police affirmatively acted for its benefit in any way differently than they would have for any other member of the public. To the contrary, the amended complaint arguably acknowledged that the relationship between Vince’s Crab House and the county was not unique:

The owners of Vince’s Crab House and others have repeatedly pleaded with local officials and others to cease enabling the destruction of their property and the imminent dangers posed to them and their neighborhood. But the

Defendants have not listened, or have not cared, and thus Plaintiffs have had to resort to litigation to make themselves heard.¹²

In the absence of a special relationship (or here, even the allegation of one), there can be no duty by the county to Vince’s Crab House, and with no duty “there can be no relief.” *McNack*, 398 Md. at 399. Therefore, the circuit court was legally correct in finding that the public duty doctrine supported dismissal of Vince Crab House’s amended complaint.

2. The circuit court did not err in determining that public official and governmental immunity protected the county.

Even if Vince’s Crab House had alleged a special relationship with the county in its amended complaint, its claim still would have failed because the county is protected by public official immunity. *See* MD. CODE, CTS. & JUD. PROC. (“CJ”) §5-507(a)(1) (“An official of a municipal corporation, while acting in a discretionary capacity, without malice, and within the scope of the official’s employment or authority shall be immune as an official or individual from any civil liability for the performance of the action.”).

“Public official immunity protects public officials—including police officers—who perform negligent acts during the course of their discretionary, as opposed to ministerial,

¹² Vince’s Crab House, in its amended complaint, pointed to the fact that its Harford County location had not been impacted by protests and claimed it was because Harford County officials had been more proactive than Baltimore County officials in their protection of Vince’s Crab House’s business. If so, that serves simply to illustrate the fact that different county executives and police chiefs balance the respective rights of business owners and protesters differently. Except in the rare case in which actual malice precludes the county officials from properly balancing those rights, the decisions of the county officials are best left to the political branches and not the Judiciary.

duties.” *Howard*, 239 Md. App. at 526. “When applied to public officials, discretion is the power conferred upon them by law to act officially under certain circumstances according to the dictates of their own judgment and conscience and uncontrolled by the judgment of conscience of others.” *Id.* (quoting *Cooper v. Rodriguez*, 443 Md. 680, 713 (2015)). Public official immunity does not apply, however, to acts undertaken with malice or gross negligence. *Id.*

Vince’s Crab House doesn’t dispute that Olszewski, Hyatt, and the police officers who were present at the scene of the protests were public officials acting within the scope of their official duties. Vince’s Crab House doesn’t claim, nor could it, that law enforcement’s decision whether to arrest or charge someone with a crime is anything other than discretionary. *See Howard*, 239 Md. App. at 527 (“a police officer’s determination regarding what degree of action or investigation might be necessary in responding to particular situation... is a paradigmatic case of an action involving the exercise of personal judgment in determining the manner in which the State’s police power will be utilized”).

Instead, Vince’s Crab House attempts to defeat public official immunity by making conclusory statements that the county acted with malice. Saying it without any factual support, however, doesn’t make it so. A “pleader must set forth a cause of action with sufficient specificity—bald assertions and conclusory statements by the pleader will not suffice.” *Davis v. Frostburg Facility Operations., LLC*, 457 Md. 275, 284-85 (2018) (cleaned up).

To sufficiently plead malice, a plaintiff must set forth “well-pled facts showing ‘ill will’ or ‘evil or wrongful motive,’” with the willful purpose of injury. *Barbre v. Pope*, 402

Md. 157, 182 (2007). Vince’s Crab House’s amended complaint made no allegations to meet this standard. In fact, in its amended complaint, Vince’s Crab House asserted that the county’s inaction “reflected a deliberate indifference to the risk that a violation of constitutional and/or statutory rights would follow the inaction.” The defendants’ alleged “inaction” and “indifference” certainly does not rise to the level of malice. In the absence of factual support in Vince’s Crab House’s amended complaint for the conclusory claim that the county acted maliciously or with gross negligence during the protest, the circuit court was legally correct in finding that the defendants were protected by public official immunity.

Public official immunity would also apply to Baltimore County as an individual defendant because “[CJ] § 5-303(e)^[13] permits the local government to utilize any immunity defense possessed by its employees.” *Hines v. French*, 157 Md. App. 536, 571 (2004). Furthermore, Maryland counties are shielded from tort liability for governmental actions “unless the General Assembly has specifically waived the immunity of the municipality.” *Williams v. Prince George’s Cnty.*, 112 Md. App. 526, 553 (1996). Because the operation by the county of its police department is “quintessentially governmental,” *Clark v. Prince George’s Cnty.*, 211 Md. App. 548, 558 (2013), we held, in *Williams*, that the county was shielded by governmental immunity from tort liability for its alleged acts

¹³ CJ § 5-303(e) provides: “A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.”

or omissions in the conduct of its police department’s investigation. 112 Md. App. at 554. The General Assembly has not waived the county’s immunity from direct suit to “any extent more broad than its duty to indemnify employees.” *Livesay v. Baltimore Cnty.*, 384 Md. 1, 20 (2004). Therefore, the circuit court was also legally correct in dismissing all Vince’s Crab House’s tort claims against Baltimore County.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY IS
AFFIRMED; COSTS TO BE PAID BY
APPELLANTS.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0648s22cn.pdf>