Circuit Court for Frederick County
Case No.: C-10-CV-23-000043

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0961

September Term, 2023

GEORGIA ANNE MCCAULEY

v.

SUNTRUST, ET AL.

Wells, C.J.,
Shaw,
Zic,

JJ.

Opinion by Zic, J.

Filed: August 7, 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 its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Georgia Anne McCauley, appellant, challenges the Circuit Court for Frederick County's dismissal of her claims relating to two residential mortgage loans from SunTrust Bank ("SunTrust").[1] Although Ms. McCauley admitted failing to make timely payments in accordance with the terms of her notes, she alleged that when she attempted to make payments to bring the loans current, they were improperly handled by SunTrust, its employee Luke Petersen, and loan servicer Selene Finance, LP ("Selene"), appellees.

In her *pro se* complaint (the "Amended Complaint"), Ms. McCauley alleged counts for "Intentional Infliction of Emotional Distress (Misrepresentation/Negligence)" (Count #1); "Defamation" (Count #2); "Theft" (Count #3); "Fraud" (Count #4); and "Invasion of Privacy (Informational Privacy)" (Count #5). In her *pro se* appeal to this Court, Ms. McCauley raises four issues that we consolidate and restate as follows: [2]

[1] Although SunTrust Bank, as a result of a merger, has changed its name to Truist Bank, for convenience and clarity, we will refer to this defendant/appellee as SunTrust.

[2] In her brief, Ms. McCauley frames her questions presented as follows:

1. Was the trial court's denial of the Appellant's Request for Default (& Judgment) without granting and entering a Default in this case legally correct when Maryland Rule 2-613(b) requires the trial court to enter default on written request of the plaintiff when the time for a pleading has expired?
2. Was the trial court's granting of the Motion to Dismiss for the defendant, Selene Finance LP, legally correct under Maryland Rule 2-322 which requires them to file the stated defense either before the answer is due or with the answer, which was not completed within the thirty (30) day time period after the service of the original complaint?
3. Was the trial court's granting of the Motion to Dismiss legally correct under Maryland Rule 2-322 with regard to the defendants (SunTrust not Truist, Luke Petersen, Sunita Seth,

(continued)

1. Did the circuit court err in failing to enter default relief against Selene?
2. Did the circuit court err in dismissing the complaint against SunTrust, Mr. Petersen, and Selene without leave to amend?

For reasons that follow, we conclude that the circuit court did not err in denying default relief or in dismissing all counts without leave to amend.

BACKGROUND

On January 19, 2023, Ms. McCauley filed her complaint against SunTrust, Mr. Petersen, Selene, and other unnamed individuals who were later identified but not served.[3] On March 31, 2023, after unsuccessfully seeking default relief against Selene, Ms. McCauley filed the Amended Complaint at issue here. After the circuit court granted motions to dismiss by SunTrust, Mr. Petersen, and Selene, without leave to amend, Ms. McCauley noted this timely appeal.

In her Amended Complaint, Ms. McCauley alleges that in 2003, she accepted two loans from SunTrust, securing both with her residential property in Knoxville, Maryland (the "Property"). For each loan, she executed a promissory note and deed of trust in favor of SunTrust. We shall refer to these as the First Loan/Mortgage and the Second

Meenakashi Sharma) when their only argument was that there was a discrepancy in the way payments were being made by the plaintiff?

4. Was the trial court's dismissal of the Amended Complaint with no leave to amend legally correct under Maryland Rule 2-341 when the plaintiff filed the Amended Complaint within the time limits specified in the rule and did not change the cause of action or operative material circumstances[?]

[3] Ms. McCauley also sued two other SunTrust employees, but neither was personally served, so neither is a party to the judgment or this appeal.

Loan/Mortgage. Under both loans, Ms. McCauley's monthly payments were due on the first day of each month and treated as late after the 15th of the month, triggering late fees and other default remedies.

Ms. McCauley alleges that "on many occasions [she] made payments as late as the thirty-first (31st) of the month without any reports of lateness being forwarded to the credit reporting bureaus" and that SunTrust "accepted this course of conduct by" her. But after merging with BB&T Bank to form Truist "in late 2019 or early 2020[,]" SunTrust, "in bad faith and with an intent to harm, then blocked [her] from making an online payment that she ha[d] completed on many occasions, in the past."

On her First Loan, Ms. McCauley "attempted to make this payment at the end of February for the February first (1st) payment but was blocked by [SunTrust] from completing the transaction[.]" Then, "on March 2, 2020," SunTrust "accepted a check payment, via teller transaction . . . at the Rosemont branch[.]" Although this was after both her February and March payments were due, Ms. McCauley alleges she intended that check to be "for the February 1, 2020, payment[.]" The amount of that check, she contends, "was for a regular monthly payment ($694.97) and some of the late fees owing ($60.03) for a total of $755.00."

Sometime after SunTrust sent this check to its "Payment Processing Office" and "received the funds in their bank account from [Ms. McCauley's] financial institution and personal checking account[,]" Ms. McCauley alleges that SunTrust "sent [her] a check for $755.00 on their bank account which was returned to them by [her] VOIDED."

Eventually, however, SunTrust "accepted this payment for February 1, 2020" on the First Loan.

On March 13, 2020, at the same branch, Ms. McCauley alleges that she attempted another payment:

> During this visit Mr. Petersen stated before the teller transaction that they would not accept [Ms. McCauley's] check; while the teller completed their payment transaction Mr. Petersen stood inside the teller area next to the processing teller and another employee stood outside close to [Ms. McCauley] watching the transaction. This payment check was not sent through [SunTrust's] Payment Processing Office and to [Ms. McCauley's] knowledge is still being held at the Rosemont Branch located in Frederick, MD, negligently and with an intent to harm [Ms. McCauley]. From this circumstance [SunTrust] is claiming that [Ms. McCauley] did not make the March 1, 2020, payment (1st Mortgage, acct # …7907).

SunTrust then notified Ms. McCauley by mail that she had to bring her account current by April 11, 2020 to avoid default remedies, including foreclosure proceedings. Yet, Ms. McCauley alleges by that time, she had already:

> made the following payments on this account which brought this account in current payment status:
>
> a. March 2, 2020, for the February 1, 2020, payment, in the amount of $755.00 which included the regular monthly payment ($694.97) and some of the late fees ($60.03) (1st Mortgage, acct #...7907).
>
> b. March 13, 2020, for the March 1, 2020, payment in the amount of $694.97 which is a regular monthly payment. This payment was withheld from the [SunTrust] Payment Processing Office by [SunTrust]; Luke Petersen; Sunita Seth . . . and/or other unknown/unnamed individual employees (1st Mortgage, acct #...7907).

c. March 30, 2020, for the April 1, 2020, payment, in the amount of $885.85 for the regular monthly payment ($711.28) and the remainder of all late fees ($174.57) (1st Mortgage, acct #...7907).

While the dispute over her loan account continued, Ms. McCauley alleges, she made additional payments. Even though her March 13 check was never returned to her, she alleges that she continued to make monthly payments that were timely but improperly credited. She made another payment on April 30, 2020, intended as payment of her May 1 obligation, but SunTrust and its agents did not submit that check to its Payment Processing Office. According to Ms. McCauley, beginning with that payment, and continuing through September 2021, even though SunTrust received all payments "before the thirty (30) day late period or on time at the first day of each month[,]" SunTrust placed her payments into a "suspense fund instead of giving [her] credit for making [] mortgage payments[.]"

Meanwhile, SunTrust charged her late fees and sent "negative late payment information to the credit reporting bureaus," even though her payments either had "been received before the thirty (30) day late period or [were] on time on the first day of each month." During an in-person appointment with SunTrust in November 2021 and in ensuing mail, Ms. McCauley alleges she was advised that the First Loan was in default and notified of her delinquency and options for avoiding foreclosure.

Selene became involved in servicing the First Loan and Mortgage after SunTrust sold that debt to "U.S. Bank Trust National Association" in January 2022 and "relayed to the new owners/trustees that the mortgage was in default[.]" As part of the debt transfer,

Ms. McCauley alleges that SunTrust provided Selene with funds received from her, which were deemed insufficient under the payment and default terms of the loan, then returned to her.

According to Ms. McCauley, after loan "servicing was assigned to Selene," Selene "failed to respon[d] to [Ms. McCauley's] request to review the payments made during 2020, 2021, January 1, 2022, and make corrections to their collection process." On April 11, 2022, and again on June 22, 2022, Selene notified Ms. McCauley of its intent to foreclose under the First Mortgage.

With respect to her Second Loan and Mortgage, Ms. McCauley alleges that she paid off the remaining principal, interest, and recording fees by November 2, 2021, but SunTrust also improperly placed those funds in a suspense account. Ms. McCauley submitted a check for $1,127.76 in October 2021, but Selene treated that as insufficient to pay off the Second Loan and returned that check to her. When Ms. McCauley submitted another check for $58.55, that payment also was treated as insufficient to satisfy her obligation. Ms. McCauley alleges that SunTrust continued to charge late fees after November 16, 2021, and sent negative late payment information to credit reporting bureaus since February 2022.

In June 2022, SunTrust notified Ms. McCauley of foreclosure "alternatives if she is unable to bring her payments current" and also notified the Internal Revenue Service via a 1098 Mortgage Form that the outstanding balance on the Second Loan was $11,674.22. Despite these notices, Ms. McCauley alleges that on August 26, 2022, SunTrust notified her that it was releasing the lien on the Second Deed of Trust and

notified the credit bureaus that this account had been "'charged off' for $1,069.00." Yet, on September 27, 2022, Ms. McCauley alleges that SunTrust began "trying to intimidate [her] by saying that [she] is still responsible for paying this account . . . and that she may live in the house until . . . such time they decided to sell the residence[.]"

DISCUSSION

I. THE COURT DID NOT ERR IN FAILING TO ENTER DEFAULT RELIEF AGAINST SELENE.

Ms. McCauley contends that the circuit court erred in denying her request for default relief against Selene. We disagree.

Ms. McCauley misunderstands the default provisions of the Maryland Rules, which bifurcate the preliminary entry of a default *order* from the final entry of a default *judgment*. Under Md. Rule 2-613(b), "[i]f the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default." After the clerk gives notice that a default order has been entered, "the defendant may move to vacate the order of default within 30 days after its entry[,]" by "stat[ing] the reasons for the failure to plead and the legal and factual basis for the defense to the claim." Md. Rule 2-613(d). Only when there is no such motion to vacate or when such a motion has been denied can the court proceed to "enter a judgment by default that includes a determination as to the liability and all relief sought[.]" Md. Rule 2-613(f).

Here, the record shows that on March 3, 2023, Selene requested a two-week extension for responding to Ms. McCauley's initial complaint, in order to investigate the

claims asserted by her. Counsel stated that "this file has recently been escalated to [the] firm" and that "we are diligently working to investigate the allegations in the Complaint and compile the necessary information and documents to" compose its "responsive pleading[,]" but that Selene's response was due that day and attempts to reach Ms. McCauley "multiple times this week" regarding an extension had been unsuccessful. Selene stated that it was "submitting this formal request" to the court for "an extension of time, until March 17, 2023, to permit [Selene] to file its response to the Complaint." Selene filed its motion to dismiss the Complaint on March 10, 2023.

On March 14, the court, noting that filing, denied Ms. McCauley's request for default. Ms. McCauley moved for reconsideration and then, while that motion was pending, filed her Amended Complaint on March 31. The court denied Ms. McCauley's motion for reconsideration on April 1, 2023. In these circumstances, where Selene's pleadings supported a determination that there were no grounds for a default order, much less a default judgment, the circuit court did not err in denying Ms. McCauley's requests for default relief against Selene.

II. THE COURT DID NOT ERR IN DISMISSING THE AMENDED COMPLAINT.

Ms. McCauley contends that the circuit court erred in dismissing her complaint. The Supreme Court of Maryland recently summarized the standards governing review of a judgment of dismissal:

> Pursuant to Maryland Rule 2-322(b)(2), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. The court must read the complaint in the light most favorable to the plaintiff, and accept as true the well-pleaded facts and the reasonable

> inferences drawn from such facts. The court may dismiss the complaint only if the allegations and permissible inferences drawn therefrom fail to state a cause of action. The court's ruling is a question of law that appellate courts review without deference.

Eastland Food Corp. v. Mekhaya, 486 Md. 1, 20 (2023) (internal citations omitted).

Applying these standards, we must determine whether the circuit court "was legally correct." *Blackstone v. Sharma*, 461 Md. 87, 110 (2018) (internal citations and quotations omitted); *see Est. of Brown v. Ward*, 261 Md. App. 385, 409 (2024); *Cecil v. Am. Fed'n of State, County, & Mun. Emps.*, 261 Md. App. 228, 247 (2024). We address the dismissal of Ms. McCauley's five counts in turn, explaining why the circuit court did not err in concluding that none states a claim upon which relief may be granted.

A. Count I: Intentional Infliction of Emotional Distress

There are four elements to a claim for intentional infliction of emotional distress ("IIED"):

> (1) The conduct must be intentional or reckless; (2) [t]he conduct must be extreme and outrageous; (3) [t]here must be a causal connection between the wrongful conduct and the emotional distress; (4) [t]he emotional distress must be severe. . . . [E]ach of these elements must be pled and proved with specificity.

Manikhi v. Mass Transit Admin., 360 Md. 333, 367 (2000) (internal quotation marks and citations omitted).

Detailing her course of dealing with SunTrust, Mr. Petersen, and Selene, Ms. McCauley alleged that these defendants/appellees falsely claimed that she was in default on both loans, then wrongfully asserted rights and remedies under the First and Second

Mortgages. Ms. McCauley contends that even after she brought her accounts current, her loans were mishandled and collection attempts continued. In the final paragraph of this count, Ms. McCauley alleged:

> The Defendant's (SunTrust now Truist, Luke Petersen, **Sunita Seth/AKA:** John/Jane Doe #1), **Meenakashi Sharma (AKA:** John/Jane Doe #2), **and/or any other unknown/unnamed individual employees of SunTrust now Truist,** Selene Finance LP) conduct was intentional, reckless, extremely outrageous causing [sic] the Plaintiff severe emotional distress.

(emphasis in original).

This conclusory language is insufficient to satisfy the high pleading threshold for IIED. As the Supreme Court has explained, a plaintiff is required to plead supporting facts that, assuming their truth, could constitute outrageous conduct that causes a severe level of emotional distress.

Maryland courts have narrowly defined "extreme and outrageous" conduct to be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Batson v. Shiflett*, 325 Md. 684, 735 (1992). *See Caldor, Inc. v. Bowden*, 330 Md. 632, 642-45 (1993); *Carter v. Aramark Sports & Entertainment Servs., Inc.*, 153 Md. App 210, 246 (2003). For example:

> Previous cases indicate the high burden imposed by the requirement that a plaintiff's emotional distress be severe.[] *See Caldor, Inc. v. Bowden*, 330 Md. 632, 642-45 (1993) (affirming grant of judgment n.o.v. on IIED count because, although sixteen year old store employee was falsely imprisoned for four hours, coerced into signing confession that he had stolen money, and maliciously prosecuted, the

> evidence that he went to a psychologist one time, felt insecure and incapable of trusting others, and suffered weight loss did not suffice to show severe distress); *Harris* [*v. Jones*, 281 Md. 560, 572 (1977)] (affirming grant of judgment n.o.v. because, although other employees and a supervisor mimicked, harassed, and shamed plaintiff regarding stuttering defect, evidence that he felt humiliated and that his speech impediment was exacerbated did not suffice to show severe distress); *Vauls v. Lambros*, 78 Md. App. 450, 460-61 (1989) (affirming grant of judgment n.o.v. on ground that Jehovah's witness, when "disfellowshipped" and harassed by defendant, failed to show that her grief, stigmatization, and destruction of her own property constituted severe emotional distress); *Hanna v. Emergency Med. Assocs.*, 77 Md. App. 595, 609 (stating in *dicta* that trial court was correct to grant judgment on IIED count because severe depression, humiliation, and anxiety over career prospects and finances suffered by physician allegedly fired for filing civil rights claim against employer would not rise to level of severe emotional distress), *cert. denied*, 315 Md. 691 (1989); *Leese v. Baltimore County*, 64 Md. App. 442, 472 (affirming dismissal for failure to state a claim when terminated employee's complaint alleged that he suffered "'physical pain, emotional suffering and great mental anguish'" because these allegations fell "short of the 'evidentiary particulars' that must be pleaded to show a *prima facie* case of severe injury" (quoting *Harris*, 281 Md. at 572)), *cert. denied*, 305 Md. 106 (1985), *overruled on other grounds by Harford County v. Town of Bel Air*, 348 Md. 363 (1998); *Moniodis v. Cook*, 64 Md. App. 1, 15-16 (holding that trial court erred in submitting to jury IIED claims for certain terminated employees forced to take polygraph exams because evidence of increased smoking, lost sleep, and hives did not indicate that any of these plaintiffs was "emotionally unable, even temporarily, to carry on to some degree with the daily routine of her life"), *cert. denied*, 304 Md. 631 (1985).

Manikhi, 360 Md. at 368-71.

Consistent with this severity requirement, the following allegations in *Manikhi* were insufficient to state a claim for IIED based on that employer's failure to protect the plaintiff from sexual harassment in the workplace by another employee:

> 93. The respondents engaged in a continuing pattern of intentional and reckless conduct, that was extreme and outrageous, causing Ms. Manikhi severe emotional distress.
>
> 94. The acts of the respondents, including knowing refusal to protect Ms. Manikhi from Defendant Ovid's physical and verbal attacks, rise to the level of extreme and outrageous conduct that is beyond all possible bounds of decency . . . atrocious and unitarily [sic] intolerable in a civilized society.
>
> 95. MTA knew of these acts, which rose to the level of physical conduct and caused Ms. Manikhi to seek medical treatment.

Id. at 367-68 (cleaned up).

Ms. Manikhi, in other incorporated portions of her complaint, further "allege[d] that she suffered fear at work, that the misconduct required her constantly to be alert, and that it forced her to leave Kirk Avenue for another work site, although she later returned to Kirk Avenue." *Id*. at 368. In addition, she pointed to the principle that "'in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the [severe emotional] distress has existed.'" *Id*. (quoting *Harris*, 281 Md. at 571 and *Restatement (Second) of Torts* § 46 cmt. j (1965)).

The Supreme Court held that the "conclusory allegations within the IIED count fail to state a claim, and there are no facts alleged anywhere in the amended complaint describing conduct of the MTA, its Officials, or the Union Officials that is 'extreme and outrageous.'" *Id*. at 368. Even assuming "that [the harassing employee's] conduct was

extreme and outrageous[,]" the Court in *Manikhi* held that "the amended complaint fails to plead facts that, if true, would rise to the level of severe emotional distress[,]" *id*., because it:

> fails to allege a "*severely* disabling emotional response," *Harris*, 281 Md. at 570, of the sort that rises above the allegations of emotional injury rejected in the cases cited. Nowhere does the complaint state with reasonable certainty the nature, intensity or duration of the alleged emotional injury. *See Moniodis*, 64 Md. App. at 15 (noting that "severity [of emotional distress] is measured by factors including the intensity of the response as well as its duration" (citing *Harris*, 281 Md. at 571)). For example, [Ms.] Manikhi *does not state whether the medical treatment that she was forced to seek was of a psychological or physical nature, how long the treatment lasted, whether it was successful or is still continuing, whether it was periodic or intensive, and so forth.*
>
> Without such "evidentiary particulars," *Harris*, 281 Md. at 572, the allegation that Manikhi was forced to seek medical treatment is akin to the plaintiff's assertion in *Bowden*, *supra*, that he went to a psychologist one time. In that case, this Court affirmed the trial court's grant of a judgment notwithstanding the verdict. On the same basis, and after taking into account all other incorporated allegations and inferences to be drawn therefrom, we affirm the dismissal of [Ms.] Manikhi's IIED count.

Manikhi, 360 Md. at 370 (first emphasis in original and subsequent emphasis added).

Here, as in *Manikhi*, Ms. McCauley's conclusory allegations do not meet the pleading standards for either outrageous conduct or severe emotional distress. The Amended Complaint does not allege that SunTrust, Mr. Petersen, or Selene acted so outrageously in handling her loans, whether by refusing to accept payments, or by placing funds into a suspense account, as to elevate this financial dispute between

borrower and lender into behavior that is "extreme" and "atrocious" enough to be "beyond all possible bounds of decency." *See Batson*, 325 Md. at 735 (internal citations and quotations omitted).

Nor are there any allegations that could support a finding that Ms. McCauley suffered an extraordinary level of emotional distress based on the manner in which SunTrust, Selene, and Mr. Petersen handled her loans. Notably, this is not the type of conduct that is, on its face, of a "character" that amounts to evidence of "severe emotional distress." *See Manikhi*, 360 Md. at 368; *cf. Carter*, 153 Md. App. at 247 (holding that allegations that stadium vendors engaged in theft scheme were not sufficient to establish "extreme and outrageous conduct"). Indeed, Ms. McCauley does not allege that she suffered "a '*severely* disabling emotional response'" requiring medical treatment or otherwise describe "the nature, intensity, or duration of [her] alleged [] injury." *See Manikhi*, 360 Md. at 370 (emphasis in original) (internal citations omitted).

Lacking any detail describing conduct that meets the standards for outrageous behavior or any "disabling" injury that qualifies as severe emotional distress, Ms. McCauley's Amended Complaint falls far short of the pleading specificity mandated by *Manikhi* and other IIED cases. Even assuming, as we must, that the defendants made false statements about her loan status, we still have not been cited to any precedent for treating such disputed financial statements as so "outrageous" as to support a claim for IIED. Nor do we discern any factual basis for Ms. McCauley's claim that she suffered severe emotional injury. Because the facts pleaded here do not meet the predicate for IIED, the circuit court did not err in dismissing this count.

Ms. McCauley's reference to intentional or negligent misrepresentation in her Amended Complaint does not persuade us otherwise. Although unclear, to the extent she seeks to predicate her IIED claim on misrepresentations regarding her loan status, her allegations nevertheless do not establish an alternative factual basis for this IIED count. To establish an actionable negligent misrepresentation, Ms. McCauley had to plead and prove that SunTrust, Mr. Petersen, and/or Selene owed her a duty of care, made a false statement of material fact, with the intent that she would act upon that misrepresentation and "knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury;" and that Ms. McCauley did reasonably rely on that misrepresentation, in a manner that proximately caused her injury. *White v. Kennedy Krieger Institute, Inc.*, 221 Md. App. 601, 641 (2015).

To establish an actionable intentional misrepresentation, Ms. McCauley had to plead and prove that SunTrust, Mr. Petersen, and/or Selene made a false statement of material fact, with the intent that she would act upon that misrepresentation and with knowledge of the statement's falsity or "a reckless indifference to its truth;" and that Ms. McCauley did reasonably rely on that misrepresentation in a manner that proximately caused her injury. *White*, 221 Md. App. at 641. *See also Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 337 (1982); MPJI-Cv 11:3. Because these elements must be pleaded "with specificity[,]" Ms. McCauley was required to identify "the allegedly false statement" and "facts supporting reasonable reliance or damages caused by the statement." *Doe v. Doe*, 122 Md. App. 295, 359 (1998), *rev'd on other grounds*, 358 Md. 113 (2000). Merely labeling "acts, conduct or transactions as fraudulent . . . without

alleging facts which make them such," is not sufficient "to state a cause of action." *Greenbelt Homes, Inc. v. Bd. of Ed. of Prince George's County*, 248 Md. 350, 360 (1968). The Court stated:

> Characterizations of acts or conduct, no matter how often or how strongly adjectively asserted, are without supporting statements of fact (not evidence), conclusions of law or expressions of opinion. Allegation of fraud or characterizations of acts, conduct or transactions as fraudulent, arbitrary, capricious or as constituting a breach of duty, without alleging facts which make them such, are conclusions of law insufficient to state a cause of action.

Id.

Here, even assuming that one of the defendants/appellees made a false statement, that representation could not be a predicate for Ms. McCauley's IIED claim unless it was intentionally made with knowledge of its falsity or unless it was made with knowledge that the plaintiff would likely rely on the statement, causing loss or injury. Given the pleading deficiencies in identifying the specific false statements and the underlying facts making statements by each of these defendants/appellees both deliberately deceptive and injurious, the circuit court did not err in dismissing Ms. McCauley's IIED claim.

B. Count II: Defamation and Count V: Invasion of Privacy

"[T]o present a prima facie case of defamation, a plaintiff must establish four elements: (1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff thereby suffered harm." *Offen v. Brenner*, 402 Md. 191, 198 (2007); *see* MPJI-Cv 12:1. To be actionable as defamatory, a statement must

"tend[] to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Batson v. Shiflett*, 325 Md. 684, 722-23 (1992) (citation omitted). "A false statement is one that is not substantially correct." *Id*. at 726 (citation omitted). For statements about a private individual, the plaintiff must plead and prove that "the party making the statement should have known that [it] was false," MPJI-Cv 12:2, and that the plaintiff suffered "actual damages in the form of financial loss, injury to reputation, mental anguish, or some other tangible injury." MPJI-Cv 12:6.

A separate cause of action for invasion of privacy remedies statements that wrongfully "place[] another person before the public in a false light." MPJI-Cv 25:4. The elements of that tort are that (1) "the false light in which the other person was placed would be highly offensive to a reasonable person, and" (2) the defendant "had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *See Bagwell v. Peninsula Regional Med. Ctr.*, 106 Md. App. 470, 513-14 (1995) (citing *Restatement (Second) of Torts* § 652E).

In support of this claim, Ms. McCauley alleges that SunTrust and Selene reported false information "to third parties (credit reporting agencies, other banking agencies) indicating that [she] does not pay [her] mortgage bills as agreed, causing harm to [her] financial reputation." SunTrust and Selene counter that to the extent Ms. McCauley admits that she made late payments and that there were ongoing disputes over whether and when she cured her arrearages, any such late payment statements to credit reporters could not be knowingly false and actually harmful. Given Ms. McCauley's

acknowledgements that her payments were late and being held in a suspense account before being returned to her as insufficient to satisfy her arrearage, SunTrust and Selene contend that she did not sufficiently plead either the falsity of specific statements or that such statements were made with knowledge of their falsity or reckless disregard for truth.

We agree that Ms. McCauley fails to allege with sufficient specificity that she suffered injury based on late payment reports to credit bureaus that qualify as false statements by these defendants/appellees. As Ms. McCauley states in her Amended Complaint, she had a long history of late payments before March 2020. Although she alleges that SunTrust and Selene made late payment statements to credit bureaus, she identifies only one particular statement, made after she paid off her Second Loan in November 2021, and does not otherwise allege that either SunTrust or Selene knew that those statements were false or made them with reckless disregard for the truth. There were no allegations involving statements made by Mr. Petersen to third parties. Nor does Ms. McCauley, given her history of late payments and the ongoing account disputes, explain how her financial reputation was materially harmed as a result of any such statements. Absent the necessary specificity on these elements, the court did not err in dismissing Ms. McCauley's defamation and invasion of privacy claims.

C. Count III: Theft

Although there is no civil cause of action for theft,

> [c]onversion is an intentional tort, consisting of two elements, a physical act combined with a certain state of mind. The physical act can be summarized as any distinct act of ownership or dominion exerted by one person over the

> personal property of another in denial of his right or inconsistent with it. This act of ownership for conversion can occur either by initially acquiring the property or by retaining it longer than the rightful possessor permits. . . . The gist of a conversion is not the acquisition of the property by the wrongdoer, but the wrongful deprivation of a person of property to the possession of which he is entitled.
>
> To establish the element of intent for conversion, the evidence must show that the defendant possessed an intent
>
> > to exercise a dominion or control over the goods which is in fact inconsistent with the plaintiff's rights. The defendant may have the requisite intent even though he or she acted in good faith and lacked any consciousness of wrongdoing, as long as there was an intent to exert control over the property.

Yuan v. Johns Hopkins Univ., 452 Md. 436, 463 (2017) (quoting *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 261-63 (2004) (internal quotation marks and citations omitted)).

Treating Ms. McCauley's allegation that SunTrust and Selene engaged in theft as a civil conversion claim, we agree with the circuit court that the Amended Complaint does not state a claim upon which such relief may be granted. At the heart of Ms. McCauley's Amended Complaint are her allegations that SunTrust and Selene refused to credit payments that she voluntarily made under her two loans. Ms. McCauley does not identify any funds that belong to her but were wrongfully and permanently retained by SunTrust, Mr. Petersen, or Selene. To the contrary, although she complains that her payments were mishandled, she does not deny that those funds were either owed under

the terms of her two loans or eventually returned to her. Consequently, the circuit court did not err in dismissing Ms. McCauley's "theft" claim.

D. Count IV: Fraud

To the extent Ms. McCauley seeks to state a fraud claim separate from her misrepresentation allegations in Count I, the same pleading particularity principles apply. *See generally Thomas v. Nadel*, 427 Md. 441, 453 (2012) ("seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent"). Specifically, Ms. McCauley was required to identify not only each false statement of material fact, but also who made it, when it was made, how it was made (*i.e.*, orally, in writing, etc.), facts indicating that defendant either knew that the statement was false or made it with reckless disregard for its truth, and that Ms. McCauley reasonably and detrimentally relied upon such false statements in a manner that harmed her.[4] *See McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 528 (2014).

Ms. McCauley does not identify specific statements that she contends were false and injurious. Instead, she points generally to representations, made in mail and

[4] The pattern instructions for "deceit" require a plaintiff to show that:

> (1) the defendant made a false representation of a material fact;
>
> (2) the defendant knew of its falsity or made it with such reckless indifference to the truth that it would be reasonable to charge the defendant with knowledge of its falsity;

(continued)

meetings, about the "time line [sic] for bringing any payment(s) up to date." The Amended Complaint does not specify what was false about such "timeline" statements, much less that they were made with knowledge of such falsity or reckless disregard for truth and the intent to defraud, or that they induced actual, reasonable, and detrimental reliance. Indeed, Ms. McCauley does not allege how any such statements by SunTrust, Mr. Petersen, or Selene induced her to make payments that were either not owed on her two loans or not credited or returned. Because the Amended Complaint lacks the pleading specificity required to state a fraud claim, the circuit court did not err in dismissing this count.

E. Dismissal Without Leave to Amend

Incorporating her prior pleadings by reference, Ms. McCauley complains that she was not given leave to amend her Amended Complaint. Although her brief focuses on the timing of when she filed the Amended Complaint, that is not the standard by which we evaluate a decision not to permit a plaintiff to amend her complaint. Instead, "[d]enial of leave to amend is appropriate if the amendment would result in prejudice to the other party, undue delay, or where amendment would be futile because the claim is irreparably flawed." *Eastland Food Corp.*, 486 Md. at 20.

> (3) the defendant intended that the plaintiff would act in reliance on such statements;
>
> (4) plaintiff did justifiably rely on the representations of the defendant; and
>
> (5) plaintiff suffered damages as a result of that reliance.

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Here, we have not been cited to anything indicating that the timing of Ms. McCauley's amendment of her complaint was a factor in the court's ruling. In any event, the record shows that although Ms. McCauley amended her complaint in response to the defenses asserted by Selene and SunTrust/Mr. Petersen in their motions to dismiss her original complaint, she did not request a second opportunity to amend. We cannot say that the court's failure to offer, on its own initiative, another opportunity where none was requested constitutes an abuse of discretion, particularly given the nature and number of the pleading deficiencies warranting dismissal.

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