

Circuit Court for Baltimore County
Case No. C-03-CV-21-003528

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1486

September Term, 2023

VALENTINO MOFOR

v.

LYFT, INC.

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

JJ.

Opinion by Graeff, J.

Filed: August 26, 2025

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

This is the third appeal in this Court involving claims filed by Valentino Mofor, appellant, against Lyft, Inc., appellee, in connection with Lyft’s termination of an agreement authorizing Mr. Mofor to provide ridesharing services. Both parties seek a resolution in this Court that will end the litigation.¹

In this appeal, appellant, an unrepresented litigant, presents the following questions for this Court’s review,² which we have rephrased slightly, as follows:

1. Did the circuit court err in granting Lyft’s motion to dismiss Mr. Mofor’s complaint for failure to state a claim and in dismissing Mr. Mofor’s complaint with prejudice?
2. Did the circuit court err or abuse its discretion in denying Mr. Mofor’s motion for default judgment against Lyft?

¹ Mr. Mofor states that he “demands this Hon to put an end to this dispute, and that it should set aside and ignore the last hearing of the lower court leading to this appeal.” Lyft states that Mr. Mofor’s “continued harassment of Lyft and misuse of limited court resources must end.”

² Mr. Mofor presented the following questions:

Whether the court erred in dismissing with prejudice Appellant’s valid “Public Policy” complaint without leave to amend as if frivolous?

Did the court erred [sic] in denying Appellant’s motion for default judgment by failing to consider the provision of Maryland Rule 2-321(C)?

Did the Court erred [sic] in not allowing Appellant’s/Appellee’s case decided by jury, as requested by Appellee later requested by Appellant.

Did the Court erred [sic] in not considering Appellant’s motion for partial summary judgment/public policy exception relevant to Appellant’s matter, opposed by Appellee, instead of a legal response as required by such motions?

3. Did the circuit court abuse its discretion in denying Mr. Mofor’s motion for reconsideration of an order denying Mr. Mofor’s motion for partial summary judgment?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND³

In the complaint at issue in this appeal, Mr. Mofor alleges that Lyft is a ridesharing company that offers transportation services, scooter and bicycle sharing, and food delivery. Lyft’s Express Drive Program allows independent contractors to rent vehicles from Hertz Corporation, a rental car company, for the purpose of providing ridesharing services to the public using the Lyft technology platform. To be eligible for the Express Drive Program, independent contractor drivers must consent to a criminal and driving record background check and agree to the Lyft program’s terms of service.

In July 2018, after successfully completing the background check, Mr. Mofor paid the required \$250 deposit and “formally executed the contract” to begin providing ridesharing services through Lyft. The “verbal and written contract was renewable every Monday as to whether 15 or more ri[d]les have been given, and whether the car payment was made as required under the terms.” Mr. Mofor provided rides “seven days a week without lapses” until he had two accidents: one in November 2018 and another in January 2019. Mr. Mofor claimed he was not at fault in either accident. Lyft temporarily suspended his account in 2019, pending an investigation. After another criminal background and

³ Because we are reviewing the grant of a motion to dismiss, we take the underlying facts from the allegations in the complaint. *See Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403, 451, *cert. denied*, 486 Md. 246 (2023).

driving record check cleared Mr. Mofor, the parties executed another contract. On May 25, 2019, “two days into the contract,” Lyft deactivated Mr. Mofor’s account based on the results of the background check, which was performed by Samba, a third party.⁴

Mr. Mofor contacted Lyft and filed a dispute. During the time his account was deactivated, Lyft continued to bill Mr. Mofor “\$250 every week without resort to any terms of the contract.” When Mr. Mofor did not return the Hertz rental car, Lyft “threatened to report it stolen” and ultimately recovered it from Mr. Mofor’s residence.

I.

First Lawsuit

In 2019, Mr. Mofor filed a lawsuit against Lyft alleging breach of contract and implied covenant of good faith and fair dealing, unfair and deceptive trade practices, constructive fraud, negligence, and intentional infliction of emotional distress.⁵ On September 6, 2019, Lyft filed a motion to dismiss the amended complaint for failure to state a claim. Mr. Mofor did not file an opposition. Following a hearing on November 4 2019, the court granted Lyft’s motion to dismiss the amended complaint without prejudice, explaining to Mr. Mofor that he could re-file the matter. The court did not, however, grant

⁴ At the November 4, 2019 hearing on the motion to dismiss, counsel for Lyft stated that she was unaware of what was discovered during the background check that led to the suspension of Mr. Mofor’s account.

⁵ The lawsuit initially was filed in the District Court of Baltimore County. It was transferred to the circuit court pursuant to Lyft’s demand for a jury trial. Hertz Corporation was a defendant in the original complaint, but it was not named as a defendant in the amended complaint at issue in this appeal.

Mr. Mofor leave to amend the complaint. The court stated that it was not able to determine from the amended complaint whether Mr. Mofor had a cause of action and advised him to consult an attorney.

Mr. Mofor filed several post-judgment motions after the dismissal, which the court denied. He did not appeal the order granting the motion to dismiss his complaint or re-file his lawsuit in a new matter. Instead, on January 6, 2020, Mr. Mofor filed a second amended complaint in the same case, alleging substantially the same allegations as those set forth in the amended complaint, which had been dismissed, and he then filed a third amended complaint on February 18, 2020, adding a negligence claim. Lyft filed motions to dismiss the second and third amended complaints on the ground that the complaints failed to state a claim as a matter of law and that Mr. Mofor filed the complaints without leave of the court and after the 30-day deadline set forth in Maryland Rule 2-322(c).⁶

On March 10, 2020, the court granted Lyft’s motion to dismiss with prejudice and without leave to amend “based on the procedural issues that have not been complied with.” The court stated that Mr. Mofor did not get leave of the court to file the amended complaints, and he did not file within the 30-day deadline. The court stated that it was not going to address the substantive issues raised. Following dismissal of the third amended

⁶ Maryland Rule 2-322(c) provides, in pertinent part, as follows:

If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action.

complaint, Mr. Mofor filed a motion for summary judgment, as well as several other post-judgment motions, all of which were denied. On April 24, 2020, Lyft filed a motion requesting that the court, based on its inherent power to control frivolous litigation, issue an injunction precluding Mr. Mofor from filing any further papers without leave of the court. The court granted Lyft’s motion and issued an order for the requested relief.

Mr. Mofor filed a notice of appeal of the court’s order dismissing his third amended complaint. In a per curium opinion, we affirmed the circuit court’s ruling, holding that the “complaint was properly dismissed on procedural grounds” because, instead of filing a new action, Mr. Mofor filed the second and third amended complaints without leave of the court and more than 30 days after dismissal of the amended complaint. *Mofor v. Lyft, Inc.*, No. 325, Sept. Term, 2020, 2021 WL 2182337, at *2 (Md. App. Ct. May 28, 2021). We did not reach Mr. Mofor’s claims on appeal relating to the merits of his third amended complaint. *Id.*

II.

Second Lawsuit

On October 26, 2021, Mr. Mofor filed a new complaint, as well as a motion for partial summary judgment. Lyft filed a motion to dismiss on the ground that the cause of action was barred by the doctrine of res judicata. After a February 28, 2022 hearing, the court granted Lyft’s motion to dismiss with prejudice and without leave to amend. The court held that there was “no question” that the new lawsuit involved the same parties and the same claims, and “for the purposes of res judicata, [the previous] dismissal with

prejudice constitute[d] a judgment on the merits under Maryland law.” The court then dismissed Mr. Mofor’s motions for summary judgment as moot, and Mr. Mofor filed a motion to alter or amend, which the court denied.

Mr. Mofor appealed the orders dismissing his complaint and motion for partial summary judgment, arguing that, because the circuit court’s dismissal of his first lawsuit was on procedural grounds, it was not a judgment on the merits, and therefore, *res judicata* did not bar his new action. We agreed, holding that “the reason for dismissing an action supersedes the fact that it was dismissed with prejudice,” and a dismissal with prejudice based on a procedural issue “was not a final judgment on the merits for purposes of *res judicata*.” We vacated the circuit court’s judgment and remanded for further proceedings. On January 6, 2023, we issued a mandate consistent with that ruling.⁷

Approximately three months after the mandate, Mr. Mofor filed a Demand for Default Judgment, based on Lyft’s failure to file an answer in accordance with Rule 2-321(c). Lyft filed an opposition, arguing that *entry* of a default judgment was premature because: (1) the court had not issued an order of default; and (2) the rules provide that the defaulting party has the opportunity to move to vacate any order of default within 30 days of its entry. Lyft stated that it had strong grounds to have any order of default vacated, and the “procedural technicality” on which Mr. Mofor’s motion was based “has not prejudiced [him] in any way.”

⁷ Notably, we did not find that the circuit court erred in denying Mr. Mofor’s motions for summary judgment because the underlying action had been dismissed.

Lyft asserted that default judgments are disfavored under Maryland law and reserved for cases where “the defaulting party lacked a meritorious defense,” not for mere procedural errors. It asserted that its contemporaneously filed motion to dismiss set forth “a meritorious argument that each and every cause of action in [Mr. Mofor’s] Complaint fails to state a claim.” It further contended that it was equitable to excuse the failure to timely file a responsive pleading because there was no indication that Lyft willfully delayed its response or that Mr. Mofor was prejudiced by the short delay.⁸ On May 8, 2023, the court issued an order denying Mr. Mofor’s demand for default judgment.

On July 21, 2023, Mr. Mofor filed a motion to reconsider his motion for partial summary judgment, asking the court to consider whether: (1) Lyft had or possessed a decisive advantage in bargaining power; (2) “the contract or nature of [the] transaction affect[ed] the public interest”; and (3) “plaintiff was confronted with a standardized contract of adhesion.”⁹ Lyft opposed the motion, stating that there was no basis for reconsideration under the rules because it was denied more than 17 months prior, was not the subject of an appeal, and was not vacated by this Court in our ruling reversing the circuit court’s earlier dismissal based on res judicata. It further argued that Mr. Mofor’s motion for summary judgment, if considered on the merits, was “grossly premature” because there had been no discovery in the case and it was based on a deficient affidavit.

⁸ Lyft noted that it mistakenly thought the court would issue guidance after the mandate was entered regarding further responsive pleadings.

⁹ As indicated, the circuit court had dismissed the motion for summary judgment as moot after it dismissed the complaint based on res judicata.

On August 10, 2023, the circuit court denied Mr. Mofor’s motion to reconsider his motion for partial summary judgment on the grounds that the matters raised were not undisputed facts.

A.

Motion to Dismiss

On August 16, 2023, the court held a hearing on Lyft’s motion to dismiss for failure to state a claim. In its supporting memorandum of law, filed on May 1, 2023, Lyft addressed the merits of each of Mr. Mofor’s causes of action. On the breach of contract count, Lyft argued that Mr. Mofor did not allege any terms, specific or otherwise, between himself and Lyft that were allegedly breached, and he did not produce a copy of the alleged contract at issue. Mr. Mofor, therefore, could not satisfy his burden of proof as to the existence or breach of the contract. With regard to Mr. Mofor’s claim for preliminary injunctive relief, Lyft noted that he did not allege specific facts showing immediate, substantial, and irreparable harm, or a likelihood of success on the merits, and he did not satisfy the affidavit or bond requirements.

Regarding count two for tortious interference with contract, Lyft contended that, as a matter of law, Mr. Mofor could not satisfy the necessary elements because Lyft “could not have interfered with a contract to which it was allegedly a party.” Lyft argued that Mr. Mofor’s claims for breach of fiduciary duty, fraudulent concealment, and constructive fraud (counts three, four, and six) also should be dismissed because the alleged

employment agreement did not create a “confidential or fiduciary relationship” between the parties, a necessary element of these causes of action.

Lyft also asserted that Mr. Mofor’s negligence claim should be dismissed because there was no support for his claim that the parties’ relationship gave rise to a “duty of care and honesty” or to satisfy the elements of breach, causation, and damages. On count seven, Lyft stated that Mr. Mofor’s complaint allegations were “a far cry from the limited circumstances under which Maryland Courts have permitted a claim for intentional infliction of emotional distress to survive a preliminary dispositive motion.” Because Lyft suspended his participation in the Express Drive Program based on agreed-upon conditions, its conduct could not be considered extreme and outrageous under Maryland law. Lyft also noted that Mr. Mofor could not show his alleged distress was severe because he did not claim that he required any medical care, that he could not function in daily life, or that his alleged depression was beyond what a reasonable person could expect to endure.

Finally, with regard to Mr. Mofor’s claim for punitive damages, Lyft argued that he did not allege actual malice in his complaint nor any facts that would support a finding that Lyft acted with actual malice. Because Mr. Mofor made no showing of “evil motive, intent to injure, ill will or fraud,” his claim for punitive damages was deficient and should be dismissed.

B.

Hearing on Motion to Dismiss

On August 16, 2023, the court held a hearing on Lyft’s motion to dismiss for failure to state a claim. The court asked Mr. Mofor to present his argument first.

Mr. Mofor stated that he “signed [a] contract, but the copy of the contract wasn’t presented to [him],” and Lyft breached the “entire contract” when it deactivated his account two days after initially approving him and providing him with a car. He alleged that the criminal background check was supposed to be completed before providing him with a vehicle and activating his account, and “there’s just no way . . . that within two days, something that they should have known before approving [him]” occurred. Mr. Mofor stated that he had to provide a \$250.00 deposit to obtain the vehicle, and he argued that Lyft intentionally collected the deposit knowing that they would deactivate the account just two days later, causing him to forfeit the deposit money. He noted that \$250 “looks very small [but] . . . [j]ust imagine that they do that to five hundred people; one thousand people.” It was his understanding, based on the contract, that Lyft had already conducted the background check when they allowed him to get the vehicle. He alleged that, when Lyft then deactivated the contract two days later, it was “fully liable for the damages, even if it was a mistake.” He asked the court to deny the motion to dismiss.

Counsel for Lyft contended that, even accepting all the allegations in the complaint as true, Mr. Mofor did not “state a cause of action for any of the seven claims” or for punitive damages. She noted that Mr. Mofor did not append a copy of the contract to the

complaint and did not cite a specific provision that had been breached. She argued that Mr. Mofor agreed to submit to a criminal and driving background check, “which might affect his participation in the driving program,” and “[t]hat’s exactly what happened.” She noted that Mr. Mofor did not file an opposition to the motion to dismiss, and she requested dismissal with prejudice and without leave to amend.

The court gave Mr. Mofor the last word even though he was not the moving party. Mr. Mofor asserted that “the contract was given on the basis of take it or leave it,” and Lyft “ha[d] decisive advantage and bargaining power.” He argued that there was an enforceable contract between the parties and that Lyft’s conduct violated public policy, justifying punitive damages.

C.

Court’s Ruling

On August 29, 2023, the court issued an order granting Lyft’s motion to dismiss for failure to state a claim on all seven counts and dismissing the complaint with prejudice. On Count One, for Breach of Contract and Request for Injunctive Relief, the court found that “Mr. Mofor failed to sufficiently allege what contractual obligation(s) Lyft owed to him and how Lyft breached [them],” and he failed to “allege a sufficient legal or factual basis for injunctive relief.” The court dismissed Count Two, Intentional Interference with Contractual Relations, and Count Three, finding that Lyft could not “as a legal and practical

matter intentionally interfere with its own contract.”¹⁰ On Count Four, which alleged Fraudulent Concealment, the court found that Mr. Mofor failed to sufficiently plead the required elements of that cause of action, “including a duty on the part of Lyft to disclose some material fact.”

The court dismissed Count Five for Negligence, finding that Mr. Mofor failed to sufficiently plead “any breach of a duty owed by Lyft to Mr. Mofor,” and Count Six for Constructive Fraud, finding that he failed to plead “a breach of some legally-recognized duty owed by Lyft through fraudulent conduct.” With regard to Count Seven, alleging Intentional Infliction of Emotional Distress, the court found that Mr. Mofor failed to sufficiently plead “allegations of the level of extreme and outrageous conduct and severe emotional distress necessary to state a claim.” The court also dismissed Mr. Mofor’s claim for punitive damages because there was no longer any viable cause of action on which to base it. Finally, the court found that, “[g]iven the procedural history of this case and the multiple opportunities afforded to Mr. Mofor to attempt to sufficiently plead causes of action, there [wa]s no legal or practical basis for the dismissal to be without prejudice.”

This appeal followed.

¹⁰ The court appeared to err in its order by stating that both Counts Two and Three alleged “Intentional Interference with Contractual Relations” and in failing to analyze Count Three for “Breach of Fiduciary Duty.” As we shall explain, *infra*, this does not preclude us from affirming the court’s dismissal of the entire complaint.

DISCUSSION

I.

Dismissal for Failure to State a Claim

Mr. Mofor alleges that the Maryland Rules did not permit Lyft to file a motion to dismiss on remand to the circuit court. He requests that this Court “set aside the [circuit court’s] ruling . . . as if it never occurred, and decide this matter for once and for all.”

Lyft argues that Rule 2-322(b) “unambiguously provides that a motion to dismiss for failure to state a claim may be filed at any time, either before or after the filing of an answer.” It further alleges that Mr. Mofor’s “Complaint fails to state any claims for which relief may be granted” because his allegations were insufficient to prove the required elements of the causes of action he pleaded.

A.

Standard of Review

In reviewing an order granting a motion to dismiss, our task is to determine whether the trial court was legally correct. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019). The standard of review on a motion to dismiss is, therefore, *de novo*. *Elsberry v. Stanley Martin Cos.*, 482 Md. 159, 178 (2022). “We will affirm the circuit court’s judgment ‘on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.’” *D.L.*, 465 Md. at 350 (quoting *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015)).

B.

Motion to Dismiss on Remand

We begin with Mr. Mofor’s assertion that Lyft was not permitted to file a second motion to dismiss on remand. Rule 2-322(b) provides that:

The following defenses *may* be made by motion to dismiss filed before the answer, if an answer is required: . . . (2) failure to state a claim upon which relief can be granted[.] . . . If not so made, these defenses and objections may be made in the answer, *or in any other appropriate manner after answer is filed.*

(Emphasis added). The Supreme Court of Maryland has explained that Rule 2-322(b) “allows certain defenses to be asserted in an answer or before or after an answer is filed.” *Att’y Grievance Comm’n v. Johnson*, 450 Md. 621, 630 n.2 (2016). The circuit court did not err in permitting Lyft to file, on remand, a motion to dismiss for failure to state a claim upon which relief could be granted.

C.

Merits

The applicable standard for ruling on a motion to dismiss for failure to state a claim is well established:

The circuit court considers only the facts alleged in the complaint and any supporting exhibits incorporated into the complaint. *See, e.g., RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643, 994 A.2d 430 (2010). A court, however, need not accept the truth of pure legal conclusions . . . or of “[m]ere conclusory charges that are not factual allegations.” *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335, 983 A.2d 408 (2009). Moreover, “[a]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader.” *Id.* Dismissal is proper if, even after assuming the truth of all well-pleaded factual allegations and after drawing all reasonable inferences from

those allegations in favor of the pleader, the pleader would still not be entitled to relief.

Bennett v. Ashcraft & Gerel, LLP, 259 Md. App. 403, 451, *cert. denied*, 486 Md. 246 (2023). *Accord RRC Ne., LLC*, 413 Md. at 644 (“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.”).

Before we begin our analysis, we note that Mr. Mofor did not present any specific legal arguments in his brief as to how the court erred in granting Lyft’s motion to dismiss. Ordinarily we do not consider arguments that are not presented with particularity on appeal. *See Anne Arundel Cnty. v. Harwood Civic Ass’n*, 442 Md. 595, 614 (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”). We could affirm the circuit court’s ruling on this basis alone. Nevertheless, given the lengthy procedural history of this matter, we will address the merits of the court’s decision.

1.

Breach of Contract/ Injunctive Relief

As indicated, Mr. Mofor does not explain how the court erred in dismissing Count One, Breach of Contract and Injunctive Relief. Lyft contends that the court did not err in dismissing Count One of the complaint because Mr. Mofor failed to meet his burden of proving “that certain and definite terms of a contract existed and that Lyft breached those

terms” and failed to allege facts sufficient to meet the stringent requirements for injunctive relief. We agree with Lyft.

In Maryland, “a complaint alleging a breach of contract ‘must of necessity 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*, 413 Md. at 655 (quoting *Cont’l Masonry Co. v. Verdel Constr. Co.*, 279 Md. 476, 480 (1977)). When considering the sufficiency of allegations in a complaint for breach of contract, “any ambiguity or uncertainty in the allegations is to be construed against the pleader.” *Id.* (quoting *Cont’l Masonry Co.*, 279 Md. at 480).

Mr. Mofor argued that a contract existed between him and Lyft, which provided that, once he cleared his background check and paid a \$250 deposit, he would be authorized to use the Lyft platform under the Express Driver Program. He alleged that Lyft breached the contract when it deactivated his account two days *after* he paid the \$250 deposit and ostensibly cleared the background check. He asserted that the contract “clearly stated” that his account could not be activated until he cleared the background check and that he detrimentally relied on the premature clearance. Mr. Mofor, however, did not attach any contract to his complaint and did not cite to any specific provision of any contract that Lyft breached in deactivating his account. He did, however, acknowledge that his eligibility to participate in the program was dependent on clearing the background check. Without reference to a particular contractual provision that was allegedly breached, Mr. Mofor cannot satisfy the specificity requirements for a cause of action for breach of contract, and

he cannot establish a likelihood of success on the merits required to obtain a preliminary injunction. *See DMF Leasing, Inc. v. Budget Rent-A-Car of Md., Inc.*, 161 Md. App. 640, 648-49 (2005) (likelihood of success on merits is one factor courts must consider in a request for preliminary injunction). We find no error in the court’s finding that Mr. Mofor failed to sufficiently allege a factual basis for its breach of contract and injunctive relief claims.

2.

Tortious Interference with Contractual Relationship

Lyft contends that the circuit properly dismissed Count Two of the complaint because it could not, as a matter of law, commit tortious interference with its own contract. Mr. Mofor does not address this issue in his brief. Lyft is correct that Mr. Mofor cannot prevail on this claim.

“It is not possible under Maryland law for a party to a contract . . . to interfere tortiously with a contract to which it is a party.” *Lewis v. Balt. Convention Ctr.*, 231 Md. App. 144, 155 (2016). The elements of a claim of tortious interference with contractual relations are, as follows:

(1) The existence of a contract or a legally protected interest between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3) the defendant's intentional inducement of the third party to breach or otherwise render impossible the performance of the contract; (4) without justification on the part of the defendant; (5) the subsequent breach by the third party; and (6) damages to the plaintiff resulting therefrom.

Blondell v. Littlepage, 185 Md. App. 123, 153-54 (2009) (quoting *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 503 (1995)), *aff'd*, 413 Md. 96 (2010). Central to this

tort is that the contractual interference comes from a third party. *Id.* at 154. A claim for tortious interference with a contract, therefore, fails as a matter of law if the alleged interference is based on the conduct of a party to the contract. *Id.* *Accord Traveler's Indem. Co. v. Merling*, 326 Md. 329, 343 (1992) (“For the tort [of tortious interference] to lie, the defendant tortfeasor cannot be a party to the contractual or economic relations with which he has allegedly interfered.”).

The only contract at issue in this lawsuit is alleged to be between Mr. Mofor and Lyft. Although Mr. Mofor states that a third-party agency furnished Lyft with the information resulting in the deactivation of his Lyft account, he has named only Lyft as a defendant in this action. As indicated, because Lyft cannot, as a matter of law, interfere with its own contract, the court did not err in dismissing Mr. Mofor’s claim for tortious interference.

3.

Breach of Fiduciary Duty

In his complaint, Mr. Mofor alleged that Lyft breached its fiduciary duty to him because it had “all decisive advantage in bargaining power,” and therefore, it was required to “have [his] best interest at heart.” Lyft argues that there was no fiduciary relationship between the parties and that his claim fails as a matter of law.¹¹

¹¹ As we noted earlier, the court appears to have inadvertently duplicated its discussion of count two and omitted from its order a discussion of the count for breach of fiduciary duty. The court stated in its opinion, however, that it was “dismissing the entire complaint” and found in its analysis of constructive fraud that Mr. Mofor failed to establish

The required elements of a cause of action for breach of fiduciary duty are as follows: (1) the existence of a fiduciary relationship; (2) breach of the duty owed by the fiduciary to the beneficiary; and (3) harm to the beneficiary. *Plank v. Cherneski*, 469 Md. 548, 599 (2020). “[F]iduciary relationships can be created by common law, by statute, or by contract, and can have different characteristics.” *Id.* at 598. Common examples of fiduciary relationships include those between attorney-client, trustee-beneficiary, agent-principal, director-corporation, and guardian-ward. *Id.* A duty of loyalty and “an obligation to avoid self-dealing and conflicts of interest” are common to all types of fiduciary relationships, while more specific fiduciary obligations depend on the nature of the relationship. *Id.* at 601.

A fiduciary duty to another is based on the existence of a confidential relationship between the parties. *Comptroller of Md. v. Broadway Servs., Inc.*, 250 Md. App. 102, 123 (2021), *aff’d*, 478 Md. 200 (2022). A standard arms-length contractual transaction between two parties to further their own independent financial objectives typically does not create a confidential relationship. *Id.* Rather, “a confidential relationship exists where one party has dominion over the other person, and the relationship is such that the person with greater

the existence of a confidential relationship, which is also a required element of a claim for breach of fiduciary duty. In addition, it is well established that when reviewing a dismissal for failure to state a claim, we can affirm the circuit court’s ruling “on any ground adequately shown by the record” even if not raised by the parties or relied upon by the court. *Harris v. McKenzie*, 241 Md. App. 672, 678 (2019) (quoting *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009)). For these reasons, we will proceed with an analysis of the court’s dismissal of count three of the complaint.

influence is expected to act in the best interest of the other person.” *Brass Metal Prods., Inc. v. E-J Enters., Inc.*, 189 Md. App. 310, 356 (2009). “[T]rusting and relying on the other party to perform its side of the transaction is not enough; rather, something ‘apart’ from the transaction itself is required to create a confidential relationship.” *Broadway Servs., Inc.*, 250 Md. App. at 124. An imbalance in bargaining power in a contractual relationship, such as that often present in a landlord-tenant relationship, also does not create a confidential relationship. *Id.* at 123. (“Similarly, the relationship between a bank and its borrower/customer is also considered contractual and not confidential.”).

Mr. Mofor alleges that he executed a contract with Lyft authorizing him to use a vehicle and access the Lyft platform in exchange for a \$250.00 weekly deposit and contingent on approval of his background check. Although he alleges that Lyft’s “advantage in bargaining power” required it to act with his “best interest at heart,” he makes no specific allegations that would demonstrate their agreement went beyond a standard arm’s-length agreement from which each party benefitted. *Id.* at 123. Moreover, as indicated, an imbalance of power alone is not enough for a confidential relationship to arise. *Id.* at 123-24. Because Mr. Mofor did not establish the existence of a fiduciary relationship with Lyft, the court did not err in dismissing the count for breach of fiduciary duty.

4.

Fraudulent Concealment

We next address the dismissal of Count Four for Fraudulent Concealment. Mr. Mofor asserts in his complaint that Lyft “intentionally concealed” the results of his background check “purposely to mislead [him] for the purpose of forfeiting [his] security deposit.” Lyft contends that Mr. Mofor failed to establish any of the elements of fraudulent concealment and could not establish any duty to disclose because there was no confidential relationship between the parties.

To state a claim for fraudulent concealment, the movant must show:

(1) the defendant owed a duty to the plaintiff to disclose a material fact; (2) the defendant failed to disclose that fact; (3) the defendant intended to defraud or deceive the plaintiff; (4) the plaintiff took action in justifiable reliance on the concealment; and (5) the plaintiff suffered damages as a result of the defendant’s concealment.

Crystal v. Midatlantic Cardiovascular Assocs., 227 Md. App. 213, 232 (2016) (quoting *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 138 (2007)). A duty to disclose arises when there is a confidential or fiduciary relationship, *Hogan v. Maryland State Dental Association*, 155 Md. App. 556, 567 (2004), or when a party suppresses the truth with the intent to deceive. *Accord Rhee v. Highland Dev. Corp.*, 182 Md. App. 516, 525 (2008).

Here, as discussed, the parties’ contractual dealings did not give rise to a confidential or fiduciary relationship. Accordingly, Mr. Mofor must show with specificity that Lyft concealed the disqualifying results of his driving record with an intent to deceive him. As noted by Lyft, however, Mr. Mofor is alleging that Lyft withheld his *own* driving

and criminal record. Failure to disclose records freely available to a party does not constitute fraudulent concealment under Maryland law. *Rhee*, 182 Md. at 525 (absent duty to disclose, plaintiff must show defendant took affirmative action to conceal fact that plaintiff could not have discovered with exercise of reasonable diligence). The court properly dismissed count four of the complaint.

5.

Negligence

Mr. Mofor stated in his complaint that Lyft owed him a “duty of care and honesty considering the nature of [the] contract . . . where it possessed superiority in bargaining power and decisive advantages.” He alleged that Lyft breached the duty “by negligently and carelessly deactivating [his] account . . . without resort to any terms signed by both parties and contrary to its own standard format.” Lyft argues that “the purported contract between the parties” did not give rise to a duty, and Mr. Mofor could not satisfy the pleading requirements for a negligence claim.

To state a claim for negligence, Mr. Mofor must show that Lyft owed him a duty to conform to a particular standard of conduct. *Chassels v. Krepps*, 235 Md. App. 1, 12-13 (2017), *cert. denied*, 457 Md. 677 (2018). In Maryland, “[a] contractual obligation, by itself, does not create a tort duty.” *Mesmer v. Md. Auto Ins. Fund*, 353 Md. 241, 253 (1999). Thus, the “[m]ere failure to perform a contractual duty, without more, is not an actionable tort.” *Id.* (quoting *Wilmington Tr. Co. v. Clark*, 289 Md. 313, 329 (1981)). Although, in certain circumstances, a duty supporting a tort action can arise from a contractual

relationship, “the duty giving rise to a tort action must have some independent basis.” *Id.* When the alleged negligence involves an obligation that falls within the scope of the contract, however, “the plaintiff is ordinarily limited to a breach of contract remedy.” *Id.* at 254 (no tort duty “when the dispute is over the existence of any valid contractual obligation covering a particular matter”).

Here, Mr. Mofor does not allege that Lyft owed him a duty that was independent of the contractual obligation. Rather, he asserts in his negligence count that Lyft acted “without resort to any terms signed by both parties and contrary to its own standard format,” and he would not have been injured “if [Lyft] would not have breached the contract.” Because Mr. Mofor failed to show that Lyft owed him a duty of care outside and independent of the contract, the circuit court did not err in dismissing his negligence count.

6.

Constructive Fraud

In count six of his complaint, Mr. Mofor alleged that Lyft committed constructive fraud by purposely concealing information about Mr. Mofor’s disqualifying background check “when it had said information at its disposal prior to commencement of the contract.” He contends Lyft’s “omission and nondisclosure ma[de] the entire contract [a] misleading concealment.” Lyft argues that Mr. Mofor “failed to plead a fiduciary or confidential relationship with Lyft,” and therefore, he could not establish a *prima facie* case of constructive fraud as a matter of law.

“Constructive fraud is a ‘breach of a legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.’” *Cicada Invs., LLC v. Harbour Portfolio VII LP*, 261 Md. App. 148, 162 (2024) (quoting *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 422 (2006)). For purposes of constructive fraud, “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). *Accord Md. Env’t Tr. v. Gaynor*, 370 Md. 89, 99 (2002) (claim for constructive fraud dismissed where “[t]here was no fiduciary or confidential relationship” between the parties that required a disclosure). As discussed, *supra*, business relationships involving arms-length transactions generally are not confidential relationships. *Brass Metal Prods., Inc. v. E-J Enters., Inc.*, 189 Md. App. 310, 357 (2009).

Here, Mr. Mofor failed to establish that a confidential relationship existed between him and Lyft. The allegations in the complaint indicate that the parties entered into a mutually beneficial agreement. Mr. Mofor paid a deposit for the use of a vehicle in exchange for Lyft’s authorization to access its ridesharing platform, subject to a background check. This was an ordinary business transaction authorizing an independent contractor driver to use an established ride share platform based on an agreement that furthered the parties’ separate interests. Lyft did not exercise influence over Mr. Mofor such that he would expect Lyft to act in his best interest. *Id.* at 359 (relying on a party to perform a contract and “do the job it was retained to do” does not create a confidential

relationship). The circuit court properly found that Lyft did not sufficiently plead “a breach of some legally-recognized duty owed by Lyft through fraudulent conduct.”

7.

Intentional Infliction of Emotional Distress

The final count of Mr. Mofor’s complaint alleged intentional infliction of emotional distress. It alleged that Lyft’s “breach was intentional and reckless, causing enormous pains and suffering, ranging from homelessness, forebodings, loss of societal standings, unemployment, mental anguish and soliloquy.” Lyft contends that Mr. Mofor did not allege facts sufficient to meet the elements of a claim for intentional infliction of emotional distress because Lyft’s alleged conduct did not rise “to the level of extreme and outrageous conduct,” and his alleged distress was not severe.

The following elements are required to state a claim for intentional infliction of emotional distress: “1) the conduct must be intentional or reckless, 2) the conduct must be extreme and outrageous, 3) there must be a casual connection between the wrongful conduct and the emotional distress, and 4) the emotional distress must be severe.” *Mixer v. Farmer*, 215 Md. App. 536, 547-48 (2013) (quoting *Harris v. Jones*, 281 Md. 560, 566 (1977)). A defendant’s conduct is intentional or reckless when he or she “desires to inflict severe emotional distress, and also where he knows that such distress is certain, or substantially certain, to result from his conduct; or where the defendant acts recklessly in deliberate disregard of a high degree of probability that the emotional distress will follow.” *Haines v. Vogel*, 250 Md. App. 209, 229 (2021) (quoting *Harris*, 281 Md. at 567).

Extreme and outrageous conduct is that which goes “beyond all possible bounds of decency . . . [and is] regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* at 230 (quoting *Batson v. Shiflett*, 325 Md. 684, 734 (1992)). In addition, the alleged distress must be “so severe that ‘no reasonable person could be expected to endure it.’” *Id.* at 232 (quoting *Harris*, 281 Md. at 570-71). Notably, in Maryland, “the tort has been found to exist in only the most extreme circumstances . . . [where] the accused had a unique relationship with the person claiming emotional distress.” *Id.* at 230-31.

Mr. Mofor has not alleged facts sufficient to satisfy these elements. He baldly asserts that Lyft’s breach of contract was intentional and reckless without alleging any facts indicating that Lyft knew or should have known its conduct would result in emotional distress. He also failed to allege that Lyft’s conduct was extreme and outrageous¹² or the severe emotional distress necessary to state a claim for intentional infliction of emotional distress. *See id.* at 233 (“[C]laims of IIED are reserved for the most serious and emotionally devastating acts.”). The circuit court did not err in finding that Mr. Mofor failed to sufficiently plead the necessary elements of a cause of action for intentional infliction of emotional distress.¹³

¹² In any event, we would be hard pressed to conclude that Lyft’s actions in deactivating Mr. Mofor’s account based on contractual terms to which Mr. Mofor consented amounted to extreme and outrageous conduct.

¹³ Having held that the court properly dismissed Mr. Mofor’s entire complaint, “any claim for punitive damages also must be dismissed because punitive damages must be based on a viable cause of action.” *See Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 639 (independent cause of action does not exist for punitive damages under Maryland law), *cert. denied*, 390 Md. 92 (2005).

II.

Dismissal of Demand for Default Judgment

Mr. Mofor contends that the court erred in denying his motion for default judgment. He asserts that Lyft failed to file an answer to his complaint within 15 days of remand as required by Rule 2-321(c), “without stating any legal or factual reason” for its noncompliance. He requests that we “set aside the [circuit court’s] decision as if it never occurred.”

Lyft argues that the “court did not abuse its discretion in denying [Mr. Mofor’s] improper Demand for Default Judgment.” It alleges that Mr. Mofor’s request for entry of default judgment was “premature and unwarranted” under Rule 2-613, and he “failed to establish that the short delay [in responding to the complaint on remand] prejudiced” him.

A circuit court has broad discretion in determining whether a case subject to an order of default should be permitted to proceed on the merits. *Att’y Grievance Comm’n v. Ward*, 394 Md. 1, 20-22 (2006) (no abuse of discretion in vacating order of default even where the defendant failed to provide a detailed legal and factual basis for his failure to plead). Appellate courts review a circuit court’s “decision to vacate a default order liberally because ‘the Maryland Rules and case law contain a preference for a determination of claims on their merits; they do not favor imposition of the ultimate sanction absent clear support.’” *Id.* at 20 (quoting *Holly Hall Publ’ns, Inc. v. Cnty. Banking & Tr. Co.*, 147 Md. App. 251, 266 (2002)).

The circuit court’s application of the rules governing default judgments, however, “presents a pure question of law.” *Pomroy v. Indian Acres Club of Chesapeake Bay, Inc.*, 254 Md. App. 109, 117 (2022). The question presented here, whether Mr. Mofor had authority to request entry of a default judgment before the court issued an order of default, is a legal issue. *Id.* (power to enter default judgment without issuance of order of default is question of law). We will therefore conduct a *de novo* review of the court’s order denying Mr. Mofor’s demand for a default judgment.

Rule 2-613 governs the procedure for requesting a default judgment and states, in pertinent part, as follows:

(b) **Order of default.** — If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default.

* * *

(c) **Notice.** — Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days after its entry.

* * *

(d) **Motion by the defendant.** — The defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.

(e) **Disposition of motion.** — If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order.

(f) **Entry of judgment.** — If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default

Rule 2-613 sets forth a two-step process for addressing a defendant’s failure to plead. The first step is for the plaintiff to request an *order* of default. Rule 2-613(b). If issued, the defendant has 30 days to move to vacate the order, stating “the reasons for the failure to plead and the legal and factual basis” for its defense. Rule 2-613(d). Because a default judgment is not meant to punish a party for breach of a procedural rule, if the court determines there are meritorious defenses to the claims and that it is “equitable to excuse the failure to plead,” it “shall vacate the order.” Rule 2-613(e). *Accord Abrishamian v. Wash. Med. Grp., P.C.*, 216 Md. App. 386, 403 (2014) (preference is for judgments to reflect merits, not “gotcha” victories).

The second step is issuance of a default judgment. Rule 2-613(f). “A judgment of default is permitted only if a motion to vacate an order of default is not filed or, if filed, is denied.” *Pomroy*, 254 Md. App. at 120-21. It is “clear error” to issue a default judgment without first issuing an order of default. *Id.* at 121.

Here, Mr. Mofor filed a Demand For Default Judgment before requesting that the court enter an order of default, which would have allowed the plaintiff to file a motion to vacate. Because Mr. Mofor’s demand was premature, the court did not err in denying it.

Moreover, in opposing the demand for default judgment as procedurally improper, Lyft also challenged it on the grounds that it had “a meritorious argument that each and every cause of action in [Mr. Mofor’s] Complaint fail[ed] to state a claim.” Lyft referenced its contemporaneously filed motion to dismiss for failure to state a claim. Lyft asserted that it was equitable to excuse its failure to plead because counsel was expecting guidance

from the court upon remand, and it had been actively participating in the protracted litigation from its onset. In addition, Mr. Mofor did not allege that he suffered any prejudice based on the delay. Given the court’s broad discretion and the preference to address claims on the merits, we perceive no error in the court’s denial of his request.

III.

Motion to Reconsider Motion for Partial Summary Judgment

Mr. Mofor contends that the court “erred in not considering [his] motion for partial summary judgment.” As best we can ascertain, he asserts that the contract at issue contained an exculpatory clause that was unenforceable because it violated public policy.

Lyft contends that the circuit court “did not abuse its discretion in denying [Mr. Mofor’s] untimely and unsupported Motion for Reconsideration of his Motion for Partial Summary Judgment.” It asserts that “[t]here is no basis under the Maryland Rules for [Mr. Mofor’s] belated request for reconsideration,” noting that the motion was initially denied as moot in February 2022, but his motion for reconsideration was filed in July 2023. Moreover, it argues that the circuit court properly denied the motion for partial summary judgment because it was “grossly premature and premised entirely upon strongly contested facts.”

The court denied the motion to reconsider on the ground that the “matters raised [therein were] not undisputed facts.” Mr. Mofor’s motion was based on bald allegations that the contract at issue contained an unenforceable exculpatory clause that was void under public policy. Because he never produced the contract or any evidence of an exculpatory

clause, and filed the motion prior to discovery, we agree with the circuit court that his motion was premature. *See Thomas v. Shear*, 247 Md. App. 430, 447 (2020) (moving party has burden of demonstrating *prima facie* basis for summary judgment). The court did not abuse its discretion in denying the motion to reconsider.¹⁴

Moreover, we have upheld the court’s ruling dismissing the entire complaint for failure to state a claim on which relief could be granted. Mr. Mofor states no claim for relief with respect to the court’s earlier decision not to reconsider his motion for summary judgment.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

¹⁴ Mr. Mofor’s third question presented is whether the court erred in not allowing this case to be decided by a jury as requested by both parties. We need not address this issue as we have held that the court properly dismissed the complaint.