

Circuit Court for Anne Arundel County
Case No. C-02-CV-21-001348

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1206

September Term, 2024

ESTATE OF NORMAN W. GREENWALD,

SR.

v.

NORMAN W. GREENWALD, ET AL.

Friedman,
Albright,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: March 26, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises from tax sale proceedings against property owned by Norman Greenwald, Sr. (“Greenwald, Sr.”), located at 1443 Henley Place, Crofton, Maryland. The tax sale was conducted by Anne Arundel County on June 6, 2017, and resulted in surplus funds which Greenwald, Sr. was entitled to. Greenwald, Sr.’s son, Norman Greenwald, Jr. (“Greenwald, Jr.”) retained Appellee Pessin Katz Law (“PK Law”) to oppose the tax sale at the foreclosure of rights of redemption proceedings in the Circuit Court for Anne Arundel County. After he was unsuccessful in staving off the tax sale of the property, Greenwald, Jr. retained PK Law to assist in securing the surplus funds from the Anne Arundel County Office of Finance.

Greenwald, Sr. died on May 16, 2021, and his daughter, Kimberlee Greenwald-Reed (“Reed”), was appointed personal representative of his Estate. In this appeal, the Estate is the Appellant. The Estate filed claims in the Circuit Court for Anne Arundel County against Greenwald, Jr., other family members, and PK Law, alleging a wide variety of misconduct, including intentional misrepresentation, constructive fraud, conversion, trespass to chattels, breach of fiduciary duty, and financial exploitation pursuant to Maryland’s SAFE Act.¹

The circuit court granted PK Law’s motion to dismiss claims for conversion, unjust enrichment, civil conspiracy, and aiding and abetting, and granted PK Law’s motion for

¹ Although the amended complaint of the Estate sued Greenwald, Jr., Beverly Greenwald (Greenwald, Jr.’s spouse), Kaylie Bender (Beverly Greenwald’s granddaughter), and PK Law as Defendants in this action, the only issue the Estate raises for appellate review is the summary judgment granted in favor of PK Law.

summary judgment on all remaining counts. The Estate presents one question for our review, which we have rephrased as follows:

Did the circuit court err when it granted summary judgment in favor of Pessin Katz Law?²

We shall answer in the negative, and therefore affirm.

BACKGROUND

A. Factual Background

The dispute that underscores this case involves several family members. For ease of reference, we identify the principal players here at the outset: Greenwald, Sr. and his son, Greenwald, Jr.; Greenwald, Sr.’s daughter and Greenwald, Jr.’s sister, Kimberlee Greenwald-Reed (“Reed”); Greenwald, Jr.’s wife, Beverly Greenwald; and Beverly Greenwald’s granddaughter, Kaylie Bender.

Greenwald, Sr.’s property at 1443 Henley Place in Crofton, Maryland was sold in a tax sale on June 6, 2017. Thereafter, the property was subject to foreclosure of rights of redemption proceedings.³ In an effort to circumvent these proceedings, Greenwald, Jr. first retained Frost Law and then later PK Law. Greenwald, Jr. filed a Motion for Emergency Stay of Enforcement of Writ of Possession and Motion to Vacate Foreclosure Right of

² The Estate presented its question as follows:

Did the circuit court err by granting summary judgment as to Pessin Katz Law on all counts?

³ *Reovest LLC v. Norman Greenwald, Jr., et al.*, No. C-02-CV-17-003673 (Cir. Ct. Anne Arundel Cnty., Dec. 8, 2017).

Redemption, wherein Greenwald, Jr. claimed that the property had been conveyed to him, that he was the rightful title owner, and that any subsequent conveyance of the property was fraudulent. Some confusion on this point was attributable to Greenwald, Sr. calling himself “Norman Greenwald, Jr.” until his son, Greenwald, Jr., began using the “Junior” designation, whereupon Greenwald, Sr. adopted the “Senior” moniker.

The court held a hearing on the emergency motions on February 12, 2019. Chief among the materials included in the filing to support Greenwald, Jr.’s claim of ownership was an affidavit purportedly signed by Greenwald, Sr. wherein Greenwald, Sr. attested that Greenwald, Jr. was the rightful owner of the property. At the hearing, Greenwald, Sr.’s daughter, Reed, testified that she was with Greenwald, Sr. when he signed the affidavit. The court denied the motions and found that Greenwald, Sr. was the property’s rightful owner relying primarily on the fact that the deed in question conveyed the joint property interest as “tenants by the entirety” which would negate the son from being the grantee in the deed.

The tax sale of the property proceeded and resulted in surplus funds of \$274,053.28. The Anne Arundel County Office of Finance held the surplus funds in escrow. After the property was sold, Greenwald, Sr. moved in with his brother in Pasadena, Maryland.

Greenwald, Jr. again enlisted PK Law to assist him in obtaining the surplus funds on Greenwald, Sr.’s behalf. A PK Law paralegal contacted the Office of Finance via email on February 11, 2019, regarding the surplus funds. The Office of Finance requested confirmation regarding which Norman Greenwald was being represented by PK Law, to which the PK Law paralegal replied, “Yes, we represent Norman Greenwald, Jr.”

Text messages between Greenwald, Jr. and Reed indicate that the two collaborated to assemble the documents necessary to submit a claim form for the surplus funds, including Greenwald, Sr.'s driver's license, passport, and social security card. Greenwald, Jr. also provided PK Law with a W-9 form signed by Greenwald, Sr., which PK Law then provided to the Office of Finance per its request. The claim form listed Greenwald, Sr.'s address as 314 Grindstone Drive in Arnold, Maryland, which was Greenwald, Jr.'s address at the time. Greenwald, Sr. never resided at that address. During this process, text messages showed that Greenwald, Jr. advised Reed that mail for Greenwald, Sr. was being sent to Greenwald, Jr., that Greenwald, Jr. kept Reed up to date on the process of obtaining the surplus funds, and that the two discussed dividing the surplus funds among themselves in addition to Greenwald, Sr.

The Office of Finance ultimately sent the check for surplus funds to Greenwald, Jr.'s address. Greenwald, Jr. opened a new bank account at PNC Bank around May 22, 2019. Greenwald, Jr. endorsed the check payable to his father and deposited it into this bank account. Greenwald, Jr. then transferred the funds into various other bank accounts under the names of other defendants, including Beverly Greenwald and Kaylie Bender, and closed the account on July 5 of the same year. The Estate asserts that PK Law was paid for its services from this bank account, but PNC Bank records do not support this assertion.

Greenwald, Jr. and Beverly Greenwald moved to Iowa shortly thereafter. Greenwald, Sr. had subsequently moved in with his daughter, Reed, and he passed away on May 16, 2021. The Orphans' Court for Baltimore County appointed Reed as the personal representative for Greenwald, Sr.'s Estate on September 1, 2021.

B. Procedural History

The Estate initially filed its Complaint against Greenwald, Jr., Beverly Greenwald, Kaylie Bender, and PNC Bank in the Circuit Court for Anne Arundel County. PNC Bank removed the case to the United States District Court for the District of Maryland. While the case was in federal court, the Estate filed its Second Amended Complaint, wherein the Estate added PK Law as a defendant. PNC Bank was subsequently dismissed from the case, and the case was remanded to the Circuit Court for Anne Arundel County.

The Estate's original Complaint alleged nine causes of action against the defendants: counts 1 and 2, intentional misrepresentation; count 3, constructive fraud; counts 4 and 5, conversion and unjust enrichment; counts 6 and 7, civil conspiracy and aiding and abetting; count 8, financial exploitation pursuant to the SAFE Act; and count 9, trespass to chattels. Counts three through nine included PK Law as a defendant.

PK Law filed a motion to dismiss, and the court held a hearing on the motion on February 12, 2023. The court granted PK Law's motion to dismiss on counts 4 and 5, conversion and unjust enrichment, without leave to amend. The court granted dismissal on counts 6 and 7, civil conspiracy and aiding and abetting, with leave to amend. The court denied the motion to dismiss on all other counts.

In its Second Amended Complaint, the Estate alleged eleven causes of action against PK Law: counts 1 and 2, intentional misrepresentation; count 3, constructive fraud; counts 4 and 5, conversion and unjust enrichment; counts 6 and 7, civil conspiracy and aiding and abetting; count 8, financial exploitation pursuant to the SAFE Act; count 9, trespass to

chattels; and counts 10, 11, and 12, fraud, breach of fiduciary duty, and breach of fiduciary duty to a third party.

At a hearing on July 23, 2024, the Estate reached a settlement agreement with Greenwald, Jr. and Beverly Greenwald. The court entered a Consent Judgment in the Estate’s favor against Greenwald, Jr. and Beverly Greenwald in the amount of \$200,000 on August 15, 2024.

PK Law and Kaylie Bender each filed motions for summary judgment. The court held a hearing on these motions on October 30, 2023, whereupon the court granted summary judgment in favor of Kaylie Bender on all counts. In a Memorandum Opinion dated January 4, 2024, the court granted summary judgment in PK Law’s favor on all counts.

The Estate now appeals, but only on the summary judgment granted in favor of PK Law.

DISCUSSION

The circuit court properly granted summary judgment in favor of Pessin Katz Law.

Standard of Review

We review the circuit court’s decision to grant a motion for summary judgment *de novo*. See *Webb v. Giant of Maryland, LLC*, 477 Md. 121, 135 (2021). “In reviewing a grant of summary judgment under Md. Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” *Haas v. Lockheed*

Martin Corp., 396 Md. 469, 479 (2007) (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006)). We review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the nonmoving party. *Id.* Summary judgment is proper when there is no genuine dispute of material fact and the circuit court’s grant of summary judgment was correct as a matter of law. *Id.* (citing Md. Rule 2-501).

Analysis

The circuit court found that the Estate “failed to demonstrate any genuine factual dispute” on any of the issues it raised, and thus found that PK Law was entitled to judgment as a matter of law on all counts. We find no fault with the circuit court’s findings of fact. We agree that the Estate raised no genuine dispute of material fact, and the parties were thus entitled to judgment as a matter of law. We now determine whether the circuit court’s ruling on each claim was legally correct.

A. Counts One and Two, Intentional Misrepresentation

A claim of intentional misrepresentation requires that the plaintiff demonstrate “(1) that the defendant made a false representation to the plaintiff, (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth, (3) that the misrepresentation was made for the purpose of defrauding the plaintiff, (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.” *Gourdine v. Crews*, 405 Md. 722, 758 (2008) (internal quotations omitted).

Here, the Estate asserts that PK Law intentionally misrepresented whether its client was Greenwald, Jr. or Greenwald, Sr. in its interactions with the Office of Finance to facilitate disbursement of the surplus funds. The Estate submits that PK Law intentionally told a representative from the Office of Finance that it represented Greenwald, Sr., that PK Law knew Greenwald, Jr. intended to have the surplus funds mailed to himself instead of Greenwald, Sr., and that a jury should have decided whether PK Law’s actions were taken with intent to deceive.

This is, however, an improper tort under which to bring such a claim. As the circuit court noted, and as we reiterate here, the tort of intentional misrepresentation generally requires that the defendant made a material misrepresentation **to the plaintiff**, or in lieu thereof, that the defendant made such a misrepresentation with the expectation that the plaintiff would receive and rely upon it. Here, it appears PK Law made no representations to Greenwald, Sr. whatsoever. Given that PK Law had no interaction with Greenwald, Sr., and its statements to the Office of Finance were not made with the expectation that they would reach Greenwald, Sr., the tort of intentional misrepresentation does not apply, and PK Law was entitled to judgment as a matter of law. Thus, the circuit court properly granted summary judgment in PK Law’s favor on counts one and two.

B. Count Three, Constructive Fraud

Constructive fraud is a “breach of a legal or equitable duty which,” regardless of subjective intent, “the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.” *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 421–22 (2006) (quoting *Md. Envtl. Trust v. Gaynor*,

370 Md. 89, 97 (2002)). “For constructive fraud’s purposes, a defendant owes an equitable duty to a plaintiff where the parties are in a confidential relationship.” *Thompson v. UBS Fin. Servs., Inc.*, 443 Md. 47, 69 (2015). Under this doctrine, a confidential relationship exists “where the defendant ‘has gained the [plaintiff’s] confidence ... and purports to act or advise with the [plaintiff]’s interest in mind.’” *Id.* at 70 (quoting *Buxton v. Buxton*, 363 Md. 634, 654 (2001)). To show that an attorney owes a fiduciary duty to a third party, the third party “must allege and prove that the intent of the client to benefit the nonclient was a direct purpose of the transaction or relationship.” *Flaherty v. Weinberg*, 303 Md. 116, 130–31 (1985).

Here, the Estate submits that PK Law engaged in constructive fraud because PK Law allegedly made the argument in the underlying tax sale proceedings that Greenwald, Jr. was the rightful owner of Greenwald, Sr.’s property. The Estate then argues that PK Law knew that Greenwald, Jr. intended to take the surplus funds for himself and nevertheless continued to assist him in obtaining the funds. Finally, the Estate submits that PK Law engaged in constructive fraud when it allegedly failed to advise Greenwald, Sr. on the application for and disbursement of surplus funds, failed to authenticate Greenwald, Sr.’s signature on the claim form, and failed to authenticate Greenwald, Sr.’s address. The Estate asserts that these circumstances were factual disputes that should have been left to a jury to decide.

Like the circuit court, we acknowledge that retaining PK Law for the purpose of conferring a benefit on Greenwald, Sr. created a fiduciary, and thus a confidential, relationship wherein PK Law owed an equitable duty to act in Greenwald, Sr.’s interest.

The parties agree that Greenwald, Jr. retained PK Law first to attempt to save Greenwald, Sr.'s house from tax sale, and then to access the surplus funds from that sale, also allegedly for Greenwald, Sr.'s benefit. Emails and testimony from PK Law indicate that PK Law proceeded as expected in its efforts to aid Greenwald, Sr. based on the information it received from Greenwald, Jr. The record does not indicate fraud on the part of PK Law. The Estate failed to raise any genuine issue of material fact, and thus, the circuit court properly granted summary judgment in PK Law's favor on count three.

C. Counts Four and Five, Conversion and Unjust Enrichment

Counts four and five were dismissed without leave to amend in a hearing on February 13, 2023, prior to PK Law's motion for summary judgment. When a court dismisses a claim without leave to amend, the plaintiff may not reassert that claim without the court's permission. Md. Rule 2-341. Because "[t]he determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge[,]” we review the dismissal of a claim without leave to amend for abuse of discretion. *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443–44 (2002).

Here, the Estate attempted to reassert these claims in its Second Amended Complaint without leave of the court. The circuit court noted that counts four and five were dismissed without leave to amend and were thus improperly included in the Second Amended Complaint. The court properly exercised its discretion to grant summary judgment in PK Law's favor on this basis.

We now exercise our discretion to address the underlying dismissal, a review which we conduct *de novo*. See *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015). “A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, the allegations do not state a cause of action for which relief may be granted.” *Id.* (internal quotations omitted). In general, we limit our review of the facts underlying the circuit court’s analysis to the contents of the complaint and its incorporated exhibits. See *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004). “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 Maryland, Inc.*, 413 Md. 638, 644 (2010).

The tort of conversion is “the wrongful exercise of dominion by one person over the personal property of another.” *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 36 (2003), *aff’d*, 379 Md. 249 (2004) (quoting *Kalb v. Vega*, 56 Md. App. 653, 665 (1983)). “[T]he gist of the tort is not necessarily the manner of acquisition of the property by the defendant, but rather his wrongful exercise of dominion over it[,]” which “may involve nothing more than the improper withholding of the property from the rightful owner[.]” *Id.* at 37 (quoting *Kalb*, 56 Md. App. at 666).

Here, the Estate submitted in its First Amended Complaint that PK Law committed conversion by wrongfully exerting dominion over surplus funds belonging to Greenwald, Sr. for the purpose of depriving Greenwald, Sr. of those funds. The Estate does not allege

with specificity PK Law’s role in the purported conversion, but instead states, referring to all listed defendants collectively: “the Defendants did not have permission to act as Plaintiff’s agent or attorney, to direct the Funds be mailed to [Greenwald, Jr.’s] address, to endorse the check, or to deposit the Funds in the PNC Account, and they lacked justification for doing so.”

The record shows, however, that PK Law never obtained access to or exercised control over Greenwald, Sr.’s property. The surplus funds in question remained in the control of the Office of Finance until a check was sent to an address provided for Greenwald, Sr. The Estate failed to allege with sufficient specificity that PK Law exerted any control over Greenwald, Sr.’s property, and thus failed to state a claim for conversion upon which relief could be granted. The court properly dismissed this claim.

We turn next to the claim of unjust enrichment. Unjust enrichment is “the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.” *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 439 (2008) (internal citations omitted). To establish a claim of unjust enrichment, a plaintiff must show: (1) the plaintiff conferred a benefit upon the defendant; (2) the defendant was aware of or appreciated the benefit; and (3) under the circumstances, the defendant’s acceptance or retention of the benefit without payment of its value would be inequitable. *See id.* (citing *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 295 (2007)).

Here, the Estate averred in its First Amended Complaint that the Defendants collectively conferred a benefit upon themselves by obtaining the surplus funds from the tax sale with no intention of returning those funds to Greenwald, Sr.

Here, again, the record does not show that Greenwald, Sr. conferred any benefit upon PK Law. The Estate argues that PK Law was paid from the PNC Bank account where Greenwald, Jr. deposited the ill-begotten surplus funds, but the bank records do not support this claim. Thus, PK Law received no benefit from Greenwald, Sr. which could have unjustly enriched it. The Estate failed to establish a claim for unjust enrichment upon which relief could be granted, and thus the court properly dismissed the claim.

D. Counts Six and Seven, Civil Conspiracy and Aiding and Abetting

In the same hearing on February 13, 2023, the circuit court dismissed counts six and seven with leave to amend on the ground that civil conspiracy and aiding and abetting are not separate torts. To establish a claim of civil conspiracy, a plaintiff must show: (1) a confederation of two or more persons by agreements or understanding; (2) some unlawful or tortious act done in furtherance of the conspiracy or use of unlawful or tortious means to accomplish an act not in itself illegal; and (3) actual legal damage resulting to the plaintiff. *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 154 (2007). “[C]onspiracy is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff.” *Id.* A party alleging civil conspiracy will not succeed absent underlying tortious conduct. Similarly, civil aiding and abetting “requires that there

exist underlying tortious activity in order for the alleged aider and abettor to be held liable.” *Alleco Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 340 Md. 176, 201 (1995).⁴

Here, the Estate contends that PK Law engaged in civil conspiracy and aiding and abetting in the torts of constructive fraud, financial exploitation under the SAFE Act, and trespass to chattels. The Estate also submits that it should have been granted leave to amend these claims after the May 10, 2023, deadline because PK Law did not disclose messages that supported the Estate’s claims until June 9; however, the circuit court fully addressed these claims in its Memorandum Opinion without regard for the timeliness of the amendments, and therefore so shall we.

We first note that engaging in civil conspiracy or aiding and abetting in constructive fraud would be a difficult proposition, because constructive fraud does not have an intent requirement. Constructive fraud is conduct that the law declares fraudulent because of its tendency to deceive others, violate confidence, or injure public interests, regardless of moral guilt or intent. See *Canaj, Inc.*, 391 Md. at 422. Conspiring to commit, or aiding and abetting another in committing, actions that do not require intent, creates an insurmountable logical mismatch. The Estate’s claims cannot rest on an underlying tort of constructive fraud.

⁴ Although the Estate does not specifically argue that its claims of civil conspiracy or aiding and abetting might rest upon its claims for breach of fiduciary duty, we note that in *Pinner v. Pinner*, 240 Md. App. 90, 118 (2019), this Court addressed the dismissal of a claim for aiding and abetting a breach of fiduciary duty. There, we noted, “Maryland law is clear that a lawyer may not be liable to a non-client [] for alleged tortious conduct committed within the scope of performing his or her duties for his client.” *Id.*

We turn next to conversion. As we stated above, the circuit court dismissed the Estate's conversion claim without leave to amend, and properly exercised its discretion in denying the Estate leave to amend of its own accord. Because the claim for conversion was properly dismissed, the Estate's claims for civil conspiracy and aiding and abetting cannot rest on this underlying claim.

Finally, these claims cannot rest on an underlying claim for financial exploitation under the SAFE Act. The Estate does not fully elaborate upon this claim, but lists this as an underlying tort on which its claims for civil conspiracy and aiding and abetting might rest. As we will discuss in greater detail below, although PK Law owed a fiduciary duty to Greenwald, Sr., there is no indication in the record that PK Law breached that duty. If the other listed defendants acted duplicitously, the record does not suggest that PK Law was aware of this, or that PK Law facilitated such actions. Messages between PK Law attorneys Herbert Burgunder and Jennifer Harris state:

Conference call. Client does not want to appeal. He does not want to buy the property. He wants to see if we can get the County to send the check to us. Client reports that his nephews are out of control and his sister is crooked. Client has been communicating with his father. Client intends to take care of his father with the money. Rebecca feels like client is leaving money on the table. I will reach out to the County Attorney.

Contrary to the Estate's assertions, the messages between Burgunder and Harris suggest that PK Law acted within the scope of the duty for which it was retained; namely, to assist Greenwald, Jr. in his purported attempts to assist Greenwald, Sr. These messages do not suggest any ill or conspiratorial intent.

Liability for civil conspiracy and aiding and abetting only exists where a plaintiff can show underlying tortious conduct. Here, the Estate failed to establish an underlying tort that might support these claims. Thus, the circuit court properly granted summary judgment.

E. Count Eight, Financial Exploitation under the SAFE Act

Maryland Code, Estates and Trusts (“ET”) §§ 13-601, *et seq.*, known as the Maryland Statute Against Financial Exploitation (“SAFE Act”), established a civil cause of action for victims of financial exploitation, aimed at combatting exploitation of vulnerable and older adults. *See Bailey v. Happer*, No. 0685, slip op. at *1 (Md. App. Feb. 25, 2026).

To establish a claim of financial exploitation under the SAFE Act, a plaintiff must show by a preponderance of the evidence that an action was taken by a person who

- (i) Stands in a position of trust and confidence with a susceptible adult or older adult and who knowingly obtains or uses, or endeavors to obtain or use, a susceptible adult’s or older adult’s funds, assets, or property with the intent to temporarily or permanently deprive the susceptible adult or older adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the susceptible adult or older adult, in such a manner that is not fair and reasonable;
- (ii) By deception, false pretenses, false promises, larceny, embezzlement, misapplication, conversion, intimidation, coercion, isolation, excessive persuasion, or similar actions and tactics, obtains or uses, or endeavors to obtain or use, a susceptible adult’s or older adult’s funds, assets, or property with the intent to temporarily or permanently deprive the susceptible adult or older adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the susceptible adult or older adult; or
- (iii) Knows or should know that a susceptible adult or older adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use, the susceptible adult’s or older adult’s funds, assets, or property

with the intent to temporarily or permanently deprive the susceptible adult or older adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the susceptible adult or older adult.

ET § 13-601(e)(1); *Bailey*, slip op. at *18.

Financial exploitation also includes:

- (i) Breach of a fiduciary relationship resulting in the unauthorized appropriation, sale, or transfer of property;
- (ii) Unauthorized taking of personal assets;
- (iii) Misappropriation, misuse, or transfer of assets belonging to a susceptible adult or older adult from a personal or joint account; and
- (iv) Intentional failure to effectively use a susceptible adult's or older adult's income and assets for the necessities required for the susceptible adult's or older adult's support and maintenance.

ET § 13-601(e)(2).

Here, the Estate alleges that PK Law engaged in financial exploitation by knowingly obtaining and using Greenwald, Sr.'s funds with the intent to deprive Greenwald, Sr. of those funds. However, the record shows that PK Law never obtained or used any funds belonging to Greenwald, Sr. PK Law was retained with the purpose of assisting Greenwald, Jr. in accessing the surplus funds from the tax sale on Greenwald, Sr.'s behalf. In doing so, PK Law ascertained that the Office of Finance made the surplus funds check payable to Greenwald, Sr. and that the Office sent the check to the address it had on file for Greenwald, Sr.

As we have established and will discuss again below, PK Law owed a fiduciary duty to Greenwald, Sr. because PK Law was retained with the express purpose of conferring a benefit on Greenwald, Sr. However, PK Law's actions did not constitute a breach of that duty. The record shows that PK Law acted in accordance with its directive, and any harm

to Greenwald, Sr. was the result of alleged machinations that were not disclosed to PK Law. There is no evidence suggesting that PK Law engaged in financial exploitation. The circuit court properly granted summary judgment in PK Law’s favor.

F. Count Nine, Trespass to Chattels

Trespass to chattels is “an intentional use or intermeddling with the chattel in possession of another.” *United States v. Arora*, 860 F. Supp. 1091, 1097 (D. Md. 1994), *aff’d*, 56 F.3d 62 (4th Cir. 1995). Trespass to chattels and conversion provide “alternative remedies for the same wrong[,]” where trespass to chattels constitutes a lesser interference with another’s property than the tort of conversion. *Staub v. Staub*, 37 Md. App. 141, 145 (1977). “Where there has been a single interference with a chattel, the owner may recover for trespass or for conversion, but not for both.” *Id.* In *Staub*, our Supreme Court noted that “no fixed line can be drawn” between trespass to chattels and conversion, but that “the question is nearly always one of degree” of “the seriousness of the interference.” *Id.* at 145.

Here, the Estate argues that PK Law engaged in trespass to chattels because PK Law allegedly knew that Greenwald, Jr. intended to keep the surplus funds for himself and assisted him nonetheless in this venture. In the Estate’s view, it has now sufficiently pleaded a cause of action for conversion, and trespass to chattels should thus be included in the style of a lesser included offense, where PK Law committed the act by aiding Greenwald, Jr. in his efforts to deprive Greenwald, Sr. of the surplus funds.

As we stated above, the Estate’s claim for conversion was dismissed without leave to amend, and the circuit court acted within its discretion to deny the Estate’s amendment

without the court’s permission. Moreover, the record shows that PK Law never obtained access to or exercised control over Greenwald, Sr.’s property. The surplus funds in question remained in the control of the Office of Finance until a check was sent to an address provided for Greenwald, Sr. PK Law never exerted any control over Greenwald, Sr.’s property, and thus committed no trespass to Greenwald, Sr.’s chattels. The circuit court properly granted summary judgment on count nine.

G. Counts Ten, Eleven, and Twelve, Negligence, Breach of Fiduciary Duty, and Breach of Fiduciary Duty to a Third Party

A claim for negligence requires that the plaintiff show (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; (3) that the plaintiff suffered actual harm; and (4) that the defendant’s actions were the proximate cause of that harm. *Lloyd*, 397 Md. at 131. Without a duty of care, there can be no breach, and thus no finding of negligence. *Walpert, Smullian & Blumenthal, P.A. v. Katz*, 361 Md. 645, 655 (2000).

A cause of action for breach of fiduciary duty, then, requires the existence of a fiduciary relationship, along with the subsequent breach thereof and resultant harm to the plaintiff. *See Plank v. Cherneski*, 469 Md. 548, 599 (2020). To establish an attorney’s fiduciary duty to a third party, the plaintiff must show “that the intent of the client to benefit the nonclient was a direct purpose of the transaction or relationship.” *Flaherty*, 303 Md. at 130–31. Once this duty is established, breach of that fiduciary duty follows the framework of a negligence action. *Id.*

Here, it is undisputed that Greenwald, Jr. retained PK Law with the express purpose of conferring a benefit on Greenwald, Sr.—first, PK Law assisted Greenwald, Jr. in attempting to allay tax sale proceedings on Greenwald, Sr.’s home; then, PK Law assisted Greenwald, Jr. in effecting disbursement of the surplus funds derived from that tax sale. This establishes that PK Law owed a fiduciary duty to Greenwald, Sr. despite the dearth of direct interaction.

These claims end here, however, because there is no evidence that PK Law ever breached its duty to Greenwald, Sr. PK Law had a duty to ensure that the check for surplus funds was made payable to Greenwald, Sr., and that it was sent to his address. PK Law received and submitted a claim form with Greenwald, Sr.’s signature that listed 314 Grindstone Drive in Arnold, Maryland as his address. PK Law then followed up with the Office of Finance to ascertain these details. Thus, PK Law did not breach its duty to Greenwald, Sr.

The Estate failed to show that PK Law breached its duty to Greenwald, Sr., and thus these claims fail. The circuit court properly granted summary judgment in PK Law’s favor.

CONCLUSION

The circuit court properly granted summary judgment in PK Law’s favor on all counts. For the foregoing reasons, we affirm the decision of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**