Circuit Court for Montgomery County
Case No. 478191V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1373

September Term, 2021

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ALAN WORDEN, ET AL.

v.

3203 FARMINGTON LLC, ET AL.

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Arthur,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zic, J.

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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. Rule 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.

This case arises from a two-year lease agreement between appellants, Alan Worden and Victoria Powers (the "Tenants"), and appellees, 3203 Farmington LLC ("Farmington") and Zak Elyasi ("Mr. Elyasi").[1] In January 2020, the Tenants filed suit against Mr. Elyasi and Farmington for multiple claims related to the parties' lease agreement. In April 2020, Farmington filed a counterclaim for breach of contract. The Tenants subsequently filed three amended complaints, and the Circuit Court for Montgomery County granted Mr. Elyasi and Farmington's motion to dismiss for all except one of the Tenants' claims. The Tenants filed a fourth amended complaint alleging violation of the Maryland Consumer Protection Act ("MCPA"), and the circuit court granted Farmington's motion to strike the fourth amended complaint. Following trial, a jury verdict was returned in favor of Farmington on the remaining breach of contract claim. The Tenants now appeal the circuit court's dismissal of several claims in the third amended complaint and the circuit court's decision to grant the motion to strike the fourth amended complaint.

[1] The Tenants named Mr. Elyasi, a managing member of Farmington, in his individual capacity in the negligence and fraud counts raised in the third amended complaint.

## QUESTIONS PRESENTED

The issues on appeal have been rephrased and reframed as follows:[2]

1. Whether the circuit court erred by finding the Tenants did not sufficiently plead that Mr. Elyasi and Farmington were negligent in fulfilling duties to the Tenants.

2. Whether the circuit court erred by finding the Tenants did not sufficiently plead that Farmington breached the statutory warranty of habitability.

3. Whether the circuit court erred by finding the Tenants did not sufficiently plead that Mr. Elyasi and Farmington fraudulently induced the Tenants into entering the lease agreement.

4. Whether the circuit court abused its discretion in granting Farmington's motion to strike the Tenants' fourth amended complaint.

For the reasons that follow, we affirm the circuit court on questions one, two, and four. On question three, we affirm in part and reverse in part. We also vacate the judgment in favor of Farmington.

## BACKGROUND

In April 2019, the Tenants entered into a rental agreement with Farmington to lease 3203 Farmington Drive (the "Premises"), a single-family home in Chevy Chase, Maryland, from June 1, 2019, through May 31, 2021.[3] An addendum to the lease

[2] The Tenants phrased the issues as follows:

1. Did the circuit court err in dismissing Counts II, V, and VI of the third amended complaint?
2. Did the circuit court abuse its discretion in striking the fourth amended complaint?

[3] Among other things, the rental agreement stipulated that the Tenants were responsible "after the first thirty (30) days of occupancy, for general elimination of household pests," and Farmington was responsible for "replacement of or repairs to

required the Tenants to pay four months' rent in advance plus a security deposit equal to one month's rent for a total of $78,500.[4] The addendum also required Farmington to address items on an attached "punch list" prior to June 1, 2019.[5] Upon completion of the "punch list" items, the Tenants agreed to wire Farmington an additional $32,000.[6] All parties signed the addendum; for Farmington, the Lease was signed "3203 Farmington LLC" and initialed "3FL."

On January 24, 2020, the Tenants sued Mr. Elyasi and Farmington for breach of contract, breach of the implied warranty of habitability under Montgomery County Code § 29-30, and charging an excessive security deposit. On January 31, 2020, Farmington filed a failure to pay rent action against the Tenants. On February 4, 2020, the Tenants notified Farmington, through counsel, that the Tenants would vacate the Premises before March 1, 2020. The Tenants vacated the Premises in early March 2020, and the failure to pay rent action was dismissed. Farmington filed a counterclaim against the Tenants for breach of contract and moved to dismiss the Tenants' complaint. The Tenants amended their original complaint, and Mr. Elyasi and Farmington again moved to dismiss. The

structural elements of the [Premises]." The rental agreement also notified the Tenants of their right to make repairs and deduct any costs from rent as approved by the Director of the Department of Housing and Community Affairs.

[4] The Tenants wired $78,500 to Farmington on April 23, 2019.

[5] The Tenants' "punch list" included, among similar items, blackout shades with white exterior in the bedrooms, "simple" shelving in the kitchen pantry, and a deep clean following the completion of all other action items.

[6] The Tenants wired $34,000 to Farmington on June 6, 2019; $16,000 on October 19, 2019; and $16,000 on November 25, 2019.

Tenants amended their original complaint two additional times following Mr. Elyasi and Farmington's responsive motions to dismiss. Each time, the Tenants added additional legal claims against Mr. Elyasi and Farmington.

***The Tenants' Third Amended Complaint***

On May 29, 2020, the Tenants filed the third amended complaint.[7] The Tenants first alleged Mr. Elyasi and Farmington did not possess a rental license issued by the Montgomery County Department of Housing and Community Affairs at any time until after the Tenants filed their first complaint. The Tenants also claimed that after moving into the Premises in June 2019, they "encountered a variety of serious problems." Specifically, the Tenants alleged experiencing issues with the heating, ventilation and cooling ("HVAC") system, smoke and carbon monoxide detectors, the main breaker box, and the clothes dryer.[8] The Tenants further claimed they regularly encountered pests and rodents in the Premises and eventually remediated the issues at their own expense because of Mr. Elyasi and Farmington's refusal to do so. The Tenants restated and incorporated all preceding paragraphs for every subsequent count.

[7] The Tenants' third amended complaint raised the following claims: breach of contract (Count I); breach of warranty of habitability (Count II); charging and collecting excessive security deposit (Count III); retaliatory eviction (Count IV); negligence (Count V); fraud in the inducement (Count VI); and wrongful withholding of security deposit (Count VII).

[8] Additionally, the Tenants alleged missing hardware on an exterior door, broken lights and doors, broken and improperly installed flooring, plumbing issues, missing cable outlets, and improper painting and sealing of exterior walls.

To support the breach of contract count against Farmington, the Tenants pled that Mr. Elyasi and Farmington "breached the terms of the Lease agreement by representing that (1) the Premises was constructed consistent with Montgomery County Code and/or Maryland law, and the requisite standard acceptable in the industry; and (2) representing that the Premises was in a clean, safe and sanitary condition, free of rodents and vermin, in a habitable condition, and in complete compliance with all applicable law." The Tenants also asserted that Mr. Elyasi and Farmington "fail[ed] to properly maintain the Premises consistent with all applicable provisions of federal, state, and county law," and "leas[ed] the Premises without first obtaining a rental license."

To support the breach of warranty of habitability[9] count against Farmington, the Tenants claimed they "experienced issues with rodents and insects, heating and cooling issues, dryer ventilation, and issues with unknown gas leaks." Additionally, the Tenants alleged that Mr. Elyasi and Farmington "failed to adequately install and/or repair smoke and carbon monoxide detectors and failed/refused to remediate issues with exposed wires and an improperly labeled/unlabeled breaker box." As a result of these "failures and refusals," the Tenants alleged they were harmed by "pay[ing] rent for an uninhabitable dwelling, pay[ing] excessive heating and cooling costs . . . and pay[ing] an attorney to pursue claims and defend claims against [Mr. Elyasi and Farmington]." The Tenants also claimed consequent "personal injury, inconvenience, fear, mental anguish, loss of sleep, aggravation, embarrassment, frustration, humiliation and emotional distress."

[9] The Tenants cite Montgomery County Code § 29-30 for the breach of warranty of habitability count.

To support the negligence count against Mr. Elyasi and Farmington, the Tenants pled that Mr. Elyasi and Farmington failed to "provide and/or maintain the Premises in a safe, healthy, and habitable manner" and "in accordance with applicable laws and codes." As a result, the Tenants claimed "actual damages, costs and fees by way of the payment of rent and out of pocket costs for inspections and repairs."

To support the fraud in the inducement count, the Tenants alleged that Mr. Elyasi and Farmington knew the representations that the Premises was in a habitable condition and was properly licensed were false, but nonetheless made these representations to induce the Tenants into prepaying more than two months' rent and entering into the lease agreement. First, the Tenants pled that "[p]ursuant to the Lease Agreement (addendum), paragraph 1, [Mr. Elyasi and Farmington] represented to [the Tenants] that the Premises and all common areas were in a clean, safe, and sanitary condition, free of rodents and vermin, in a habitable condition, and in complete compliance with all applicable law," but that Mr. Elyasi and Farmington knew the Premises was not in such condition when the lease agreement was executed. The Tenants stated that Mr. Elyasi and Farmington's agreement to complete the "punch list" evidenced that Mr. Elyasi and Farmington knew the Premises was not in habitable condition. The Tenants claimed Mr. Elyasi "had no intention of completing the aforementioned punch list at the time [he] made the representation," and signed the lease agreement "knowing he could not lawfully collect

more than the equivalent of two (2) months' rent per dwelling unit as a security deposit."[10]

Second, the Tenants alleged that "pursuant to the Lease Agreement, paragraph 4, [Mr. Elyasi and Farmington] represented to [the Tenants] that the Premises was licensed in accordance with Montgomery County law," but that it was not, in fact, licensed "until or around January 30, 2020." The Tenants also claimed Mr. Elyasi "intentionally" did not tell the Tenants that the Premises was not in compliance with applicable law because Mr. Elyasi "did not have the funds to complete construction of the Premises . . . ." The Tenants alleged Mr. Elyasi made these representations to persuade the Tenants into "prepaying [Mr. Elyasi] more than" two months' rent and entering into the lease agreement.

***Dismissal of the Negligence, Warranty of Habitability, and Fraud Counts***

On June 12, 2020, Mr. Elyasi and Farmington filed a Motion to Dismiss the Third Amended Complaint. On September 10, 2020, the Circuit Court of Montgomery County heard the parties' arguments on Mr. Elyasi and Farmington's motion to dismiss. Ultimately, the circuit court granted Mr. Elyasi and Farmington's motion to dismiss all the Tenants' claims except for the breach of contract count against Farmington. In dismissing the negligence count, the circuit court found that the Tenants failed to

[10] Alternatively, the Tenants argue that Mr. Elyasi entered into the lease agreement with "reckless indifference" regarding the legality of the security deposit amount.

"establish[] an independent duty that would permit a negligence action."[11] In dismissing the warranty of habitability count, the circuit court cited *Joseph v. Bozzuto Management Company*, 173 Md. App 305 (2007). The circuit court reasoned that, based on the text and structure of Chapter 29 of the Montgomery County Code, the "concept behind this local law was not to create its own cause of action. It is to create an entire . . . vehicle by which [tenants and landlords] have their own tribunal who can reconcile the differences as explained and created by these various sections . . . ." Finally, in dismissing the fraud count, the circuit court determined that the Tenants failed to plead fraud with particularity and pierce the veil of corporate liability.

***The Tenants' Fourth Amended Complaint and Motion to Strike***

On April 19, 2021, the Tenants filed a fourth amended complaint containing two counts against Farmington: breach of contract (Count I); and violation of the Consumer Protection Act (Count II). On April 30, 2022, Farmington filed a Motion to Strike the Fourth Amended Complaint and a separate Answer. Farmington's motion to strike argued the Tenants were required to seek leave from the circuit court prior to amending their complaint because the circuit court had previously dismissed all but one of the counts in Tenants' third amended complaint. Further, Farmington argued that the Tenants' filing of a "fifth complaint . . . in a simple failure to pay rent case" evinced their

[11] Initially, the circuit court stated that "the Economic Loss Doctrine applies in this case . . . . Nothing is plead with particularity and I don't find there could be an independent duty created in this case that (unintelligible) in tort negligence." After clarifying that the court did not "mean to talk about the fraud there," the court again stated that it "find[s] the Doctrine of Economic Loss, I don't believe that in this case the [Tenants] ha[ve] established an independent duty that would permit a negligence action."

"transparently vexatious litigation strategy designed to intimidate [Farmington], drive up the costs of this case, and deplete [Farmington's] resources."

The Tenants' responsive Opposition, filed May 20, 2021, argued that the Tenants were permitted to submit a fourth amended complaint without leave of the circuit court because they did so more than 30 days before the scheduled trial date. Additionally, because the new count in the fourth amended complaint "exclusively rests on the same operative factual pattern that forms the basis for the breach of contract count," the new claim could not intimidate Farmington. The Tenants also argued that the "well-settled" principle that amendments shall be freely granted to promote justice "should not be undermined simply because [Farmington] claims, without any support, that the Consumer Protection Act count is designed to intimidate and deplete its resources."

Farmington filed a timely Reply to the Tenants' Opposition. Again, Farmington argued that the September 2020 dismissal of all except one of the Tenants' claims did not provide leave to amend.[12] In relevant part, Farmington also argued that the doctrine of res judicata barred the Tenants' fourth amended complaint.[13] Finally, Farmington specifically claimed that it would be prejudiced by the Tenants' fourth amended

[12] Farmington also argued that the circuit court's "subsequent order on Plaintiffs' Motion to Alter or Amend the Judgment did not alter any aspect of the September Order."

[13] "[I]n order to serve the interests of finality and avoidance of piecemeal and repetitive litigation among the same parties, the doctrine of res judicata holds that all claims that a plaintiff actually brought and could have brought based on the same operative set of facts are barred." *Walls v. Bank of Glen Burnie*, 135 Md. App. 229, 245 (2000) (citation omitted).

complaint because the complaint added additional factual allegations and a new claim for attorney's fees which, although discovery closed in December 2020, the Tenants waited until April 2021 to seek. The circuit court granted Farmington's Motion to Strike on June 3, 2021.

Following a June 2021 trial, the jury rendered a verdict in favor of Farmington in the amount of $251,457 on the breach of contract claim.

**STANDARD OF REVIEW**

Under Maryland Rule 2-322(b)(2), a trial court may grant a motion to dismiss if a complaint fails to state a claim upon which relief may be granted. *Schisler v. State*, 177 Md. App. 731, 742 (2007). "The standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct." *Id*. (citing *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998)). This de novo review requires the court to "determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Clark v. Prince George's Cnty.*, 211 Md. App. 548, 557 (2013) (quoting *Fioretti*, 351 Md. at 72). Accordingly, an appellate court must "presume the truth of well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." *Id*. "The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010) (citing *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000)). The circuit court's judgment can be affirmed on any ground adequately shown by the record, even one that the circuit court

did not rely on. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (citing *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015)).

Additionally, a trial court may grant a motion to strike "any pleading that is late or otherwise not in compliance with these rules . . . in its entirety." Md. Rule 2-322(e). The decision to grant a motion to strike an amended complaint is "within the sound discretion of the trial court." *Bacon v. Arey*, 203 Md. App. 606, 667 (2012) (quoting *First Wholesale Cleaners, Inc. v. Donegal Mut. Ins. Co.*, 143 Md. App. 24, 41 (2002)). The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[14] has explained that an abuse of discretion exists "where no reasonable person would take the view adopted by the [trial] court[] . . . or when the court acts without reference to any guiding rules or principles." *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 701 (1997)) (internal quotation marks omitted). An abuse of discretion can also be found when the trial court's ruling is "clearly against the logic and effect of facts and inferences before the court[]." *Id.*

[14] 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 also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

## DISCUSSION

### I. THE CIRCUIT COURT DID NOT ERR IN DISMISSING THE TENANTS' NEGLIGENCE CLAIM AGAINST MR. ELYASI AND FARMINGTON.

The Tenants argue that the circuit court erred in dismissing the Tenants' negligence count. According to the Tenants, the circuit court was incorrect in its application of the law regarding when an "independent tort duty" may arise. The Tenants further argue that because residential leasing affects the public interest and the Tenants suffered a risk of personal injury, Mr. Elyasi and Farmington owed the Tenants a duty of reasonable care under Chapter 29 of the Montgomery County Code. Finally, the Tenants argue that the circuit court erroneously relied on the economic loss doctrine to support dismissing the negligence count.

In response, Mr. Elyasi and Farmington argue the Tenants failed to establish a duty independent of the lease agreement. Mr. Elyasi and Farmington additionally counter that § 29-30 of the Montgomery County Code does not create an independent duty, and that the circuit court's reference to the economic loss doctrine was not in error.

As explained further below, we hold the Tenants failed to demonstrate the existence of an independent duty and uphold the circuit court's dismissal of the negligence count.

#### A. Jacques

In Maryland, it is well established that "not every duty assumed by contract will sustain an action sounding in tort." *Mesmer v. Md. Auto. Ins. Fund*, 353 Md. 241, 252 (1999) (quoting *Council of Co-Owners Atl. Condo., Inc. v. Whiting-Turner Cont. Co.*,

308 Md. 18, 32 (1986)). "The mere negligent breach of a contract, absent a duty or obligation imposed by law independent of that arising out of the contract itself, is not enough to sustain an action sounding in tort." *Jones v. Hyatt Ins. Agency, Inc.*, 356 Md. 639, 654-55 (1999) (quoting *Heckrotte v. Riddle*, 224 Md. 591, 595 (1961)). While there is no simple test to determine whether a tort duty exists independent of a valid contract, "when the dispute is over the existence of any valid contractual obligation covering a particular matter . . . the plaintiff is ordinarily limited to a breach of contract remedy." *Mesmer*, 353 Md. at 254.

In the absence of an express contract, Maryland courts consider the following when deciding whether to impose tort liability: first, whether the defendant's failure to exercise due care creates a likely risk of economic loss or personal injury by the plaintiff; and second, the nature of the relationship between the parties. *Jacques v. First Nat'l Bank*, 307 Md. 527, 534 (1986). Where the defendant's failure to exercise due care creates only a risk of economic loss, a plaintiff must also show that there was an "intimate nexus" (i.e., contractual privity or its equivalent) between the parties. *Id.*

The Supreme Court of Maryland applied this framework to hold a bank liable for the purely economic losses of its customers, when the bank agreed to process the customers' mortgage loan application, accepted consideration for processing the application, and promised a guaranteed interest rate as incentive for the customers' business with the bank. *Id.* at 528-30, 538-39. The Court looked at the "particular facts of th[e] case" and noted that the "extraordinary" financing provisions integrated into the loan application by means of the real estate sales contract "left the [customers]

particularly vulnerable and dependent upon the Bank's exercise of due care." *Id.* at 528, 540. The Court also examined the public nature of the banking business, explaining that heightened requirements imposed exclusively on state banks[15] evinced the General Assembly's policy and supported imposing a tort duty of reasonable care on the bank. *Id.* at 542-43.

Here, the Tenants argue that the circuit court erred in dismissing the negligence count because, as the bank in *Jacques*, Mr. Elyasi and Farmington owed a "tort duty of reasonable care" to the Tenants. However, the Tenants' situation is meaningfully different than that of the customers in *Jacques*. Unlike the parties in *Jacques*, between whom there existed no express contract, the written lease agreement here bound the Tenants and Farmington. By incorporating the previous breach of contract and breach of warranty of habitability counts, the Tenants' negligence count added allegations that Mr. Elyasi and Farmington failed to "provide and/or maintain the Premises in a safe, healthy, and habitable manner" and "in accordance with applicable laws and codes." But the lease agreement contained nearly identical terms.[16] The negligence claim therefore

[15] For example, the Court cites to § 3-203(b) of the Financial Institutions Article, which allows a bank to be chartered only after a state official conducts an investigation and finds that "[t]he character, responsibility, and general fitness of the incorporators and directors named in the articles command confidence and warrant belief that the business of the proposed commercial bank will be conducted honestly and efficiently . . . and [that] [a]llowing the proposed commercial bank to engage in business . . . [w]ill promote public convenience and advantage . . . ." *Jacques*, 307 Md. at 542-53.

[16] "Landlord covenants that the leased premises and all common areas are delivered in a clean, safe, and sanitary condition, free of rodents and vermin, in a habitable condition, and in complete compliance with all applicable law."

concerned "[a] valid contractual obligation" that fell within the scope of the lease agreement. *Mesmer*, 353 Md. at 254. Accordingly, because the Tenants failed to demonstrate Mr. Elyasi and Farmington owed them a duty of care independent of the lease agreement, the circuit court did not err in dismissing the Tenants' negligence count against Mr. Elyasi and Farmington.

**B. Reliance on the Economic Loss Doctrine**

Alternatively, the Tenants argue that the circuit court erroneously relied on the economic loss doctrine to dismiss the Tenants' negligence count. As the Tenants correctly explain, the "economic loss doctrine" and *Jacques* are not "one and the same." *Cash & Carry Am., Inc. v. Roof Solutions, Inc.*, 223 Md. App. 451, 466 (2015). "The economic loss doctrine, which developed in product liability cases, prohibits a plaintiff from recovering tort damages for what in fact is a breach of contract." *Id.* Conversely, "economic loss" in *Jacques* discusses when a court may impose a tort duty in absence of a contract in privity. 307 Md. at 540.

First, we conclude that the circuit court did not intend to reference the "economic loss doctrine" used in *Cash & Carry America, Inc*. At least one time during the September 21, 2020, hearing, the court referred to the "economic loss doctrine issue" as the negligence question concerning whether there existed a "duty outside of the lease." Further, the court's reference to the "economic loss doctrine" came after the parties discussed non-economic losses. Considering the context in which the court referenced the "economic loss doctrine," we read the court's use of the term to be an example of "confusion in the nomenclature" and not erroneous conflation. *Id.* at 466.

Second, assuming *arguendo* the circuit court used the products liability "economic loss doctrine," for the reasons discussed in the preceding section, we find the Tenants nonetheless failed to demonstrate Mr. Elyasi and Farmington owed them a duty of care independent of the lease agreement. Further, the circuit court mentioned both the economic loss doctrine and the absence of "an independent duty that would permit a negligence action" as its reasoning for dismissing the negligence count. Any reliance on the products liability "economic loss doctrine" was harmless error because it ultimately did "not affect the outcome of the case." *Gillespie v. Gillespie*, 206 Md. App. 146, 169 (2012) (quoting *Flores v. Bell*¸ 398 Md. 27, 33 (2007)).

Accordingly, we affirm the circuit court's dismissal of the Tenants' negligence claim.

## II. THE CIRCUIT COURT DID NOT ERR IN DISMISSING THE TENANTS' WARRANTY OF HABITABILITY CLAIM AGAINST FARMINGTON.

The Tenants next argue that the circuit court improperly dismissed the breach of warranty of habitability count. According to the Tenants, the circuit court's reliance on *Joseph v. Bozzuto Management Company* was misplaced. 173 Md. App. 305 (2007). In response, Mr. Elyasi and Farmington argue that the statutory warranty of habitability does not create a cause of action, but rather establishes the procedure by which a tenant may file a complaint to the Director of the Department of Housing and Community Affairs. As explained further below, we hold the circuit court did not err in granting Mr. Elyasi and Farmington's motion to dismiss the Tenants' breach of warranty of habitability count.

Chapter 29 of the Montgomery County Code sets out the legal rights, remedies, and obligations of the parties to any rental agreement for rental units within Montgomery County. § 29-4(a). Under this Chapter, landlords are required to "reasonably provide for the maintenance of the health, safety, and welfare of all tenants and all individuals on the premises of rental housing." § 29-30(a).

Any affected tenant[17] may file a written complaint with the Director of the Department of Housing and Community Affairs (the "Director").[18] The Director then investigates to determine whether a defective tenancy exists.[19] § 29-39. If the Director "finds reasonable grounds to believe that a violation of [Chapter 29] has occurred or a defective tenancy exists," the Director must attempt to resolve the matter through conciliation with the landlord and the tenant. § 29-41(a). If the defective tenancy persists following conciliation efforts, the Commission on Landlord Tenant Affairs (the "Commission") will hold a hearing to determine if a defective tenancy exists. § 29-43.

The Commission must issue a written order if it finds that a defective tenancy exists. § 29-47(a). Among other forms of relief, the order may terminate the lease and relieve the tenant from any future lease obligations, award up to three times the amount of any security deposit wrongfully withheld by the landlord, or return all or part of any

[17] Section 29-1 defines "affected tenant" as "[a]ny tenant whose health, safety and welfare is, or reasonably may be, impaired by a defective tenancy."

[18] A written complaint may be filed when the landlord fails to make a bona fide effort to rectify the defective tenancy within one week after the tenant notifies the landlord of the defective tenancy. § 29-36(a).

[19] Section 29-1 defines "defective tenancy" as "[a]ny condition in rental housing that violates a term of the lease, [Chapter 29], or any other law or regulation."

rent paid to the landlord after the landlord was notified of the defective tenancy. § 29-47(b)(1), (3)-(4). Furthermore, any party dissatisfied with the "final action of the Commission . . . may appeal to the Circuit Court under the Rules of Procedure for review of those actions." § 29-49.

In short, Chapter 29 of the Montgomery County Code allows for a "specially designed tribunal to reconcile any differences between [landlords and tenants]." *Joseph*, 173 Md. App. at 332-33; § 29-2 ("[T]o facilitate fair and equitable arrangements . . . it is necessary and appropriate that the County appoint a commission and assign responsibilities to the Department to determine certain minimal rights and remedies, obligations and prohibitions, for landlords and tenants of certain kinds of residential property."). The Chapter does not, as the Tenants claim, create a legal cause of action against landlords who fail to maintain leased premises in the interests of tenants' health, safety, and welfare as required by § 29-30(a). Instead, § 29-2 reveals that the Chapter was established to create a process for resolving disputes which itself is not reliant on common law principles—those principles "ill-suited to the modern residential setting of this urban county." § 29-2. Therefore, as Chapter 29 merely provides an alternative process to common law causes of action, we hold that the circuit court did not err in dismissing the Tenants' breach of warranty of habitability count. Accordingly, we affirm the circuit court's decision to dismiss the breach of warranty of habitability count.

## III. THE CIRCUIT COURT ERRONEOUSLY DISMISSED THE TENANTS' FRAUD CLAIM AGAINST FARMINGTON WITH RESPECT TO THE LICENSURE ISSUE.

The Tenants additionally argue that the circuit court erred in dismissing the fraud count against both Farmington and Mr. Elyasi. The Tenants argue on appeal that the third amended complaint alleged all requisite elements of fraud with particularity. The Tenants alternatively argue that even if the third amended complaint did not satisfy the requisite standard of particularity, the circuit court erred in failing to allow the Tenants leave to amend. The Tenants further contend that the fraud count properly included Mr. Elyasi in his individual capacity.

In response, Mr. Elyasi and Farmington argue that the Tenants' third amended complaint proffered only conclusory evidence to support the fraud count against Mr. Elyasi and Farmington. Mr. Elyasi and Farmington argue that the Tenants did not have the right to rely on certain representations and further, failed to state how they were damaged by the misrepresentations. Regarding the fraud claim against Mr. Elyasi in his individual capacity, Mr. Elyasi and Farmington maintain that the third amended complaint did not allege specific misrepresentations made by Mr. Elyasi.

As explained below, we find that the Tenants' fraud count regarding the licensure issue against Farmington was erroneously dismissed. We shall consider each of the issues raised after discussing the particularity requisite for pleading fraud.

### A. Fraud Must Be Pled with Sufficient Particularity

To plead a prima facie fraud action,[20] a plaintiff must allege: (1) "the defendant made a false representation" regarding a material fact, (2) the defendant either knew the representation was false or made the representation "with reckless indifference as to its truth," (3) the defendant made the misrepresentation "for the purpose of defrauding the plaintiff," (4) "the plaintiff relied on the misrepresentation and had the right to rely on it," and (5) "the plaintiff suffered compensable injury resulting from the misrepresentation." *Gourdine v. Crews*, 405 Md. 722, 758 (2008) (citations omitted); *Rozen v. Greenberg*, 165 Md. App. 665, 674-75 (2005) (citations omitted). And, although all complaints must contain a "clear statement of the facts necessary to constitute a cause of action" as required by Rule 2-305, Maryland courts have required parties pleading fraud to do so with heightened "particularity." *See, e.g.*, *Antigua Condo. Ass'n v. Melba Invs. Atl., Inc.*, 307 Md. 700, 735-36 (1986); *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 153-54 (2007).

The particularity standard requires plaintiffs to allege facts which either "indicate fraud or from which fraud is necessarily implied." *Antigua Condo. Ass'n*, 307 Md. at 735. To satisfy particularity, a plaintiff must generally identify who made the false statement, when and how the false statement was made, and why the statement is false. *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 528 (2014). "The critical element of [fraud] that distinguishes it from others arising from false representation is scienter on the

[20] In Maryland, the term "fraud" includes fraudulent misrepresentation, fraudulent inducement, and fraudulent concealment. *Sass v. Andrew*, 152 Md. App. 406, 432 (2003).

part of the defendant[—]intent to deceive the other party." *Gross v. Sussex*, 332 Md. 247, 260 (1993) (quoting *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982)); *see also Rozen*, 165 Md. App. at 674 ("The tort of fraudulent inducement means that one has been led by another's guile, surreptitiousness or other form of deceit to enter into an agreement to his detriment.") (citations and quotation marks omitted).

The rigor of particularity required for fraud claims is evident even during the pleading stage.[21] For example, in *Sims v. Ryland Group, Inc.*, this Court affirmed the dismissal of homebuyers' fraud action against a realty company when the complaint contained "no more than a bald allegation of fraud with no supporting facts." 37 Md. App. 470, 473 (1977). This Court reasoned that, absent "allegations of the facts and circumstances which constitute fraud . . . [t]hat [the appellee] did not build a house conforming to the specifications in the contract does not of itself support an allegation of fraud on its part." *Id.* at 474 (citations omitted). Notably, the particularity standard required the homebuyers to allege specific facts and circumstances implying fraud other than the company's patent business interest in inducing the homebuyers to enter into the sales contract. *Id.*

[21] The particularity standard places a high burden on complainants alleging common law fraud. *See Antigua Condo. Ass'n*, 307 Md. at 735; *Lloyd*, 397 Md. at 154. Recognizing that consumers often have difficulty establishing the elements of common law fraud, the Maryland Consumer Protection Act allows complainants to allege "unfair and deceptive trade practices" (i.e., false or misleading material oral or written statements) without the heightened particularity or scienter components of a fraud action. *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 211 (2005); *see also Maryland Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices*, 38 Md. L. Rev. 733, 735 (1979).

Likewise, in *McCormick*, this Court upheld the dismissal of a fraud action where the complaint "satisfactorily allege[d] that the [company] knew that the off-label use of the [drug] could lead to many, serious side effects," but ultimately determined that the complaint "lack[ed] specificity in alleging when and how the [company] made the false statements of material fact" to complainants' prescribers. 219 Md. App. at 528.

Put succinctly, an action in fraud will not survive a motion to dismiss unless a complaint alleges both specific facts regarding the misrepresentation (e.g., the "who, what, where, when, and how") and facts showing "why a finder of fact would have reason to conclude that the defendant acted with scienter." *Id.* In the instant case, the Tenants' third amended complaint raises three factual bases for their fraud claim: first, that the Premises was in uninhabitable condition; second, Mr. Elyasi would complete the "punch list" prior to the Tenants taking possession of the Premises; and third, the Premises was not licensed as a rental facility at the time the Tenants entered into the lease agreement. We now address each of these bases in turn.

***1. The Tenants Failed to Allege Facts Reasonably Implying Mr. Elyasi and Farmington had Knowledge of the Premises' Alleged Habitability Issues.***

The third amended complaint alleges that "[Mr. Elyasi and Farmington] knew at the time the Lease Agreement [was] executed that the [Premises] was not in a . . . habitable condition . . . as evidenced by the 'punch list' attached to the Lease Agreement." In particular, the Tenants claim that at the time the lease agreement was executed, the property was "not in a clean, safe, and sanitary condition, free of rodents and vermin . . . and in complete compliance with all applicable law." That Mr. Elyasi

and Farmington agreed to complete the items listed on the punch list, the Tenants argue, implies Mr. Elyasi and Farmington knew at the time the Tenants entered into the lease agreement that the Premises was not in habitable condition.

Read in the light most favorable to the Tenants, the punch list does not reasonably imply Mr. Elyasi and Farmington knew about the alleged habitability issues included in the Tenants' third amended complaint. Among other similar items, the punch list contains provisions regarding closet shelving and bars, window shade color and opacity, paint "touch up," door locks and handles, and construction dust. The punch list does not mention rodents or vermin, safety issues, or sanitation concerns which could reasonably impair the Tenants' health, safety, and welfare, and instead, only implies Mr. Elyasi and Farmington had knowledge of select aesthetic preferences added by the Tenants. For this reason, the punch list does not reasonably imply Mr. Elyasi and Farmington had knowledge of the alleged habitability concerns at the time the lease agreement was executed. Therefore, as the Tenants failed to allege facts supporting scienter, dismissal of the Tenants' fraud count based on Mr. Elyasi and Farmington's misrepresentation of the Premises' habitability was appropriate. Accordingly, we affirm the circuit court's dismissal of the Tenants' fraud count regarding Mr. Elyasi and Farmington's representation of habitability.

#### *2. The Tenants Failed to Allege Facts Reasonably Implying that the Tenants Relied on Mr. Elyasi and Farmington's Promise to Complete the "Punch List."*

The Tenants next claimed Mr. Elyasi and Farmington fraudulently misrepresented their intention to complete the punch list. Relevant here, the lease agreement addendum

stipulates that the "Landlord" agreed to complete the items on the punch list by June 1, 2019. Following the punch list's completion, the addendum provided that the Tenants would transfer an additional $32,000 to Farmington. Even assuming the situation here falls into the narrow category of actions of fraud which may rest on statements about future events, *see First Union Nat'l. Bank v. Steele Software Sys. Corp.*, 154 Md. App. 97, 134-35 (2003), the Tenants' complaint alleged facts that undermined their allegation of their reliance on Mr. Elyasi and Farmington's promise to complete the punch list.

The Tenants alleged that despite Mr. Elyasi and Farmington's failure to complete the punch list, they took possession of the Premises in June 2019 and wired an additional $34,000[22] to Farmington on June 6, 2019. But here, reliance on Mr. Elyasi and Farmington's promise to complete the punch list necessarily means withholding the additional rent. As provided in the lease addendum, the Tenants were only required to pay the additional rent "[f]ollowing" the completion of the punch list. And presuming the truth of the Tenants' claim that the punch list remained unfinished, the Tenants expressly did not rely on the promise made in the addendum, but rather paid the additional rent after taking possession of the Premises. Thus, the Tenants' third amended complaint failed to allege particular reliance on Mr. Elyasi and Farmington's promise to complete the punch list. We therefore affirm the circuit court's dismissal of the fraud count regarding Mr. Elyasi and Farmington's promise to complete the punch list.

[22] Although the Lease provided that the second payment be $32,000, Mr. Elyasi explained at trial that the Tenants paid an additional $2,000 to rent furniture.

### *3. The Tenants Alleged with Particularity Facts Reasonably Implying the Premises' Lack of a Rental License Caused the Tenants to Suffer Compensable Damages.*

Finally, the Tenants claimed Mr. Elyasi and Farmington fraudulently misrepresented that the Premises was licensed. In particular, the Tenants alleged that Mr. Elyasi and Farmington "knew that the Premises was not licensed as a rental facility" and that Mr. Elyasi willfully elected not to disclose this material fact to [the Tenants] for the purpose of deceiving them into believing they were renting a home that was in compliance with Montgomery County Code and Maryland law." The Tenants claimed Mr. Elyasi "intentionally did not disclose that the Premises was not in compliance . . . because he did not have the funds to complete construction of the Premises so that the Premises could otherwise be in compliance with Maryland Law and the Montgomery County Code."

Under most circumstances, the lack of proper residential rental licensing "is a material fact that any tenant would find important in his determination of whether to sign a lease agreement and move into the premises." *Golt v. Phillips*, 308 Md. 1, 10 (1986) (analyzing materiality under the Maryland Consumer Protection Act). In the common law fraud context, a fact is material if a "reasonable person would attach importance to its existence in determining his choice of action." *Id.* (citing Restatement (Second) of Torts, § 538 (1977)). Here, similar to *Golt*, we hold that any reasonable individual would attach importance to a property's possession of a rental license in considering whether to enter into a lease agreement; therefore, the misrepresentation that the Premises was licensed is a material fact.

Mr. Elyasi and Farmington additionally contend that the Tenants had no right to rely on this misrepresentation because the Tenants could have investigated further and discovered that the Premises was not licensed prior to entering into the lease agreement. The recipient of a misrepresentation of fact, however, is generally justified in relying on the statement's truth. *Rozen*, 165 Md. App. at 677. Unless there are facts which should have made fraud "apparent to a person of the [recipient's] knowledge and intelligence from a cursory glance," or a discovery "serve[d] as a warning that [the recipient was] being deceived," the recipient is justified in relying on the representation's truth. *Id.* (citations and quotation marks omitted). Contrary to what Mr. Elyasi and Farmington argue here, Maryland law imposes no burden to investigate. *Id.* The fact that both parties may access the truth does not mean the recipient is obligated to investigate.

In the present case, the lease agreement provides contact information for the Montgomery County Department of Housing and Community Affairs' Office of Landlord-Tenant Affairs, which the Tenants could have contacted to verify the rental license status of the Premises. The Tenants were not obligated to seek information in addition to the representation made in the lease agreement, and we cannot identify any facts in the pleadings that should have alerted the Tenants to the lack of a rental license. Accordingly, the Tenants had the right to rely on the representation that the Premises was properly licensed under Montgomery County Code.

We also find that the Tenants pled compensable injury resulting from their reliance on Mr. Elyasi and Farmington's representation that the Premises was licensed as required by the Montgomery County Code. To satisfy the final prima facie fraud

element, the Tenants alleged that "[a]s a result of the misrepresentation, [the Tenants] were damaged and suffered compensable injuries in excess of Seventy-Five Thousand Dollars ($75,000.00)." These injuries (the rent paid to Farmington) reasonably stem from the Tenants' reliance on a material fact (the Premises' possession of a rental license).

Again reading in the light most favorable to the Tenants, the third amended complaint sufficiently alleges all elements of a prima facie fraud claim against Farmington: (1) Farmington made a misrepresentation of material fact, (2) Farmington knew the representation was false, (3) Farmington made the misrepresentation for the purpose of inducing the Tenants to rent the Premises despite Farmington's misrepresentation of a material fact, (4) the Tenants relied on the misrepresentation and had the right to rely on it, and (5) the Tenants suffered compensable injury resulting from the misrepresentation. For this reason, we find that the circuit court erred in dismissing the Tenants' claim against Farmington for failure to state a claim. Therefore, we reverse the circuit court's dismissal of the fraud count regarding the licensure issue. As a result, we vacate the judgment in favor of Farmington. With respect to the fraud count regarding the licensure issue against Mr. Elyasi individually, we also hold that the circuit court's dismissal was erroneous; we further discuss this holding below.

## IV. THE CIRCUIT COURT ERRONEOUSLY DISMISSED THE TENANTS' FRAUD CLAIM AGAINST MR. ELYASI WITH RESPECT TO THE LICENSURE ISSUE, ONLY.

We next address the Tenants' argument that the circuit court erred in dismissing all counts against Mr. Elyasi in his individual capacity. The Tenants contend the circuit court erroneously required the Tenants to pierce the corporate veil in its claims against

Mr. Elyasi because "[Mr. Elyasi] should be held personally liable for his own tortious conduct" under a tort theory of respondeat superior. In response, Mr. Elyasi and Farmington argue that the third amended complaint failed to include "any particular allegation of a specific statement by Mr. Elyasi individually."

Under Corporations & Associations § 4A-301, "no member shall be personally liable for the obligations of the limited liability company, whether arising in contract, tort, or otherwise, solely by reason of being a member of the limited liability company." "An LLC member is liable for torts he or she personally commits, inspires, or participates in because he or she personally committed a wrong, not 'solely' because he or she is a member of the LLC." *Allen v. Dackman*, 413 Md. 132, 154 (2010) (citing *Weber v. U.S. Sterling Sec., Inc.*, 282 Conn. 722, 732 (2007)). In order to be liable for tort, the member "must have been a participant in the wrongful act." *Metromedia Co. v. WCBM Md., Inc.*, 327 Md. 514, 520 (1992) .

Here, Mr. Elyasi is a member of 3203 Farmington, LLC. Contrary to the circuit court's conclusion, the Tenants did not need to "pierce the veil" to adequately allege fraud against Mr. Elyasi and Farmington. Instead, the Tenants were required to show that Mr. Elyasi was a participant in the alleged wrongful acts. *Id.*

For the negligence claim, the Tenants specifically alleged wrongful acts by both Mr. Elyasi and Farmington. As discussed above in Section I, however, the Tenants failed to demonstrate that Mr. Elyasi owed them a duty of care independent of the lease

agreement. Therefore, the circuit court did not err in dismissing the Tenants' negligence claim against Mr. Elyasi and we affirm its decision to do so.[23]

Similarly, although the complaint adequately alleged acts taken by Mr. Elyasi on behalf of Farmington in regard to the punch list and habitability issues, those fraud claims fail on other grounds, as discussed above in Section III. Therefore, the circuit court did not err in dismissing the fraud claim against Mr. Elyasi on these issues.

For the licensure issue, the Tenants alleged that "pursuant to the Lease Agreement, paragraph 4, Defendants represented to Plaintiffs that the Premises was licensed in accordance with Montgomery County law." The Tenants alleged specific acts taken by Mr. Elyasi in paragraphs 87 through 90 of their complaint. For example, the complaint states that the "[d]efendants knew the Premises was not licensed[,]" that "[Mr.] Elyasi willfully elected not to disclose this material fact to the [Tenants] for the purpose of deceiving them[,]" and that Mr. Elyasi did so because "he did not have the funds to complete construction . . . so that the Premises could otherwise be in compliance with Maryland law" and "to persuade [the Tenants] into prepaying [rent] and taking possession of the Premises for a [2] year term." These allegations are sufficient to state a claim for fraud against Mr. Elyasi because the Tenants alleged specific acts by him that meet the particularity requirements. Therefore, we conclude that the circuit court erred in

[23] Although we affirm the circuit court's judgment on grounds differing from that of the circuit court, the circuit court's judgment regarding a motion to dismiss can be affirmed on any ground adequately shown by the record, even one upon which the circuit court did not rely. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (citing *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015)).

dismissing the Tenants' claim of fraud on the licensure issue against Mr. Elyasi. Accordingly, with respect to Mr. Elyasi individually, we reverse the circuit court's dismissal of the fraud claim on the licensure issue, only.

## V. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING FARMINGTON'S MOTION TO STRIKE THE FOURTH AMENDED COMPLAINT.

The Tenants argue that the trial court abused its discretion when it granted Farmington's motion to strike the fourth amended complaint. According to the Tenants, Farmington failed to adequately argue that the amended complaint prejudiced the defendants. Additionally, the Tenants argue that the trial court did not exercise its discretion when it granted the motion without an explanation as to its reasoning.

Farmington argues that the Tenants were required to seek leave to amend its complaint and did not do so. Additionally, the trial court did not abuse its discretion when it granted the motion because Farmington would have been prejudiced by the Tenants' "vexatious litigation strategy" if the amendment had not been stricken. Further, the circuit court did not abuse its discretion by not articulating its reasonings because neither party had requested a hearing on the issue.

"A party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date." Md. Rule 2-341(a). "[U]nder Maryland Rule 2-341(c), amendments to pleadings are allowed 'when justice so permits.'" *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010) (citations omitted). "[A]mendments to pleadings are to be allowed freely and liberally, so long as the operative factual pattern remains

essentially the same, and no new cause of action is stated invoking different legal principles." *Gensler v. Korb Roofers, Inc.*, 37 Md. App. 538, 543 (1977) (citations omitted). "[A]n amendment should not be allowed if it would result in prejudice to the opposing party or undue delay . . . ." *RRC Ne., LLC*, 413 Md. at 673-74.

Generally, "amendments should be freely allowed so that a case is tried on its merits rather than on the niceties of a pleading" and it is a "rare situation" when a circuit court should not allow an amendment. *Hartford Accident and Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 249 (1996) (citing *Hall v. Barlow Corp.*, 255 Md. 28, 40-41 (1969)). For example, in *Bacon v. Arey*, this Court upheld the circuit court's granting of a motion to strike when the amended complaint was filed after the case had already been appealed once and "the stated purpose of remand was to adjudicate existing matters, not state anew with another amended complaint" and "the preliminary motions phase was effectively over." 203 Md. App. 606, 670-71, n.34 (2012).

Similarly, in *RRC Northeast, LLC*, the Supreme Court of Maryland affirmed the circuit court's decision to strike an amended complaint. 413 Md. at 676. In that case, the circuit court had previously directed the complainant to identify specific contractual terms to support its claim, but the complainant failed to do so in its amended complaint. *Id.* at 674. The circuit court's striking of the amended complaint, therefore, was affirmed because "there was no reason to believe that [the complainant] could allege any new facts" to support its claims and any amendment "would have been futile and would have resulted in undue delay." *Id.* at 674-75.

Here, the circuit court did not abuse its discretion when it granted Farmington's motion to strike because (1) Farmington did argue prejudice in its motion and reply and (2) the circuit court's decision was reasonable and not "clearly against the logic and effect of facts and inferences before the court." *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005).

Farmington's motion to strike argued that the Tenants were "engaged in a transparently vexatious litigation strategy designed to intimidate [Farmington], drive up costs of the case, and deplete [Farmington's] resources." Further, the motion argued that the amended complaint arose from "wasteful and costly tactics." In its reply to the Tenants' opposition to the motion to strike, Farmington argued that it was prejudiced because "[n]ot only does the Fifth Complaint add a new count, as well as additional factual allegations, but it also adds a claim for attorneys' fees."

Although the circuit court did not provide its reasons for granting the motion to strike, its decision to grant the motion was within its discretion. Because the law does not allow an amendment if it prejudices the other party, the circuit court acted within its discretion when it granted the motion to strike a complaint that included a new cause of action pursuant to the Maryland Consumer Protection Act. The amended complaint also asked for attorney's fees for the first time and new damages, including noneconomic damages for "emotional distress, anguish, loss of sleep, aggravation, embarrassment, frustration, humiliation, and emotional distress." With discovery being closed and the trial set to occur within two months, the amended complaint's added requests would have prejudiced Farmington. Although the Rule provides that amendments "shall be freely

allowed[,]" it also qualifies that right by limiting it to "when justice so permits." Md. Rule 2-341(c). Therefore, the circuit court did not abuse its discretion when it granted the motion to strike, and we affirm its decision to do so.

## CONCLUSION

We affirm the circuit court's dismissal of the Tenants' negligence claim against Mr. Elyasi and Farmington. We also affirm the circuit court's decision to dismiss the breach of warranty of habitability count against Farmington.

As to the fraud count against Mr. Elyasi and Farmington, we affirm in part and reverse in part. We affirm the dismissal of the fraud count regarding the habitability and punch list issues. We reverse the dismissal of the fraud count regarding the licensure issue, only. Accordingly, we vacate the judgment in favor of Farmington and remand for further proceedings.

Finally, we affirm the circuit court's decision to grant Farmington's motion to strike the Fourth Amended Complaint.

**ORDERS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART, REVERSED IN PART, AND JUDGMENT VACATED;**

**THE CIRCUIT COURT'S ORDER DISMISSING COUNT IV OF THE THIRD AMENDED COMPLAINT REGARDING FRAUD REVERSED AS TO THE LICENSURE ISSUE, ONLY;**

**JUDGMENT IN FAVOR OF FARMINGTON VACATED;**

**ALL OTHER ORDERS OF THE CIRCUIT COURT AT ISSUE IN THIS APPEAL ARE OTHERWISE AFFIRMED;**

**CASE REMANDED FOR ADDITIONAL PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION.**

**COSTS TO BE PAID 75% BY APPELLANTS AND 25% BY APPELLEES.**