Circuit Court for Prince George's County
Case No. CAL22-06912

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1776

September Term, 2023

JAY COLLEGE OF HEALTH SCIENCES, ET AL.

v.

EBELECHUKWU CHINWUBA, ET AL.

Graeff,
Leahy,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 11, 2025

Jay College of Health Sciences ("Jay College") and Dr. Ejike Asiegbunam (together, "Jay College" or "Appellants")[1] were sued by Ebelechukwu Chinwuba, Gold Ukegbu, and Ekene Akujor (together, "Appellees")—three former students of Jay College who alleged (1) negligence, (2) negligent misrepresentation, (3) breach of contract, and (4) fraudulent misrepresentation. Jay College denied the allegations but did not rasie any affirmative defenses.

The case was tried before a jury in the Circuit Court for Prince George's County. On October 11, 2023, following the Appellees' case-in-chief, Jay College moved for judgment on all four counts, and the circuit court granted the motion with respect to all counts except for the third count, breach of contract. Jay College rested without presenting evidence, and the case went to the jury. The jury found Jay College in breach of contract and awarded damages to Appellees.

Jay College timely filed this appeal on November 8, 2023, presenting a single question for our review: "Did the Circuit Court properly allow [Appellees'] breach of contract claim to go to the jury?"

For the reasons explained below, we hold that the circuit court did not err and affirm the court's judgment.

[1] During the proceedings below, Jay College and Asiegbunam were represented by the same counsel and filed their pleadings jointly.

BACKGROUND

Events Leading up to the Lawsuit

Appellants Came to Jay College

As noted, Appellees Chinwuba, Ukegbu, and Akujor were former students of Jay College, a nurse-training institution owned by Asiegbunam. Asiegbunam was also Jay College's president. His family member, Chimezie Ofomata, was Jay College's custodian of records. Although Jay College was based in Palm Bay, Florida, and did not have a license to provide educational services in Maryland, Asiegbunam operated the school from his offices in Hyattsville and Greenbelt. Appellees became registered at Jay College at one of the offices in Hyattsville some time before or during the COVID-19 pandemic.[2] They were not informed that Jay College was operating in Maryland without a license. In the summer of 2020, Appellees began paying Jay College monthly tuition.

Jay College offered an associate's degree in nursing, which is a requirement for taking an licensing exam to become a registered nurse (RN). In order to graduate, students needed to complete certain prerequisite courses. Typically, an associate's degree program took up to 24 months, but students with Licensed Practical Nurse (LPN) licenses could graduate in 12 to 16 months due to their completion of some prerequisites. Chinwuba and Ukegbu had LPN licenses. Akujor, though not an LPN, had completed prerequisite courses at Prince George's County Community College and submitted the list of completed courses

[2] We discuss the trial testimony regarding the timing of Appellees' registration in more details below.

upon registration.

Another graduation requirement was completion of a 40-hour, week-long "clinical" course. Because the clinicals could not be done at school, Jay College had contracts with multiple clinical facilities, including Crane Creek Hospital, located in Melbourne, Florida. At trial, Asiegbunam explained that the facilities could terminate their contracts with Jay College at any time, stating, "when one clinical site boots the students . . . [w]e move to another clinical site." Although Jay College did not have a clinical site in Maryland, Appellees were never informed of having to go to Florida for the clinicals.[3]

Problems Plauged Jay College

Numerous problems plagued Jay College's operation. In the spring of 2020, COVID-19 hit the United States. On or around March 24, 2020, the State of Florida issued an executive order, mandating schools to "go online." The mandate continued through August 2022. Jay College, licensed in Florida, also had to offer all of its classes through Zoom during that period, including "some of the clinical components that were supposed to be in healthcare facilities." The clinicals were conducted through "simulation, instead of a real, physical" lesson.

According to Asiegbunam, these changes led many students to think that Jay College was a "cash-and-carry" school, where "they could just pay some money" and

[3] According to Ofomata, Jay College did not inform students until August 2022—around the time that Florida lifted the online education mandate—that they had to go to Florida for clinicals.

obtain degrees. From January to April 2021, "more than a hundred students . . . came to Jay College, hoping to give money . . . and be given transcripts." Some faculty members also refused to provide lectures, claiming that they were not paid. Classes were temporarily halted and resumed about two months later.

In or around June 2021, Jay College notified Appellees and other students that they were required to do clinicals in Florida. Akujor was in the first group to go. After a few days, Jay College informed her that the school "got shut out" of a clinical site and that students could not continue with their clinicals. Akujor returned to Maryland after spending a week in Florida, having not completed her clinical requirements. Ukegbu, after spending four nights at a hotel, was similarly informed that "there were no clinical sites" available. She had paid for her flights, hotel, and childcare out of pocket.[4]

Appellees were never rescheduled for the clinicals.[5] On or around November 1, 2021, Jay College issued a letter to students, signed by Asiegbunam, announcing its closure plan. In the letter, Jay College explained that it would "cease classroom instruction" but "continue to train out students until all students are completed through June 2023." Jay

[4] At trial, Ofomata explained that Akujor could not continue with the clinicals because Jay College lost its contract with a clinical facility for violating the facility's "COVID rules." Ofomata also stated that Jay College could not schedule any future clinicals "due to the COVID restriction[,]" although he admitted that Appellees were not scheduled for clinicals even after COVID-19 restrictions ended in 2022. Ofomata also admitted that he never informed Appellees about the loss of the clinical site.

[5] Appellees contacted Jay College to see if the clinicals were rescheduled, but they did not receive any information. According to Ofomata, he emailed Apellees updates about rescheduling but Chinwuba told him never to contact her again, and Akujor and Ukegbu did not reply.

College also provided that it would offer students "alternative options to continue with their program of study." In addition, Jay College assured that it would "continue to provide student services to current students and alumni, all in accordance with prescribed institutional policies and procedures" and directed students to contact the school to request transcripts before June 30, 2023. Appellees requested their transcripts, but they did not receive anything from Jay College.

The Lawsuit

Appellees Filed the Complaints

On March 9, 2022, Appellees jointly filed the "Complaint for Negligence, Negligent Misrepresentation and Breach of Contract" against Jay College asserting negligence (count 1), negligent misrepresentation (count 2), and breach of contract (count 3). Appellees first amended the complaint on March 28, 2022, and then moved to amend it again on August 22, 2023. The motion was granted on September 26, 2023. In the second amended complaint, Appellees asserted an additional count, fraudulent misrepresentation (count 4), based on a dishonored check issued by Jay College to Ukegbu.[6]

In the breach of contract count of their second amended complaint, Appellees alleged that Jay College "contracted with [them] to provide . . . education in the state of

[6] Although Appellees' motion to amend complaint included the proposed second amended complaint as an attachment, Appellees never separately filed the second amended complaint. On the first day of the trial, following discussion with the parties, the circuit court accepted the attachment as the second amended complaint, with fraudulent misrepresentation as count 4.

Maryland." Appellees claimed that although they "honored their bargain by paying tuition fees and fulfilling requirements as indicated at enrollment[,]" Jay College "unilaterally modified" the contract by requiring them to complete the clinicals in Florida. Appellees further claimed that they were not able to complete their programs—which were supposed to last for one to two years—for more than three years because Jay College was "unable to secure a location for [Appellees] to do their clinicals." As a remedy, Appellees requested that the circuit court order Jay College "to make restitution . . . of all monies collected from them[.]"

More than six months after the filing of the original complaint, Jay College belatedly filed an answer on September 19, 2022, which was then amended on March 27, 2023.[7] In the original and amended answers, Jay College denied most allegations raised by Appellees and "demand[ed] strict proof of same." Jay College did not raise an affirmative defense to any of Appellees' claims.

Trial

The case was tried before a jury over two consecutive days beginning October 10, 2023. Chinwuba, Ukegbu, and Akujor testified during Appellees' case-in-chief. Appellees also called Asiegbunam and Ofomata as witnesses. Jay College did not present any evidence or witness testimony.

[7] Jay College did not file a responsive pleading to Appellees' second amended complaint.

Chinwuba initially testified that she registered at Jay College in 2019, "[r]ight before" COVID-19, but then stated that "[i]t should've been during COVID because, shortly thereafter, things started transitioning . . . to either online or not existent." Chinwuba confirmed that although her program was "to run 12 months[,]" ending in 2021, she did not graduate. Chinwuba also denied having any access to grades or transcript from Jay College. A list of payments, which was admitted into evidence, showed that she paid Jay College a total of $15,855 from July 2020 to July 2021.

Ukegbu and Akujor both testified that they registered at Jay College in 2019 for a year-long program that was supposed to run from 2020 to 2021, but neither graduated. They explained that Jay College never rescheduled their clinicals, which were necessary for graduation. Akujor further claimed that Jay College did not "show up" to administer her pre-scheduled exams. Ukegbu testified that she paid Jay College a total of $17,375.95. Documentation admitted into evidence showed that Akujor paid $15,000, though she claimed the actual amount was $16,750. Akujor also acknowledged that she owed Jay College $450.

Asiegbunam testified that all Appellees were registered at Jay College during the COVID-19 pandemic.[8] He explained that he could not issue transcripts because none of the Appellees met all graduation requirements. Specifically, he noted that all three failed to complete their clinicals, and that some were missing prerequisites. Asiegbunam

[8] Although Asiegbunam was not able to specify the year that Appellees were registered, he said he would "go[ ] by" 2019.

emphasized that students had "all the years"—from registration until graduation—to submit their prerequisites.

Ofomata also testified that Appellees were registered and enrolled in 2020. He stated that Chinwuba submitted a transcript at registration but it was missing "up to four to five" prerequisite courses. Ofomata denied that Ukegbu submitted any prerequisites. Ofomata acknowledged that Akujor fulfilled her prerequisites when she started at Jay College but claimed that her program was to run for 18 to 24 months because "she did not come in as an LPN." He also stated that Akujor was ineligible for the exit exam due to her outstanding balance at Jay College.

Appellants' Motion for Directed Verdict[9]

At the close of Appellees' case-in-chef, Jay College moved for directed verdict on all four counts—negligence (count 1), negligent misrepresentation (count 2), breach of contract (count 3), and fraudulent misrepresentation (count 4). Jay College's counsel argued that Appellees failed to meet the burden of proof with respect to any count. Concerning the breach of contract claim, counsel argued that Appellees did not "prove the elements of contract." Appellees' counsel disagreed, arguing that Asiegbunam "already

[9] Although Appellants styled their motion as a "motion for directed verdict," Maryland Rule 2-519 refers to such as a "motion for judgment." *See Brendel v. Ellis*, 129 Md. App. 309, 314 n.2 (1999). In this opinion, we use the term "motion for directed verdict" for consistency with the trial record.

testified as to a contract, that he received monies[,]" and "[t]hat is consideration furnished by [Appellees]."[10]

The circuit court initially denied the motion for directed verdict on all counts. As to breach of contract, the court reasoned that "although thin, . . . there is some evidence certaintly that there was a contract." The court noted that there was no written contract in the evidence but reasoned the testimony of Asiegbunam and Ofomata supported the existence of a contract between Appellees and Jay College. As to the other counts—negligence (count 1), negligent misrepresentation (count 2), and fraudulent misrepresentation (count 4), the court also determined that a reasonable jury could find in favor of Appellees. No objection was made to the court's ruling. Jay College rested without presenting any additional evidence.

Following a recess, the court revisited Jay College's motion for directed verdict *sua sponte* and granted the motion on all counts but breach of contract (count 3). Specifically, with regard to the claims of negligence and negligent misrepresentation, the court stated that it had "a hard time finding . . . evidence in the record to support a negligence claim" against Jay College. The court reasoned that the duty Jay College owed to Appellees "was born out of the contract . . . that was entered into between the parties when [Appellees] enrolled," and "the so-called negligence is completely subsumed in a breach of contract."

[10] As to the negligence and negligent misrepresentation counts, counsel for Appellants claimed that Appellees did not produce evidence of negligence. As to the fraudulent misrepresentation count, counsel claimed that Appellees failed to "state[ ] what representations were fraudulent."

In addition, the court found that there was no evidence to show an intent to defraud when Asiegbunam and Jay College issued a bounced check to Ukegbu. Appellees raised an objection to the court's grant of the motion for directed verdict, and the circuit court noted the objection, while Jay College did not object.

Jury Instruction and Verdict

After ruling on the motion for judgment, the circuit court turned to jury instructions for Appellees' breach of contract claim. It was then that the court, for the first time, raised concerns about the Statute of Frauds, noting the absence of a written contract in evidence.

> I got to tell you . . . . I am also a little concerned here because this contract that we're talking about here you have not introduced any evidence that this is a written contract. There is no evidence that this is a written contract.
>
> * * *
>
> [M]y concern is that there is just, under the Statute of Frauds this contract could not have been performed in less than a year, so the Statute of Frauds is my concern[.]

Appellees' counsel explained that he could not present any written agreement at trial because Jay College did not respond to his requests for admission letters and school records. Counsel also further stated that Appellees' contracts with Jay College do not fall within the Statute of Frauds because they were registered for a one-year course. The court responded:

> Well, no, no, sir, because the testimony in this case has been very consistent. All of your clients testified that they entered into this agreement in 2019 and that the program was to be completed in 2021.
>
> * * *
>
> So that's outside a year. But I will reserve on that. I will let this go to the jury, I will reserve on that issue. I may, depending on the outcome . . . I may have to come back and address that issue, but for now I will let it go to the jury[.]

The court continued discussing jury instructions, with no exceptions noted. The court then instructed the jury and confirmed that neither party had any objections to the instructions as given. After closing arguments, the jury deliberated.

The jury found that Jay College breached agreements with each Appellee—Chinwuba, Ukegbu, and Akujor. The jury awarded damages in the amount of $15,855 to Chinwuba, $17,375.95 to Ukegbu, and $15,000 to Akujor. After the verdict, the circuit court reminded Jay College of the opportunity to move for a new trial or for a judgment notwithstanding the verdict. No post-judgment motions were filed, and this timely appeal followed.

DISCUSSION

Standards of Review

We review the denial of a motion for directed verdict *de novo*, applying the same standard as the circuit court. *Ayala v. Lee*, 215 Md. App. 457, 467 (2013) (citing *District of Columbia v. Singleton*, 425 Md. 398, 406 (2012)). In *General Motors Corp. v. Lahocki*, 286 Md. 714 (1980), the Supreme Court of Maryland explained the circuit court's standard for a directed verdict:

> In considering a motion for a directed verdict the [circuit] court assumes the truth of all credible evidence on the issue and of all inferences fairly deducible therefrom. It then considers them in the light most favorable to the party against whom the motion is made. . . . If there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact in issue, then [the] court would be invading the province of the jury by directing a verdict. In such circumstances, the case should be submitted to the jury and a motion for a directed verdict denied.

Id. at 733 (internal citations omitted). Accordingly, in our consideration of a motion for a directed verdict, we must view all evidence and reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *Ayala*, 215 Md. App. at 467. If there was "any evidence, no matter how slight, that was legally sufficient to generate a jury question," the denial of the motion was proper. *Id.* (quoting *Address v. Millstone*, 208 Md. App. 62, 80 (2012) (quotation omitted)). A motion for directed verdict may be granted only "where the evidence . . . permits but one conclusion." *Id.*; *see also Brown v. Bendix Radio Div. of Bendix Aviation Corp.*, 187 Md. 613, 619 (1947) ("[I]t is only where the minds of reasonable men cannot differ that the court is justified in deciding the question as a matter of law.").

Jay College's Contentions[11]

On appeal, the Appellants confine their arguments to very narrow grounds. They do not dispute that Appellees presented enough evidence of a contract—offer, acceptance, and consideration. Rather, Appellants contend that, because Appellees presented no written agreements, they failed to establish their breach of contract claims under the "one-year clause" of the Statute of Frauds, and therefore, the trial court erred in allowing those claims to go to the jury. Appellants assert that while the Statute of Frauds requires a written memorandum for "[a]ny agreement that is not to be performed within 1 year from the making of the agreement[,]" there was no such writing in the evidence. Appellants,

[11] Appellees did not file a responsive brief.

however, acknowledge that "[i]f there is any theoretical possibility that the contract can be performed within a year, the contract . . . does not need to be in writing no matter how remote the chance is that the contract will be performed within a year."

Legal Framework

As pertinent here, Maryland's Statute of Frauds, including the "one-year clause," can be found in Maryland Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings Article ("CJ") § 5-901:

> **Unless a contract or agreement upon which an action is brought,** or some memorandum or note of it, **is in writing and signed by the party to be charged or another person lawfully authorized by that party, an action may not be brought:**
>
> (1) To charge a defendant on any special promise to answer for the debt, default, or miscarriage of another person;
>
> (2) To charge any person on any agreement made on consideration of marriage; or
>
> **(3) On any agreement that is not to be performed within 1 year from the making of the agreement.**

(emphasis added).[12] Contracts that fail to satisfy these requirements are deemed unenforceable. *Friedman & Fuller, P.C. v. Funkhouser*, 107 Md. App. 91, 105 (1996),

[12] To be sure, the one-year requirement existed in Maryland law long before the enactment of CJ § 5-901. As the Supreme Court of Maryland explained:

> This same language is found in the fourth section of the English Statute of Frauds, 29 Charles II, ch. 3, which, by reason of the provisions of Maryland Declaration of Rights art. 5, was in effect in Maryland until its repeal by Chapter 649 of the Acts of 1971, which enacted a new statute. See 2 J.

(Continued)

disapproved on a different ground by Pavel Enterprises, Inc. v. A.S. Johnson Co., Inc., 342 Md. 143 (1996).

Courts have interpreted the one-year clause "in such a way to narrow its scope as much as possible." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* 743 (4th ed. 1998). As early as in 1853, the Supreme Court of Maryland held that the one-year clause would not apply

> **where the contract can, by any possibility, be fulfilled or completed in the space of a year, although the parties may have intended its operation should extend through a much longer period.** A contract to serve another for two years, would be within the statute; but a contract to serve for an indefinite period, subject to be put an end to at any time upon reasonable notice, is not within the statute though it may extend beyond the year.

Ellicott v. Turner, 4 Md. 476, 488 (1853) (emphasis added); *see also Sun Cab Co. v. Carmody*, 257 Md. 345, 350 (1970) ("The principles of law enunciated in *Ellicott* . . . have been approved and followed[.]"). Nor does the one-year period "turn on the actual course of subsequent events[.]" *Friedman & Fuller, P.C.*, 107 Md. App. at 101 (quoting Restatement (Second) of Contracts § 130 cmt. a (1981)). Put differently,

> [t]here are two sets of circumstances under which the one-year provision of the Statute of Frauds will bar a claim. One occurs when the parties **expressly and specifically agreed that their oral contracts were not to be performed within one year.** The other occurs when it is **impossible by the terms of the contract for it to be performed fully within one year.**

> Alexander, British Statutes in Force in Maryland, 509, 534-35 (2d ed. W. Coe, 1912).

Gen. Fed. Constr., Inc. v. James A. Federline, Inc., 283 Md. 691, 693 (1978).

Griffith v. One Inv. Plaza Assocs., 62 Md. App. 1, 6 (1985) (internal citations and quotation marks omitted) (emphasis added).

The Statute of Frauds is an affirmative defense. Md. Rule 2-323(g). "An affirmative defense is one which . . . concedes the basic position of the opposing party, but which asserts that notwithstanding that concession the opponent is not entitled to prevail because he is precluded for some other reason." *Armstrong v. Johnson Motor Lines, Inc.*, 12 Md. App. 492, 500 (1971). Upon invoking an affirmative defense, the defendant assumes the burden of initial production as well as the burden of ultimate persuasion as to each element of that defense. *Bd. of Trustees, Comm. Coll. of Balt. Cnty. v. Patient First Corp.*, 444 Md. 452, 470 (2015).

Maryland Rule 2-323(a) requires that "[e]very defense of law or fact to a claim for relief in a complaint . . . be asserted in an answer," including "the defenses enumerated in section[ ] . . . (g) of this Rule." In turn, Rule 2-323(g) enumerates 21 affirmative defenses that need to be specifically pleaded in an answer, including the Statute of Frauds. *Liberty Mut. Ins. Co. v. Ben Lewis Plumbing, Heating & Air Conditioning, Inc.*, 121 Md. App. 467, 477 (1998).[13] When a defendant fails to include an affirmative defense in its original answer or amended answer, that defense is waived. *Gooch v. Md. Mech. Sys., Inc.*, 81 Md. App. 376, 385 (1990).

[13] Federal Rule of Civil Procedure 8(c) similarly "requires that all affirmative defenses be set forth in the answer." *Ben Lewis Plumbing*, 121 Md. App. at 478. Under federal jurisprudence, "a failure to plead an affirmative defense estops a party from asserting that defense at trial." *Id.* (citing cases).

This pleading requirement embraces several important purposes, the most paramount of which is to "provide[ ] notice to the parties as to the nature of the . . . defense[.]" *Woolridge v. Abrishami*, 233 Md. App. 278, 296 (2017) (quoting *Scott v. Jenkins*, 345 Md. 21, 27-28 (1997), *abrogated on other grounds by Rule 2-305*). It also "prevents unfair surprise and enables a plaintiff to concentrate the focus of his discovery." *Gooch*, 81 Md. App. at 384-85. As we explained:

> The justice of a rule precluding the defendant's reliance on an affirmative defense that was not specifically pleaded is apparent. . . . [A] plaintiff would not necessarily (and, indeed, would probably not) be on notice that a defendant is relying on an affirmative defense from a simple denial of the plaintiff's claims. Such notice is obviously important because even though the defendant would normally have the burden of production and persuasion on his affirmative defense, the plaintiff would have to produce rebuttal evidence pertaining to the defenses.

Ben Lewis Plumbing, 121 Md. App. at 478-79 (citing Lynch and Bourne, *Modern Maryland Civil Procedure*, § 6.7(c)(4), p. 414-15). Accordingly, courts have "no authority, discretionary or otherwise, to rule upon a question not raised by the pleadings, and of which the parties therefore had neither notice nor an opportunity to be heard." *Id.* at 476 (quoting *Early v. Early*, 338 Md. 639, 658 (1995)).

Analysis

Applying the foregoing principles in the instant case, we conclude that Appellants waived the issue of the Statute of Frauds by failing to specifically plead that defense in their answers. Because the defense had been waived and could not be considered by the court, we need not address whether the one-year clause renders the contracts between the parties unenforceable. We explain.

As noted, Appellants filed their answers twice—one on September 19, 2022, and and then an amended answer on March 27, 2023—but neither the original answer nor the amended answer mentioned the Statute of Frauds, let alone any affirmative defense under Rule 2-323(g). Other than these answers, Appellants did not file any responsive pleadings, *i.e.* motion for summary judgment, to Appellees' original and amended complaints, all of which invariably asserted breach of contract claim. *See Ben Lewis Plumbing*, 121 Md. App. at 480-81 (holding that an affirmative defense first raised at the summary judgment motion stage was untimely and therefore waived). Therefore, Appellants are barred from relying on the Statute of Frauds to obtain judgment in their favor. *See Gooch*, 81 Md. App. at 385.

We discern no reason or justification for Appellants' failure to amend their answers to include the Statute of Frauds defense during the proceedings below. Maryland Rule 2–341(a) allows a party to amend its pleading "at any time prior to 15 days of a scheduled trial date." Even within the 15-day period, a party can amend its pleading with leave of the court or with the written consent of the adverse party. Md. Rule 2–341(b). This is by no means a high bar, as the Maryland Rules require amendments to be "freely allowed when justice so permits." Rule 2-341(c). Appellants therefore could have amended their answer to raise the defense of the Statute of Frauds before trial, but they did not.

As we have repeatedly emphasized, "[t]he requirement that affirmative defenses be set forth separately is not a mere nicety; it is designed to give notice to the plaintiff of the defenses asserted to his complaint." *Bowser v. Resh*, 170 Md. App. 614, 642 (2006)

(quoting *Gooch*, 81 Md. App. at 384-85). Here, Appellees had no such notice. Even when moving for a directed verdict, Appellants' counsel only challenged the existence of a contract, not its enforceability under the Statute of Frauds, stating, "There [was] no contract. [Appellees' counsel] didn't prove the elements of contract." In fact, the circuit court—not the parties' counsel—first raised the issue of the Statute of Frauds *after* it ruled on the Appellants' motion for directed verdict. Because the defense of the Statue of Frauds was never specifically pleaded, and Appellees were not put on notice of the defense, the circuit court did not have any "authority, discretionary or otherwise" to enter a judgment on that ground. *Ben Lewis Plumbing*, 121 Md. App. at 478-79. Thus, we affirm the circuit court's denial of Appellants' motion for directed verdict.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.