

Circuit Court for St. Mary's County  
Case No. C-18-CV-21-000326

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 0285

September Term, 2022

---

SMS, LLC

v.

COHERENT TECHNICAL SERVICES, INC.

---

Beachley,  
Shaw,  
Zic,

JJ.

---

Opinion by Zic, J.

---

Filed: January 31, 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.

SMS, LLC (“SMS”), appellant, filed a complaint in the Circuit Court for St. Mary’s County against Coherent Technical Services, Inc. (“CTSI”), appellee, alleging that CTSI breached its written contract with SMS (“Lease”) when CTSI attempted to exercise its right to terminate the Lease. The circuit court granted CTSI’s motion to dismiss for failure to state a claim. SMS timely appealed.

### **QUESTIONS PRESENTED**

SMS presents three questions for our review, which we rephrased and recast as follows:<sup>1</sup>

1. Did the circuit court convert CTSI’s motion to dismiss into a motion for summary judgment and fail to afford SMS a reasonable opportunity to present pertinent material to the court?
2. Did the circuit court err by finding that SMS failed to state a claim upon which relief could be granted?

For the reasons that follow, we answer both questions in the negative and affirm the judgment of the circuit court.

---

<sup>1</sup> SMS presented the following questions:

1. Whether the Circuit Court erred by finding that SMS, LLC had failed to state a claim upon which relief could be granted?
2. Whether the Circuit Court erred by finding that the evidence presented by the parties was legally insufficient to maintain a claim for breach of contract.
3. Whether the Circuit Court erred in denying Appellant’s request to permit discovery prior to ruling on the motion.

## **BACKGROUND**

SMS is the owner of a shopping center commonly known as St. Mary’s Square, located in Lexington Park, Maryland in St. Mary’s County. St. Mary’s Square is comprised of several commercial rental spaces, including unit #21 containing approximately 40,000 square feet of floor space. SMS entered into the Lease with CTSI governing SMS’s lease of commercial real estate to CTSI. The parties entered into this contract on June 18, 2019, the “Effective Date” of the Lease. Provision 21.B of the Lease states that the contract “is contingent upon [SMS] obtaining government approvals necessary for [CTSI]’s light industrial use to occur at the Shopping Center . . . (by way of example, rezoning or a conditional use permit and building permits) (‘Government Approvals’).” Provision 21.B goes on to say, “[i]f [SMS] does not obtain such Government Approvals within [120] days after the Effective Date, then either party may terminate this Lease upon written notice to the other party given at any time prior to the date [SMS] obtains such Government Approvals.” The 120-day deadline after the Effective Date was October 16, 2019. On February 21, 2020, CTSI sent notice to SMS that it was exercising its right to terminate the Lease because SMS failed to obtain the required government approvals.

SMS filed a complaint against CTSI alleging breach of contract. The complaint alleged that all necessary documentation was sent to the St. Mary’s County permitting office on or about November 26, 2019 and that SMS had received all necessary approvals with the exception of the Fire Marshal by “the fall of 2020.” SMS alleged that it was unable to obtain the requisite approval from the Fire Marshal because CTSI failed to

provide information requested by the Fire Marshal. Attached to its complaint, SMS included the following exhibits: (A) a letter of intent between SMS and CTSI, (B) the lease agreement, (C) CTSI's letter to SMS indicating its intent to terminate the lease, and (D) SMS's response indicating the status of the lease and its intentions moving forward.

CTSI filed a motion to dismiss for failure to state a claim. CTSI argued that the Lease expressly permitted termination for failure to timely obtain certain government approvals. CTSI argued that SMS admitted in its complaint that it did not obtain approvals until after the Effective Date and failed to sufficiently allege that CTSI had caused this delay. SMS submitted a response to the motion to dismiss and attached additional exhibits. The exhibits included emails between the parties discussing changes being made to the leased premises. The circuit court granted the motion to dismiss. SMS then filed a timely appeal.

### **STANDARD OF REVIEW**

The standard of review of the grant of a motion to dismiss is whether the trial court was legally correct. *Schisler v. State*, 177 Md. App. 731, 742 (2007) (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). This analysis requires an appellate court to “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 or one that the parties failed to raise. *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)).

## DISCUSSION

### **A. THE CIRCUIT COURT DID NOT CONVERT CTSI’S MOTION TO DISMISS INTO A MOTION FOR SUMMARY JUDGMENT.**

SMS argues that because the record does not indicate that the court excluded the facts in the exhibits attached to its response to the motion to dismiss, it must be assumed that the facts were considered. According to SMS, if the exhibits were considered, the circuit court converted the motion to dismiss into a motion for summary judgment.

CTSI argues that the motion to dismiss was not converted to a motion for summary judgment and even if it was, any error would be harmless. CTSI claims that the record shows that the circuit court’s decision to grant the motion to dismiss was based on the complaint, the Lease, and counsel’s admissions at the hearing rather than extrinsic materials. CTSI argues that even if the circuit court considered the extrinsic materials attached to SMS’s response to the motion to dismiss, those materials simply supplemented the complaint and the motion to dismiss would not convert into one for summary judgment.

Maryland Rule 2-322(c) states that if on a motion to dismiss for failure to state a claim, “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.”

Appellate courts may treat a motion to dismiss as one for summary judgment after finding nothing in the record to suggest that the trial court excluded additional factual allegations beyond those contained in the complaint. *Hansen v. City of Laurel*, 193 Md. App. 80, 88 (2010); *see also Worsham v. Ehrlich*, 181 Md. App. 711 (2008) (assuming extraneous material attached to a motion for partial summary judgment was considered by the court because the record did not indicate otherwise).

“In the event that a trial court decides to treat a motion as one for summary judgment, it must provide the parties with a reasonable opportunity to present, in a form suitable for consideration on summary judgment, additional pertinent material.” *Worsham*, 181 Md. App. at 722 (citing *Antigua Condo. Ass’n. v. Melba Invs. Atl., Inc.*, 301 Md. 700, 719 (1986)). Otherwise, “a non-moving party may be prejudiced if a trial court treats a motion to dismiss as a motion for summary judgment by considering matters outside the pleading[] but does not give the non-moving party a reasonable opportunity to present [pertinent] material.” *Id.* at 722-23 (citing *Green v. H & R Block, Inc.*, 355 Md. 488, 502 (1999)).

Conversely, when extraneous material is not in dispute and does not deny any of the relevant factual allegations, the court recognizes the material as simply supplementing the allegations in the complaint. *Smith v. Danielczyk*, 400 Md. 98, 105 (2007). Where a

document outside of the allegations in the complaint and its incorporated exhibits “merely supplements the allegations of the complaint, and the document is not controverted, consideration of the document does not convert the motion into one for summary judgment.” *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015). When the extraneous material supplements a complaint, the motion continues to be treated as a motion to dismiss because “[w]hen a complaint relies on a document . . . the plaintiff obviously is on notice of the contents of the document, and the need for a chance to refute evidence is greatly diminished.” *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir.1993).

Here, SMS attached exhibits to its response to CTSI’s motion to dismiss. The exhibits included emails between the parties discussing changes being made to the leased premises. The consideration of these documents did not convert the motion to a motion for summary judgment. These exhibits merely supplemented SMS’s complaint because the facts presented in the attached documents are undisputed. The facts asserted were not controverted and did not bear on the factual questions of the case because the emails post-date the relevant deadline indicated by the lease agreement which was attached to the complaint.

Rule 2-322(c) requires the circuit court to permit discovery when the motion to dismiss converts into a motion for summary judgment. Because the motion maintained its status as a motion to dismiss, the circuit court did not err in declining to afford SMS a reasonable opportunity to present additional pertinent material to the court.

Because the exhibits SMS attached to its response to the motion to dismiss were not in dispute, did not deny any of the relevant factual allegations, and SMS presented them, the extrinsic exhibits supplemented the allegations in the complaint. Therefore, the motion did not convert to a motion for summary judgment and the circuit court did not err in treating the motion as a motion to dismiss.

**B. THE CIRCUIT COURT DID NOT ERR WHEN IT GRANTED CTSI'S MOTION TO DISMISS.**

SMS argues that it sufficiently pled breach of contract because the complaint alleged that CTSI was the source of the delays in obtaining the government approvals and that the contract required CTSI to cooperate with SMS in the acquisition of the required government approvals. SMS points to Section 21.B. of the Lease which “requires [CTSI] to cooperate with [SMS] in obtaining the government approvals.” SMS alleges that CTSI breached this duty by failing to provide documentation necessary to obtain the government approvals.

CTSI argues SMS did not plead a sufficient cause of action because the complaint did not include specific allegations of delay by CTSI prior to the deadline that permitted CTSI to terminate the contract. CTSI claims that the undisputed facts show that SMS failed to obtain the government approvals by the deadline, rendering the contract terminable in accordance with its terms.

Maryland Rule 2-322(b)(2) states that a motion to dismiss for failure to state a claim upon which relief can be granted may be filed before filing an answer. “The grant of a motion to dismiss is proper [only] if the complaint does not disclose, on its face, a

legally sufficient cause of action.” *Tavakoli-Nouri v. State*, 139 Md. App. 716, 725 (2001) (quoting *Rossaki v. NUS Corp.*, 116 Md. App. 11, 18 (1997)). A complaint alleging a breach of contract must “allege with certainty and definiteness facts showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant.” *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 655 (2010) (quoting *Cont’l Masonry Co., Inc. v. Verdel Constr. Co., Inc.*, 279 Md. 476, 480 (1977)). Additionally, “in considering sufficiency of a complaint alleging breach of contract, ‘any ambiguity or uncertainty in the allegations is to be construed against the pleader.’” *Id.*

SMS agrees that “the Lease was contingent on [SMS] obtaining government approvals necessary for [CTSI] to utilize the premises for light industrial use.” SMS alleges that the lease “goes on to state that should [SMS] fail to obtain said government approvals within 120 days of the Target Delivery Date (November 1, 2019)<sup>[2]</sup>, that [CTSI] may terminate the lease.” That statement, however, is inconsistent with the language of the agreement which requires SMS to obtain the government approvals by October 16, 2019. In its complaint, SMS claimed it had received all necessary approvals

---

<sup>2</sup> SMS seems to confuse the Target Delivery Date and the Effective Date. The Lease delineates the Effective Date as June 18, 2019. Section 21.B. of the Lease requires SMS to obtain the government approvals “within [120] days after the Effective Date.” That section also allows “either party [to] terminate th[e] Lease upon written notice to the other party given at any time prior to the date the Landlord obtains such Government Approvals.” The Target Delivery Date, however, is defined by the Lease in Section 11 as “90 days after [SMS] obtains permits” which “is anticipated to be November 1, 2019.” The result of failing to meet the Target Delivery Date is rent abatement. The Target Delivery Date is not relevant here because the issue is whether CTSI was allowed to terminate the lease under Section 21.B.

with the exception of the Fire Marshal by the fall of 2020, well after the October 16, 2019 deadline.

SMS’s complaint includes the conclusory statement that “[d]ue to CTSI’s failure to provide the information requested by the Fire Marshal[], [SMS] was unable to obtain the necessary permits to finish the remodeling project as set forth in the Lease.” The complaint, however, does not allege any specific requests sent to CTSI or reference events that took place before the October 16, 2019 deadline that caused a delay to SMS’s ability to acquire the Fire Marshal approval. Instead, the complaint refers to allegations of delay by CTSI that occurred in January 2020 and February 2020. The exhibits attached to SMS’s response to CTSI’s motion to dismiss include emails that also occurred after the deadline.

Additionally, the Lease required SMS to obtain other government approvals by October 16, 2019. SMS alleged that it submitted all necessary documentation on or about November 26, 2019, well after the October 16, 2019 deadline, and received all necessary approvals by “the fall of 2020.” In its complaint, SMS failed to allege any specific delay by CTSI that caused SMS to miss the deadline for obtaining these government approvals. The complaint, therefore, failed to adequately plead a reason why CTSI was not able to terminate the Lease under the terms of the contract.

SMS failed to include any specific allegation of undue delay by CTSI prior to the appropriate deadline. Therefore, SMS failed to adequately plead a legally sufficient cause of action and the circuit court did not err when it granted CTSI’s motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ST. MARY'S COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**