UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1854

September Term, 2013

JANICE L. HUNDT

v.

CONRAD C. SNEDEGAR

Meredith,
Zarnoch,
Reed,

JJ.

Opinion by Meredith, J.

Filed: August 21, 2015

In this appeal, Janice Hundt, appellant, appeals from a judgment entered in favor of Conrad C. Snedegar, appellee, following a jury trial in the Circuit Court for Baltimore County.

QUESTIONS PRESENTED

Appellant presents six questions for our consideration:

1. Was appellant entitled to judgment in her favor as a matter of law on the breach of contract count (Count I)?

2. Was appellant entitled to judgment in her favor as a matter of law on the waste count (Count II)?

3. Was appellant entitled to judgment in her favor as a matter of law on the negligence based on breach of fiduciary duty count (Count III)?

4. Was appellant entitled to judgment in her favor as a matter of law on plaintiff/appellee's request for punitive damages on the breach of fiduciary duty count (Count III)?

5. Did the trial court commit prejudicial error when it admitted printouts from the internet of real estate tax assessments as evidence of plaintiff/appellee's damages?

6. Did the trial court abuse its discretion when it denied appellant's motion for new trial?

For the reasons that follow, we answer Questions 1, 2, and 3 in the affirmative, and hold that appellant was entitled to judgment as a matter of law as to each count. In light of our answers to Questions 1 through 3, we need not reach Questions 4 through 6. Accordingly, we will reverse the judgment of the Circuit Court for Baltimore County, with instructions to enter judgment in favor of the appellant and against the appellee for costs.

FACTS AND PROCEDURAL HISTORY

This case arises from a settlement agreement ("Agreement") dated June 28, 2006, between the appellant, Janice Hundt ("Janice"), and her father, Conrad C. Snedegar ("Conrad"), appellee.[1] Prior to entering into the Agreement, Conrad had filed suit against Janice in the Circuit Court for Baltimore County (Case Number 03-C-04-13392, *Conrad C. Snedegar v. Janice L. Hundt, et al.)* asserting claims regarding certain real property titled in Janice's name alone; the Agreement was intended to fully and finally resolve that dispute.

Paragraph 4 of the Agreement provided:

> 4. Janice acquired title to three parcels of real property located at 7300 Battle Grove Road in Baltimore County, Maryland, as recorded in the Baltimore County Land Records, Liber 0012255 Folio 189-200 (the "Real Property") which title is subject to the dispute. The parties agree that the Real Property shall be sold on their behalf and that the net proceeds of such sale shall be divided between them, one-half to Janice and one-half to Conrad. All real estate taxes and insurances incurred on the Real Property since June 28, 2006 shall be divided equally between the parties. Any refund or return of these expenses shall be divided equally between the parties. The Real Property shall be listed on or before October 10, 2006, and Janice shall be entitled to retain the listing broker of her choice for the Real Property. The Parties shall agree to a listing and selling price for the Real Property. With regard to the listing price, in the event the Parties cannot agree to what the listing price should be, Janice and Conrad shall each select a broker/appraiser of their choice and shall submit the appraisals or listing agreements to [Miles & Stockbridge attorney] Katharine Fones, who shall retain an appraiser of her choice who shall determine the listing price of the Real Property. In the event that an offer less than the listing price is made, and the Parties cannot agree to accept or reject the offer, then they shall follow the procedure described above and the independent appraiser selected by Ms. Fones shall determine whether

[1]Because the Agreement at issue uses the parties' first names, we will as well, for the sake of clarity and consistency. We mean no disrespect to the parties.

> the offer is fair and reasonable and whether the offer shall be accepted or rejected. The parties agree that all costs associated with Ms. Fones[']s] efforts and those of the independent appraiser selected by her shall be borne equally by the parties. The parties agree that all reduction in price disputes and all selling price disputes shall be resolved within ten (10) days of the day that the dispute arises. In the event that no bona fide offers are received after ninety (90) days the parties agree that the listing price shall be reduced by fifty thousand dollars ($50,000.00). If bona fide offers are still not forthcoming this $50,000.00 reduction process shall be followed every ninety (90) days until the listing price reaches $800,000.00 at which point if the parties are unable to agree on a listing price Katherine Fones shall retain an appraiser of her choice who shall determine the listing price of the Real Property.

Paragraph 10 of the Agreement provided: "This Agreement contains the entire understanding between the parties and any promises or representations not herein contained shall have no force or effect."

The real property referenced in the Agreement consisted of three contiguous lots totaling approximately five acres. At the time the Agreement was entered into, a ranch-style house (with three bedrooms, one and one half baths) was situated on one of the three lots, and the other two lots were unimproved. Conrad occupied the house at the time the Agreement was signed.

Although Paragraph 4 of the Agreement provided that the real property "shall be listed on or before October 10, 2006," the property was not listed for sale by that date. After October 10, 2006, the parties entered into an amendment to the Agreement, titled "First Amendment to June 28, 2006 Agreement," which appears to have been signed by Conrad on October 12, 2006, and by Janice on October 16, 2006. The First Amendment was one

paragraph long, and defined the term "net proceeds" as used in the Agreement. The First Amendment is not at issue here.

On January 28, 2007, Conrad signed a "Third Amendment to June 28, 2006 Agreement"; Janice signed the Third Amendment on February 13, 2007. The parties agree that there was never any "Second Amendment" to the Agreement, and assume the reference to the "Third Amendment" was merely an error. In any event, the Third Amendment provided:

> Paragraph 4 to the June 28, 2006 Agreement between the Parties, which pertains to the sale of the Battle Grove Road Property (the "Real Property"), provides:
>
> > **The Real Property shall be listed on or before October 10, 2006, and Janice shall be entitled to retain the listing broker of her choice for the Real Property**. The Parties shall agree to a listing and selling price for the Real Property.
>
> **The Parties agree that as of the date the last of the Parties signs this Third Amendment to Agreement, no real estate broker has been retained to sell the Real Property**. The Parties further agree that they previously agreed to a selling price for the Real Property of One Million Dollars ($1,000,000.00). Conrad believes he has a purchaser (the "Purchaser") for the Real Property who is ready, willing and able to purchase the Property at the price agreed by the Parties. By this Third Amendment to Agreement, the Parties agree that Conrad shall have 10 days from the date of filing of the Stipulation of Dismissal to produce a contract from the Purchaser at the agreed price. The identity of the Purchaser shall be made known at the time the contract is submitted for consideration. Should the Purchaser's contract be acceptable, the Parties agree that no real estate commissions will be paid to any party as a result of the sale. If the Purchaser fails to submit an acceptable contract within the 10 day period, Janice may retain the realtor of her choice under the terms previously set forth in the Agreement. The Parties further agree that if the Purchaser fails to submit an acceptable contract within the 10 day period, Conrad shall have 30 days from the expiration of the 10 day period within

> which to remove all his personal effects, belonging [sic] and other personalty from the Real Property.

(Emphasis added.)

The Stipulation of Dismissal of the previously-filed lawsuit was filed on February 22, 2007. Conrad did not produce a buyer ready and willing to purchase the real property for the price of one million-dollars within ten days after February 22, 2007 — or indeed ever.

On March 12, 2007, Janice retained Leah Knoerlein as "the realtor of her choice," and she listed the property for sale for $1,000,000.00. A week later, on March 19, an offer to purchase the Property for $1,000,000.00 was received, but the offer contained unacceptable contingencies which reduced the effective amount of the offer to $700,000.00. Through her real estate agent, Janice made a counter-proposal, but no response to this counter offer was ever received.

The next offer was received on April 19, 2007, when Preston Snedegar, Janice's brother, offered to buy one of the three lots for $50,000.00. That offer was rejected because the three lots were being sold as a single unit.

A third offer was received on June 28, 2007, for $650,000.00. But the prospective buyers eventually "walked away" after receiving the results of a soil study.

On November 7, 2007, an offer to purchase the property for $700,000.00 was received, but the listing price at that point was $900,000, and nothing ever came of this offer. There were no offers received on the property between November 7, 2007, and April 7, 2011, when a letter of intent to purchase it was received. No firm offer emerged from the letter of intent, however. There were no other offers to purchase the real property. As contemplated

by Paragraph 4 of the Agreement, the listing price of the property was reduced by $50,000.00 on several occasions, beginning with a drop in price to $950,000.00 on June 12, 2007, which was followed by a reduction to $900,000.00 on September 12, 2007, and to $850,000.00 on December 12, 2007. On March 12, 2008, pursuant to Janice's direction, Ms. Knoerlein reduced the price to $800,000.00.

Although Paragraph 4 of the Agreement provided that the price would not be changed from $800,000 until after Ms. Fones "retains an appraiser of her choice who shall determine the listing price of the Real Property," Janice authorized further reductions in the listing price without first having Ms. Fones obtain an appraisal. On December 4, 2008, the price was reduced from $800,000 to $750,000.00; on March 17, 2009, it was reduced to $700,000.00; on July 23, 2009, it was reduced to $650,000.00; and on November 23, 2009, it was reduced to $600,000.00.

Ms. Knoerlein described the efforts she made to sell the property between 2007 and 2011 and to keep the listing fresh, but, as of the time of trial in September 2013, the property had not sold and was no longer on the market. At Ms. Knoerlein's request, she was released from her obligations as Janice's real-estate broker in September 2012.

Conrad vacated the house in 2007. In June 2007, Janice received in the mail a citation from Baltimore County, citing her for excessively high grass at the property. At trial, Janice described what she saw at the property when she went there to deal with the grass citation:

> [BY MS. HUNDT]: After my father left the house, there was a lot of maintenance to do. I had waist high grass to cut, I had a house that had water damage and buckets strategically placed in the house catching water from the leaky roof. I had mold and mildew damage. I had rotten food left on a pot on

> the oven that was covered in mold. I had a refrigerator, a full refrigerator on the front of the porch that was just there with the door on it, not taken off, a liability danger. I had to have construction debris that was scattered out through almost a five acre lot removed and hauled away. It took three huge dumpsters. I had to gather up brick and block that was scattered throughout the Property. It was a construction junk yard site and all of this was buried in waist high grass. I had a boat on a trailer that had a tree growing in the middle of it. I had to, the house was in disarray. We had to completely clean the house, bleach it, I had to have rugs shampooed. We had to clean debris out of a [sic], the cottage, the small building that was termite loaded, it had old mattress and box springs in it, had sewage backed up in it that just had a stench, it was horrific. In the house, the stench was horrific. It was so bad and we were there the hottest week of the year that I actually went in the backyard and vomited. And after that clean up and the repairs made, I paid to have repairs made to the roof so that at least the leaks would stop.

Between October 1, 2007, and March 2010, tenants occupied the property. The tenants made some repairs while they lived there, including patching the roof to stop leaks. After the tenants left, Janice spoke with two contractors about the condition of the property and about the need for repairs. The first contractor estimated the necessary repairs would cost $51,400.00, while the second contractor's estimate was $68,900.00. Janice engaged a home inspector to give her an "unbiased assessment of what the actual house needed to have done without expecting payment for it." The home inspection took place on April 27, 2010, and the home inspector estimated cost of the necessary repairs at $75,000.00 to $100,000.00.

The property was vandalized on more than one occasion after the home inspection in April 2010, and that, coupled with the extensive repairs needed, led Janice to conclude that it was not cost-effective to repair the house. In her view, even if the repairs had been done, the house was so outdated that it would not have been appealing to a buyer. Further, she theorized that a cleared lot might make the property more attractive to a developer, the most

likely purchaser of the multi-acre tract. Rather than incur the major expense of making repairs to the house, Janice had the house razed on August 23, 2010. When the house was removed, it was discovered that an old, above-ground oil tank had leaked oil under the foundation; as a consequence, Janice also had to pay for the environmental clean-up related to the leak. She did not request that Conrad share in any of the expenses, but she also did not consult him or seek his input before razing the house.

On October 21, 2011, Conrad filed the suit against Janice that is the subject of this appeal. The complaint contained three counts. Count I alleged breach of contract, specifically asserting that Janice materially breached the Agreement in four ways: (1) by failing to list the property by October 10, 2006; (2) by unilaterally lowering the asking price below the $800,000.00 "floor" specified in the Agreement, (3) by failing to use "good faith efforts to sell the property," and (4) by demolishing the house and thereby diminishing the property's value. Conrad contended that these alleged breaches of the Agreement entitled him to damages in the amount of $500,000.00, which "amount represents [Conrad's] portion of the diminution in fair market value resulting from [Janice's] breach."

Count II alleged waste, and sought compensatory damages of $500,000.00 and punitive damages of $1.5 million. In Count II, Conrad asserted that he had a beneficial interest in the property, and that Janice had an obligation to make the necessary good faith efforts to sell the property, as well as a fiduciary duty as "trustee of the Property to keep property in good repair until property was sold." Count II recited that Janice had demolished

the house on the property, and alleged that that action diminished the value of the property in which he had a beneficial interest.

Count III asserted a claim of "negligence based on fiduciary duty," and alleged that, upon entering into the Agreement, Janice became the "trustee of [Conrad's] interest in the property" and, as a result, there was a "fiduciary relationship that existed between [Conrad] and [Janice]." Count III alleged that Janice "breached her duty of looking out for [Conrad's] economic interest" by "not listing the property at a time when the property had the highest fair market value," and by not "maintaining the property in good repair, by causing a single family dwelling and a cottage on the property to be removed, lowering the value of the property tremendously." Conrad repeated his demand for $500,000.00 in compensatory damages, and $1.5 million in punitive damages.

The matter was tried before a jury on September 16 and 17, 2013. Conrad called Janice as a hostile witness during his case-in-chief. At the close of Conrad's case, Janice made a motion for judgment pursuant to Maryland Rule 2-519. As to Count I, alleging beach of contract, Janice argued that there was no evidence of any material breach of contract, and certainly no evidence of any breach of contract that caused harm. As to Count II, alleging waste, Janice argued that Conrad, who held no title in the real estate, was not legally entitled to assert a claim for waste because Conrad's only legal interest was in the proceeds of the sale pursuant to the Agreement; and alternatively, Janice argued that there was no evidence that Janice's decision to raze the house resulted in a diminution in value of the entire property as a whole. As to Count III, alleging negligent breach of fiduciary duty, Janice argued that

there was no "fiduciary" relationship between Janice and Conrad, but that, even if there had been, Maryland law does not recognize an independent cause of action at law for money damages based upon the breach of a fiduciary duty. Finally, Janice argued that there was no evidence that could support an award of punitive damages. Janice's motion for judgment at the close of Conrad's case was denied.

Janice rested her case without calling any witnesses, and renewed her motion for judgment. The motion was again denied, and the case was submitted to the jury.

The jury returned a verdict in favor of Conrad. As to Count I, the jury found that Janice had "breached a contract with" Conrad, and was liable for $36,000.00 in damages. As to Count II, the jury found that Janice had committed waste, and was liable for $100,000.00 in damages. As to Count III, the jury found that Janice owed Conrad a fiduciary duty; that Janice had been "negligent in her capacity as a fiduciary"; that Conrad was not contributorily negligent; and that Janice was liable for $220,000.00 in compensatory damages. Finally, the jury found, "by clear and convincing evidence that [Janice] acted with actual malice, evil intent, ill will, fraud or intent to injure," and was therefore liable to Conrad for punitive damages in the amount of $660,000.00.

Janice's motion for judgment notwithstanding the verdict and motion for new trial were both denied. This appeal followed.

STANDARD OF REVIEW

We review *de novo* the denial of a motion for judgment, as we explained in *James v. General Motors Corp.,* 74 Md. App. 479, 484-85 (1988):

> This Rule [Rule 2-519(b)] makes clear that when ruling on a motion for a judgment the trial judge must consider the evidence, including the inferences reasonably and logically drawn therefrom, in the light most favorable to the party against whom the motion is made. *See Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 353, 517 A.2d 1122 (1986). **If there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied.** *Virgil v. "Kash N' Karry" Service Corp.*, 61 Md. App. 23, 28-29, 484 A.2d 652 (1984), *cert.denied*, 302 Md. 681, 490 A.2d 719 (1985); *McSlarrow v. Walker*, 56 Md. App. 151, 158, 467 A.2d 196 (1983), *cert. denied*, 299 Md. 137, 472 A.2d 1000 (1984); *Montgomery Ward & Co. v. McFarland*, 21 Md. App. 501, 513, 319 A.2d 824 (1974). **On the other hand, where the evidence is not such as to generate a jury question, *i.e.*, permits but one conclusion, the question is one of law and the motion must be granted.** *Schaeffer v. United Bank & Trust Co*., 32 Md. App. 339, 343, 360 A.2d 461 (1976), *aff'd sub nom*, *United Bank & Trust Co. v. Schaeffer*, 280 Md. 10, 370 A.2d 1138 (1977). An appellate court reviewing the propriety of the grant or denial of a motion for judgment by a trial judge must conduct the same analysis. *Pahanish*, 69 Md. App. at 354, 517 A.2d 1112.

(Emphasis added.)

DISCUSSION

I. Count I - breach of contract

Interpretation of a written contract ordinarily is a question of law for the court. *See Calomiris v. Woods,* 353 Md. 425, 434 (1999); *JBG/Twinbrook Metro Ltd. Partnership v. Wheeler*, 346 Md. 601, 625 (1997). In reviewing a contract, the court must determine from the language of the agreement "what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Calomiris, supra*, 353 Md. at 436. The damages which may be recovered for a breach of contract include only those which arise naturally from the breach and those which may reasonably be supposed to have been in the contemplation of the parties at the time of making the contract. *See, e.g., Burson v.Simard,* 424 Md. 318, 327-29 (2012). Upon proof of breach of contract, damages may be recovered

for "1) the losses proximately caused by the breach, 2) that were reasonably foreseeable, and 3) that have been proven with reasonable certainty." *Thomas v. Capital Medical Management Associates, LLC,* 189 Md. App. 439, 464 (2009).

Conrad contended that Janice breached the Agreement in four specific ways: by failing to list the property for sale by October 10, 2006; by listing the property at a price below $800,000.00 without Conrad's consent; by razing the house; and by failing to use good-faith efforts to sell the property. But, even when the evidence is viewed in a light most favorable to Conrad, it was insufficient to generate a jury question with regard to his claim for breach of contract. None of the four alleged breaches of the Agreement supported a breach of contract action for compensatory damages.

A. Failure to list the property by October 10, 2006

Janice contends that there was no obligation to list the property for sale by October 10, 2006, because that obligation was extinguished by the Third Amendment and replaced with a new obligation. She contends there was a novation. Alternatively, she contends that there was no evidence from which a jury could conclude that Conrad suffered harm as a consequence of any "delay" in listing the property between October 2006 and March 2007. We agree with both arguments.

A novation occurs when parties to a contract substitute a new obligation for an old one, with the intent that the existing contractual obligation be extinguished. The Court of Appeals discussed novation in *Dahl v. Brunswick Corp*., 277 Md. 471 (1976):

> "A 'novation' is a new contractual relation made with intent to extinguish a contract already in existence. It 'contains four essential requisites:

> (1) A previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the validity of such new contract, and (4) the extinguishment of the old contract, by the substitution of the new one.' *BarGale Industries*, *Inc. v. Robert Realty Co., Inc.*, (275) Md. (638, 646), 343 A.2d 529, 535 ((1975)); *Leisner v. Finnerty*, 252 Md. 558, 250 A.2d 641 (1969); *Hudson v. Md. State Housing Co.*, 207 Md. 320, 114 A.2d 421 (1955); *Baltimore Academy of the Visitation v. Schapiro*, 169 Md. 332, 181 A. 731 (1935). See also 6 A. Corbin, Contracts § 1297, et seq. (1962).
>
> "A novation is never presumed; the party asserting it must establish clearly and satisfactorily that there was an intention, concurred in by all the parties, that the existing obligation be discharged by the new obligation. *Harford Bank of Bel Air v. Hopper's Estate*, 169 Md. 314, 330, 181 A. 751, 758 (1935); *District Nat'l Bank of Washington v. Mordecai*, (133 Md. 419, 427, 105 A. 586 (1919)). . . .
>
> "The intention to substitute a new agreement for a previous contract need not be expressed however, since facts and circumstances surrounding the transaction, as well as the subsequent conduct by the parties, may show such an acceptance as clearly as an express agreement; but such facts and circumstances, when shown, must be such to establish that the intention to work a novation is clearly implied. *Leisner v. Finnerty, supra*, 252 Md. at 565, 250 A.2d at 645 (1969), citing *Cole, Adm'x v. Wilbanks*, 226 Md. 34, 171 A.2d 711 (1961) ((per curiam)); *Swift v. Allan*, 211 Md. 588, 594, 128 A.2d 260, 263 (1957); 2 S. Williston, Contracts § 353, at 816 (3d ed. 1959)."

Id. at 481-82 (quoting *I. W. Berman Prop. v. Porter Bros*., 276 Md. 1, 7-8 (1975)) (ellipsis in quoted case).

Here, the Agreement imposed an obligation on Janice to list the property by October 10, 2006; the original Agreement stated: "The Real Property shall be listed on or before October 10, 2006, and Janice shall be entitled to retain the listing broker of her choice for the Real Property." Although the Agreement does not specifically say that *Janice* alone was responsible for having the property listed on or before October 10, 2006, we infer that

the Agreement placed that duty on Janice given that she was the sole record owner of the property and the only person who had the authority to have it listed for sale.

When the Third Amendment was signed by Conrad on January 28, 2007, it specifically recognized the foregoing sentence from the Agreement, and pointed out that, as of the time the later of Conrad or Janice signed the Third Amendment, no listing broker had been retained. The Third Amendment states: "The Parties agree that as of the date the last of the Parties signs this Third Amendment to Agreement, no real estate broker has been retained to sell the Real Property." It necessarily follows that Conrad was aware, on January 28, 2007, that October 10, 2006, was a date in the past, and that the property had not been listed on or before October 10, 2006, *i.e.*, that Janice had not listed the property by the deadline imposed in the original Agreement. Further, under the provision of the Third Amendment which gave Conrad a window of opportunity to produce a buyer of his own and thereby avoid incurring any brokerage fees on a sale to his buyer, Conrad received a bargained-for benefit by entering into the Third Amendment and waiving any claim of breach for Janice having failed to list the property prior to that point in time. The reference in the Third Amendment to Conrad having "10 days from the date of filing the Stipulation of Dismissal to produce a contract from [his Purchaser]" suggests that Janice's delay in listing the property for sale before the execution of the Third Amendment was related to the continuing pendency of Conrad's previously-filed lawsuit. When Conrad vacated the house, pursuant to the terms of the Third Amendment, in 2007, he made no claim at that time that

Janice was in breach of an obligation to list the property by October 10, 2006, the deadline set forth in the original Agreement. Indeed, that claim was not made until the filing of the complaint in this case in October of 2011.

Based on these undisputed facts, the intention to substitute a new agreement for the earlier obligation is clear from the circumstances surrounding the transaction, as well as the subsequent conduct by the parties. *Cf. Leisner v. Finnerty*, 252 Md. 558, 565 (1969) ("It should be borne in mind that there does not have to be an expressed intention to substitute the new agreement for the previous contract. 'Facts and circumstances surrounding the transaction and a subsequent conduct of the parties may show acceptance as clearly as an express agreement. These facts and circumstances must be such that the intention to work a novation be clearly implied.' Williston Contracts, 3d Ed., Vol. 2, Section 353 at 816."). We conclude that, as a matter of law, the Third Amendment was a novation of the obligation imposed by the Agreement to list the property on or by October 10, 2006, and Janice could not have thereafter been held liable for any breach of the clause in the original Agreement in this regard.

Moreover, we also agree with Janice's contention that Conrad presented no evidence from which a jury could rationally conclude that he suffered economic loss as a consequence of Janice's failure to ensure that the property was listed between October 2006 and March 2007. Conrad did not offer evidence as to the appraised value of the property as of October 10, 2006 (the date on which he alleged the property should have been listed) or

March 12, 2007, the date on which the property was listed. Nor did he present evidence from which the jury could have rationally concluded that the property most likely would have sold had it been listed for sale on or before October 10, 2006, rather than in March of 2007. In the absence of evidence establishing financial harm as a consequence of the delay in listing the property, Janice was entitled to judgment in her favor as to this claim.

B. Failure to obtain Conrad's consent to a listing price below $800,000.00

In early 2007, the parties agreed to, and did, list the property for sale at $1,000,000.00. The Agreement provided that, if no *bona fide* offers were forthcoming after ninety days on the market at the agreed-upon price, the listing price would be reduced by $50,000.00, with further reductions of $50,000.00 every ninety days thereafter if no *bona fide* offers were forthcoming. Janice's agent regularly lowered the listing price, at Janice's direction, by $50,000.00 every ninety days. On March 12, 2008, the listing price was reduced to $800,000.

The Agreement prescribed a specific process for any further adjustments to the price if it did not sell after the listing price had been reduced to $800,000.00:

> If bona fide offers are still not forthcoming this $50,000.00 reduction process shall be followed every ninety (90) days until the listing price reaches $800,000.00 **at which point if the parties are unable to agree on a listing price [attorney] Katherine Fones shall retain an appraiser of her choice who shall determine the listing price of the Real Property**.

(Emphasis added.) After the list price on the property was reduced to $800,000, nearly nine months passed during which no offers received. On December 4, 2008, without consulting

with Conrad about the list price, and without having Ms. Fones obtain an appraisal, Janice lowered the list price to $750,000.00.

Nevertheless, although the jury could rationally conclude that this action by Janice in unilaterally dropping the price below $800,000 was in breach of the procedure set forth in the Agreement, there was no evidence from which a jury could rationally conclude that this action *caused* financial harm to Conrad. Because the property *never sold* at a price below the $800,000 floor that triggered the need for an appraisal, there was no evidence that Janice's action in *reducing the price* caused any loss to Conrad. In other words, if the property could not be sold when offered at a price below $800,000 — which was the undisputed evidence at trial — there is no rational basis for concluding that the property could have been sold during that time frame if the asking price had been even higher. Janice was therefore entitled to judgment as a matter of law as to this aspect of the breach of contract claim.

C. Razing the house

The Agreement did not specify that Janice could not raze the house. Nor did it provide that Janice had a duty to consult Conrad before razing the house which she alone owned. The Agreement imposed no express obligation on Janice to improve, preserve, or maintain the house. It also did not address or in any express manner limit the scope of Janice's discretion as the owner of the property. The integration clause, on the other hand, provided that the arms-length Agreement represented the parties' *entire* understanding and

that any promises or representations not contained in the Agreement had "no force or effect." Janice was undisputedly the sole record owner of the real property, including the house, and therefore was legally entitled to raze the house. Janice was entitled to judgment as a matter of law as to this aspect of the breach of contract claim.

D. Janice's breach of implied duty of good faith

In every contract, whether made explicit or not, there is an implied duty of good faith and fair dealing which imposes upon the parties to the contract an obligation that they not "act[ ] in such a manner as to prevent the other party from performing his obligations under the contract." *Parker v. Columbia Bank*, 91 Md. App. 346, 366 (1992). But the implied covenant of good faith and fair dealing does not, in and of itself, support a cause of action for breach of contract. As we explained in *Mount Vernon Properties, LLC v. Branch Banking And Trust Co.*, 170 Md. App. 457, 471-72 (2007):

> [T]here is no independent cause of action at law in Maryland for breach of the implied covenant of good faith and fair dealing. Although the issue has not been specifically addressed by the Maryland appellate courts, we agree with the circuit court that no such action at law exists in Maryland.
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> We find persuasive the reasoning of the United States District Court in *Swedish Civil Aviation Admin. v. Project Management Enterprises, Inc*., 190 F.Supp. 2d 785, 794 (D.Md.2002):
>
> > The implied duty of good faith "prohibits one party to a contract from acting in such a manner as to prevent the other party from performing his obligations under the contract." *Parker v. The Columbia Bank*, 91 Md. App. 346, 366, 604 A.2d 521 [, *cert. denied*, 327 Md. 524, 610 A.2d 796] (1992). However, the Court of Special Appeals did not go further [in the *Parker* case] and rule that there is a duty requiring affirmative steps beyond those

> required by the contract itself. *Id*. Therefore, this duty is merely part of an action for breach of contract, *Howard Oaks, Inc. v. Maryland Nat'l Bank*, 810 F.Supp. 674 (D.Md.1993), and so, because [one count] already states a claim for breach of contract, [the count purporting to state a claim for breach of the implied duty of good faith] does not state a different claim and will be dismissed.

See also Baker v. Sun Co., 985 F.Supp. 609, 610 (D.Md.1997) ("Maryland does not recognize an independent cause of action for breach of the implied contractual duty of good faith and fair dealing."); PAUL MARK SANDLER & JAMES K. ARCHIBALD, PLEADING CAUSES OF ACTION IN MARYLAND, § 2.1 at 29 (3d ed. 2004) ("Maryland does not recognize, however, an independent cause of action for breach of the implied contractual duty of good faith and fair dealing."). A breach of the implied duty of good faith and fair dealing is better viewed as an element of another cause of action at law, *e.g.*, breach of contract, than as a stand-alone cause of action for money damages, and we conclude that no independent cause of action at law exists in Maryland for breach of the implied duty of good faith and fair dealing.

Although a covenant of good faith and fair dealing is implied in every contract, that covenant does not create obligations to perform additional acts that are not otherwise required by the express terms of contract. The implied duty of good faith and fair dealing "concerns the 'performance and enforcement' of the contract itself." *Blondell v. Littlepage,* 413 Md. 96, 113 (2010). The covenant "does not obligate a [party] to take affirmative actions that the [party] is clearly not required to take under [the contract]." *Parker, supra*, 91 Md. App. at 366. And the implied covenant does not "interpose new obligations about which the contract is silent, even if inclusion of the obligation is thought to be logical and wise." *Blondell, supra*, 413 Md. at 114 (internal quotation marks and citations omitted).

Conrad asserts that Janice's "delay in listing the Property for sale, her unilateral demolition of the Home and other improvements on the Property, and her failure to abide by the pricing floor terms and specific procedures set out in the Agreement and Third Amendment demonstrate her failure to make good faith efforts to sell the Property." For the reasons set forth above, we disagree that this evidence was sufficient to submit the breach of contract count to the jury as to these three alleged breaches. Adding an assertion that Janice acted in bad faith does not create an action for breach of contract where there was otherwise no breach of any express term of the Agreement.

With respect to Janice's delay in listing the property for sale, we have already explained above that any claim for damages arising from this departure from the terms of the Agreement was waived by Conrad when he signed the Third Amendment. As a consequence of the Third Amendment the failure to list the property prior to the execution of the Third Amendment was no longer a breach of any express or implied promise in the Agreement. We have also already explained that Conrad presented no evidence that he suffered any harm as a consequence of the delay in listing the house for sale.

As to Janice's decision to raze the house, we have already pointed out that the Agreement did not expressly preclude her from taking this action or require her to maintain or preserve the existing improvements. The evidence also showed that the property sat on the market for just under three and a half years before the house was razed, and in that time, it attracted a total of four offers, none of which were *bona fide* offers that would have fetched

anywhere close to one million dollars. In the absence of an express undertaking by Janice in the Agreement to improve, preserve and/or maintain the house, the implied duty of good faith and fair dealing would not, as a matter of law, impose such additional contractual obligations on Janice.

Even if the implied covenant of good faith was interpreted to preclude Janice from razing the house and we assume arguendo that she breached that unstated contractual duty, Conrad presented no evidence from which a jury could reasonably find, without resort to speculation, that he suffered economic damages as a consequence of the alleged breach of that duty. The Agreement giving rise to the implied duty of good faith and fair dealing, and to Conrad's claim for breach of that duty, called for Janice to list and sell all three lots, not just the lot on which the house stood. The relevant question for the jury in connection with the claim for damages associated with breach of any implied duty consequent to razing the house was whether destruction and removal of the house from the single lot increased or decreased the value of the three lots taken as a whole. But Conrad presented no evidence as to the value of all three lots, considered as a package, before and after the house on the single lot was razed.

Rather, the only valuation evidence presented by Conrad related to the value of the single lot on which the house stood. This evidence came from the testimony of Jerold Vega, of Robinson Appraisal, and from Allen Rudo, the Tax Assessor Supervisor for Baltimore County. Mr. Vega expressed an opinion as to the value of only the lot on which the house

stood – not the three-lot parcel that was the subject of the Agreement. He testified that, as of June 28, 2006, assuming the house was in "good condition," the combined value of the single lot and house was $315,000. He testified that as of August 21, 2010 (*i.e.*, two days before the house was razed), assuming the house was in "fair condition," the combined value of the single lot and house was $160,000. And he testified that as of August 28, 2010, five days after the house was razed, the value of the single lot without the house was $95,000. But he did not opine with respect to the impact the removal of the house had on the fair market value of the group of three lots that were being marketed as a package.

Mr. Rudo testified as to the "assessed value" of the lot on which the house stood – not the three-lot parcel that was the subject of the Agreement – at two points in time. He testified that, as of January 1, 2009, the State assessed the land as having a "base value" of $151,070, and the house as having a base value of $185,560, for a total base value of the lot and house of $336,630. He testified that as of January 1, 2012 – after the house was razed – the State viewed the single lot on which the house had previously stood as having a base value of $153,100.[2]

But evidence as to the value of the single lot on which the house stood, before and after the house was razed, is not competent evidence as to the value of the three lots taken

[2]Mr. Rudo relied on printouts from the internet showing the assessed value of the property in support of his opinion testimony. Janice contends that the admission of these printouts was prejudicial error. We do not reach this question in light of our conclusion that Janice was entitled to judgment in her favor as a matter of law as to all counts.

as a whole before and after destruction and removal of the house from the single lot. Even if the expert witnesses were correct that the removal of the old house from the single lot decreased the market value of that lot when its marketability was considered in isolation, Conrad retained a right to receive a share of the proceeds of the sale of all three lots, and the amount of those proceeds remains undetermined. The testimony of Conrad's experts did not provide the jury with a basis to decide without speculation that the amount of proceeds Conrad will ultimately receive from the sale of all three lots will be diminished by any amount as a consequence of the removal of the house. There was no evidence presented by Conrad from which the jury could have concluded that the destruction and removal of the house adversely impacted the value of the property taken as a whole in any amount. And it was the property taken as a whole that was the subject of the Agreement.

Finally, even if Janice's unilateral reduction in the listing price below the $800,000 "threshold" could be considered a breach in the implied obligation of good faith and fair dealing, Conrad's proof at trial, as we have already pointed out, did not demonstrate that this breach caused him any harm. The property did not sell when it was offered at $1,000,000.00, nor did it sell when it was offered at $600,000.00.

For all of the foregoing reasons, Janice was entitled to judgment as a matter of law on Count I of Conrad's complaint.

II. Janice's motion for judgment on Count II - Waste

In Count II of his complaint, Conrad contended that Janice was liable to him for committing waste by razing the house. Conrad's trial counsel conceded, however, that the Agreement provided Conrad with an interest in the proceeds of the sale of the property, rather than with an interest in the real property. During a colloquy between the court and Conrad's trial counsel, the following statements were made:

> [Court]: [I]s he a title holder?
>
> [Conrad's Counsel]: Well, that doesn't matter, Your Honor, because the contract itself creates a[n] interest in the proceeds.
>
> [Court]: The proceeds[;] I'm talking about the land. . . . We're not talking about waste of proceeds, we're talking about waste of property. . . . So how can, how can the contract create an interest in the land?
>
> [Conrad's Counsel]: The contract doesn't, it creates an interest in the proceeds of the land.
>
> * * *
>
> [B]ecause he has interest in the sale of the proceeds, he has an actionable claim on it. He doesn't have to have title or an interest in the real property himself[;] he can have an interest in the proceeds as a result of the sale.

As a matter of law, the doctrine of waste can be invoked only by an individual who has a direct or reversionary interest in the allegedly devalued property. Because Conrad did not own a direct or reversionary interest in the real property, but had only an interest in the sales proceeds (which were intangibles rather than real property), Janice was entitled to judgment as a matter of law on Count II.

The action for waste is described as follows in Am. Jur. 2d, *Waste*, § 1:

> "Waste" is considered a tort, sometimes referred to as a property damage tort, and is a concept related to real estate.
>
> "Waste" may be defined as an:
>
> • injury
>
> • to premises, an estate, a reversionary interest, property, or a freehold
>
> • by one rightfully in possession, or with a possessory estate, but who does not have absolute, unqualified, or full title to the estate
>
> • to the prejudice or detriment of another's estate or interest in the same property
>
> Similarly, "waste" has been defined as conduct, including both acts of commission and of omission, on the part of the person in possession of land which is actionable at the behest of, and for the protection of the reasonable expectations of, another owner of an interest in the same land and as an unreasonable and improper use and abuse, mismanagement, or omission of duty touching real estate by one rightfully in possession, which results in substantial injury to the real estate. Waste may be committed by acts or omissions which tend to the lasting destruction, deterioration, or material alteration of the freehold and the improvements thereto or which diminish the permanent value of the inheritance. "Waste" is the violation of an obligation to treat the premises in such manner that no harm be done to them and that the estate may revert to those having an underlying interest undeteriorated by any wilful or negligent act.

The various permutations of waste all contemplate that the party asserting the claim be the owner of an interest in the real property. Conrad was not such a party.

This Court discussed the doctrine of waste in *Boucher Inv. L.P. v. Annapolis-West Ltd. P'ship*, 141 Md. App. 1 (2001), stating:

> In the early nineteenth century, waste litigation was common in the United States because of the agrarian nature of nineteenth century American society. The leading cases of that era "reaffirm[ed] the basic principles of the old common law doctrine, especially that a present possessor is required to preserve the property essentially unchanged in value and character, in anticipation of the time when the future interest ripens into possession." *Id*. Among other things, "misuse and neglect" were prohibited and "limited duties of repair and maintenance" were imposed. *Id*. Although common then, waste cases are now relatively rare for a number of reasons. The most prominent among them is that "most states have now adopted some form of implied warranty of habitability, requiring landlords to maintain residential rental premises in minimally safe and habitable condition. These requirements effectively shift from tenants to landlords many of the duties of maintenance and repair that, under the law of waste, rested with tenants as present possessors of the property." *Id*. at 239-40.
>
> Nonetheless, the law of waste continues to evolve and Maryland, among other states, now recognizes the responsibility of a mortgagor to protect the value of a mortgagee's security from impairment. Indeed, under Maryland law, "[a]ny mortgagor, including a grantor under a deed of trust given as security for the payment of a debt or the performance of an obligation ... who, without express or implied authorization, commits or permits waste is liable for the actual damages suffered by the property." Md. Code Ann. (1974, 1996 Repl.Vol., 2001 Cum.Supp.), § 14-102 of the Real Property Article.

Id. at 15-16.

The current case does not arise in the mortgagor-mortgagee context. And a review of the cases cited by the parties confirms that Maryland has recognized the doctrine of waste only in cases in which the individual or entity making the claim had either a direct or reversionary interest in the property. *See Dickinson v. Mayor and City Counsel of Baltimore,* 48 Md. 583, 585-86; 589 (1878) (an action for waste extends to every case in which one who has a reversionary interest in property that suffers harm due to tortious acts of the occupant); *Beesley v. Hanish,* 70 Md. App. 482, 493 (1987) (tenant is liable under doctrine of waste to

landlord for actual damages caused to the property); *Redwood Hotel, Inc. v. Korbien,* 195 Md. 402, 410 (1950) (landlord has a right to seek injunction to preclude tenant from committing waste); *M'Laughlin v. Long,* 5 Har. & J. 113 (1820) (a claim for waste can be brought by a party in remainder for life or years, as in fee or tail, who held the interest at the time of the injury.). Because Conrad did not own a direct or reversionary interest in the property, he had no right, as a matter of law, to assert a claim for waste.

Alternatively, as we have already pointed out above, Conrad failed to present any legally sufficient evidence to support his claim that the property as a whole was diminished in value as a consequence of the demolition and removal of the house from the single lot. In the absence of such evidence, there was no legally sufficient basis for an award of damages in connection with the claim for waste in Count II, even assuming a cause of action for waste exists for the benefit of an individual who does not own a direct or reversionary interest in property. Janice's motion for judgment as to Count II should have been granted on this alternative ground.

III. Janice's motion for judgment on Count III - Negligent breach of fiduciary duty

In Count III of the complaint, Conrad alleged that a "fiduciary relationship" existed between himself and Janice, and that Janice negligently "breached her duty of looking out for [Conrad's] economic interest in the property by not listing the property at a time when the property had the highest fair market value," and by "not maintaining the property in good repair" and by razing the house. Janice argues that no fiduciary relationship existed between

herself and Conrad as a matter of law, and that, even if such a relationship had existed, Maryland law does not recognize an independent cause of action for damages in connection with an alleged negligent breach of fiduciary duty.

We need not reach the question of whether there was sufficient evidence from which a jury could have found that a fiduciary relationship existed between Janice and Conrad because we conclude as a matter of law that Maryland law does not recognize an independent cause of action for damages arising from an alleged negligent breach of such a duty. For this reason, Janice's motion for judgment should have been granted as to Count III.

In *Dynacorp v. Aramtel*, 208 Md. App. 403, 493-94 (2012), we observed:

> No Maryland appellate court has described the elements of [a cause of action for money damages for] breach of fiduciary duty because "[t]here is no universal or omnibus tort for the redress of breach of fiduciary duty by any and all fiduciaries." *Wasserman v. Kay*, 197 Md. App. 586, 630, 14 A.3d 1193 (2011). In *Wasserman, id.* at 631, 14 A.3d 1193, we stated, however, that "an alleged breach of fiduciary duty may give rise to a cause of action [such as breach of contract], *but it does not, standing alone, constitute a cause of action*." *Id*. at 631, 14 A.3d 1193.

(Footnote omitted, emphasis added.)

Wasserman was a complex case dealing with several real-estate "investment vehicles," managed by Mr. Kay. Mr. Kay invested money from the investment vehicles with Bernard Madoff, and lost it all. Aggrieved investors filed suit against Mr. Kay, alleging, among other things, breach of contract and breach of fiduciary duty. The trial court granted Mr. Kay's motion to dismiss. On appeal, we affirmed the dismissal of the count for breach of fiduciary duty, and explained:

Count II is against Mr. Kay for breach of his fiduciary duties to the investment vehicles and each of the partners/members thereof, and against Kay Management and Kay Investment for aiding and abetting Mr. Kay's breach. Appellants have adequately alleged that Mr. Kay owed them fiduciary duties, but ***whether the breach of those duties constitutes a separate cause of action at law for monetary damages is another question***. In *Kann v. Kann*, 344 Md. 689, 690 A.2d 509 (1997), a leading case on breach of fiduciary duty, the Court of Appeals held as follows:

> [T]here is no universal or omnibus tort for the redress of breach of fiduciary duty by any and all fiduciaries. This does not mean that there is no claim or cause of action available for breach of fiduciary duty. Our holding means that identifying a breach of fiduciary duty will be the beginning of the analysis, and not its conclusion. Counsel are required to identify the particular fiduciary relationship involved, identify how it was breached, consider the remedies available, and select those remedies appropriate to the client's problem. Whether the cause or causes of action selected carry the right to a jury trial will have to be determined by an historical analysis.

Several cases in the wake of *Kann* have held similarly. *See Int'l Bhd. of Teamsters v. Willis Corroon Corp*., 369 Md. 724, 727 n.1, 802 A.2d 1050 (2002) (treating a complaint by a labor organization against its insurance broker for negligence and breach of fiduciary duty as a complaint for negligence alone, and reasoning that "***although the breach of a fiduciary duty may give rise to one or more causes of action, in tort or in contract, Maryland does not recognize a separate tort action for breach of fiduciary duty***"); *Vinogradova v. Suntrust Bank, Inc*., 162 Md. App. 495, 510, 875 A.2d 222 (2005) (combining plaintiff's breach of fiduciary duty count and negligence count into a single negligence count where a third-party agent of a customer of a financial institution allegedly mismanaged customer's funds and investment accounts); *G.M. Pusey and Assocs., Inc. v. Britt/Paulk Ins. Agency, Inc.*, No. RDB–07–3229, 2008 WL 2003747, at *6–7, 2008 U.S. Dist. LEXIS 37525, at *18–20 (D.Md. May 6, 2008) (holding that plaintiff, wife of deceased insurance specialist, had no claim of breach of fiduciary duty against an insurance agency that the insurance specialist worked with because "***Maryland does not recognize an independent cause of action for breach of fiduciary duty" and plaintiff had alternative remedies, including a "breach of contract claim, in which a breach of fiduciary duty may be a part")***.

> *Kann* and its progeny do not obliterate the possibility of a separate cause of action for breach of fiduciary duty in an action seeking equitable relief. ***In a claim for monetary damages at law, however, an alleged breach of fiduciary duty may give rise to a cause of action, but it does not, standing alone, constitute a cause of action***. Here, the allegations in the count are relevant to other causes of action alleged (*e.g.*, fraud, tortious interference, breach of contract, and negligence), but they do not constitute a stand alone nonduplicative cause of action. Consequently, as to Count II, we affirm the circuit court's ruling [dismissing the count].

Id. at 630-31 (emphasis added).

Here, Janice's motion for judgment as to Count III should have been granted because Count III purported to state a stand-alone claim for money damages for breach of fiduciary duty, and no such cause of action at law is recognized in Maryland.

CONCLUSION

The trial court erred in denying Janice's motion for judgment as a matter of law. We therefore reverse the judgment of the Circuit Court for Baltimore County, with instructions to enter judgment in favor of Janice and against Conrad.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR ENTRY OF JUDGMENT IN FAVOR OF JANICE HUNDT IN THIS MATTER. COSTS TO BE PAID BY APPELLEE.