

Circuit Court for Montgomery County
Case No. 421985V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1676

September Term, 2016

EDMUND AWAH

v.

BARWOOD, INC.

Friedman,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: August 31, 2018

*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.

Edmund Awah, appellant, filed, in the Circuit Court for Montgomery County, a civil action, which he twice amended, against Barwood, Inc. (“Barwood”), Claims Resource Management, LLC (“CRM”), Potomac Adjustment Resources, Inc. (“Potomac”), Bayland Risk Management, LLC (“Bayland”), and Montgomery County Police Officer Jeffrey Stromberg, alleging various causes of action stemming from a traffic accident that occurred while Mr. Awah was driving a taxicab. Officer Stromberg thereafter filed a motion to dismiss, which, after a hearing, the court granted with prejudice. Barwood, CRM, Potomac, and Bayland also filed motions to dismiss, which the court, after a hearing, also granted with prejudice. In this appeal, Mr. Awah presents the following questions for our review:

1. Was the circuit court’s dismissal of appellant’s complaint against Barwood legally correct?
2. Did the circuit court err in dismissing appellant’s claims against Barwood despite their being genuine disputes as to the material facts of the case?
3. Did the circuit court abuse its discretion in dismissing appellant’s complaint with prejudice?

For reasons to follow, we affirm.

BACKGROUND

In June of 2013, Mr. Awah was driving a taxicab, which he had leased from Barwood, when he collided with a police vehicle being driven by Officer Stromberg. Approximately three years later, Mr. Awah filed a complaint against Barwood, CRM,

Potomac, Bayland, and Officer Stromberg.¹ After filing an amended complaint, Mr. Awah asked the circuit court again for leave to amend, which the court granted. Mr. Awah then filed a second amended complaint, in which he asserted six causes of action. Mr. Awah challenges in his first two questions the dismissal, although in reality a summary judgment, entered in favor of Barwood to which we now turn.

In his first cause of action, titled “Independent Contractor Misclassification,” Mr. Awah alleged that Barwood “misclassified” him as an independent contractor rather than a regular employee. Mr. Awah claimed that, as a result of that misclassification, Barwood violated its “statutory and fiduciary obligations” and “the Maryland Labor Code.”²

In his second cause of action, titled “Unsafe and Unhealthful Work Environment,” Mr. Awah alleged that the airbags in his taxicab failed to deploy during the accident, which “exacerbated the severity” of his bodily injuries. Mr. Awah further alleged that Barwood “was under a statutory obligation to provide a safe work environment,” which it failed to do “since the airbags were defective and failed to deploy.” Mr. Awah also maintained that Barwood’s actions were “in direct contravention of Md. Labor and Employment Code Ann. § 5-104.”³

¹ According to Mr. Awah’s complaint, CRM, Potomac, and Bayland “provide[d] insurance coverage to taxicabs owned by Barwood.”

² Mr. Awah did not specify which section of the “Maryland Labor Code” Barwood allegedly violated.

³ That section provides, in pertinent part, that “[e]ach employer shall provide each employee of the employer with employment and a place of employment that are: (1) safe and healthful; and (2) free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.” Md. Code, Lab. & Empl. § 5-104(a).

In his third cause of action, titled “Failure to Provide Insurance Coverage,” Mr. Awah alleged that he paid a daily rent of \$100.00 to Barwood and that part of the rent “was intended to go towards paying an insurance premium.” Mr. Awah further alleged that, despite those payments, Barwood “failed to secure an insurance cover and compensation” in violation of “the Md. Labor and Employment Code Ann. § 9-402.”⁴

In his fourth cause of action, titled “Breach of Contract,” Mr. Awah alleged that, at the time of the accident, he had “in force a policy of automobile insurance issued by Barwood” and that “said policy of insurance contained a provision for uninsured motorist coverage which provided, among other things, insurance coverage for losses and damages sustained in accidents which were caused by the negligent operation of a vehicle by third persons.” Mr. Awah further alleged that he should have received “fair compensation for his injuries from Barwood” but did not, despite the fact that, according to Mr. Awah, the other motorist had caused the accident and was uninsured at the time. According to Mr. Awah, Barwood’s “failure to pay means that Barwood” had “breached their contractual obligations.”

In his complaint, Mr. Awah also alleged identical claims against CRM, Bayland, and Potomac based upon the same set of facts. In so doing, Mr. Awah stated that, “in the

⁴ That section, which is part of the Maryland Workers’ Compensation Act, provides, in pertinent part, that “each employer shall secure compensation for all covered employees of the employer by: (1) maintaining insurance with an authorized insurer; (2) participating in a governmental self-insurance group ...; (3) participating in a self-insurance group of private employers ...; (4) maintaining self-insurance for an individual employer ...; or (5) having a county board of education or private noncollegiate institution secure compensation[.]” Md. Code, Lab. & Empl. § 9-402(a).

alternative,” the aforementioned insurance policy was “issued by Defendant Barwood and/or Co-Defendants [Bayland] and/or [CRM] and/or [Potomac].” In addition, Mr. Awah made various other factual allegations throughout his complaint, which he incorporated into his claim for breach of contract. In some of those allegations, Mr. Awah stated that CRM, Bayland, and Potomac “provide[] insurance coverage to taxicabs owned by Barwood” and that Barwood “employs and/or contracts to provide insurance[.]” In other allegations, Mr. Awah maintained that “insurance premium payouts were managed by [CRM, Bayland, and Potomac]” and that the taxicab he was driving at the time of the accident was owned by Barwood and “insured by either [Bayland, Potomac,] and/or [CRM].”

In his fifth cause of action, titled “Mental Anguish and Emotional Distress,” Mr. Awah maintained that Barwood “failed to provide physical or emotional support” to him following his accident. Mr. Awah also maintained that Barwood placed “numerous harassing phone calls to [him] during business operations to demand rent payments,” which “created severe levels of emotional distress and mental anguish” and subjected him to danger because he “was compelled to answer the telephone calls whilst driving.” Mr. Awah alleged that those harassing phone calls also violated “section 14-202(6) of the Maryland Consumer Debt Collection Act.”⁵

⁵ That section provides that “[i]n collecting or attempting to collect an alleged debt a collector may not ... [c]ommunicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor[.]” Md. Code, Comm. Law § 14-202(6).

In his sixth cause of action, titled “Unjust Enrichment/Quantum Meruit,” Mr. Awah maintained that Barwood had “been unjustly enriched through charging [him] an amount of over \$5,000.00 to cover accident damages to Barwood’s taxicab.” Mr. Awah averred that those charges were “unlawful” and “in violation of the State common law.”

After the filing of Mr. Awah’s second amended complaint, all five defendants filed motions to dismiss. The circuit court eventually held a hearing on Barwood’s, CRM’s, Potomac’s, and Bayland’s motions to dismiss.⁶ Following that hearing, the court determined that Mr. Awah had failed to state a claim “against any of the defendants in this case.” The court later entered judgment dismissing Mr. Awah’s second amended complaint with prejudice. Mr. Awah now claims that the court erred in dismissing his complaint with prejudice against Barwood on the ground that his allegations failed to state claims and against all of the defendants without leave to amend.

STANDARD OF REVIEW

“A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings.” *Ricketts v. Ricketts*, 393 Md. 479, 491 (2006) (citations and quotations omitted). “When deciding whether to grant a motion to dismiss a complaint as a matter of law, a trial court is to assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff.” *Ceccone v. Carroll Home Services, LLC*, 454 Md. 680, 691 (2017). Those facts, however, ““must be pleaded with sufficient specificity; bald assertions and conclusory statements by the

⁶ By that time, the Circuit Court had already granted Officer Stromberg’s motion to dismiss.

pleader will not suffice.” *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 497 (2014) (citations omitted). “Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.” *Ricketts*, 393 Md. at 492. “When an appellate court reviews a trial court’s grant of a motion to dismiss, the appellate court applies the same standard to assess whether the trial court’s decision was legally correct.” *Ceccone*, 454 Md. at 691.

DISCUSSION

We begin by setting forth the elements of a claim of negligence, as many of Mr. Awah’s causes of action, although captioned differently, are claims sounding in negligence:

Any theory of liability sounding in negligence is predicated on the existence of the following elements: (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant’s breach of the duty. Vital to sustaining a cause of action in negligence is the existence of a legally recognized duty owed by the defendant to the particular plaintiff. Duty, in this regard, is an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.

Warr v. JMGM Group, LLC, 433 Md. 170, 181 (2013) (internal citations and quotations omitted).

Mr. Awah’s first cause of action, “Independent Contractor Misclassification,” is not recognized as an independent tort in Maryland. If Mr. Awah believed that he had been “misclassified” and was entitled to compensation, then his exclusive remedy was by way of the State Workers’ Compensation Commission. *See* Md. Code, Lab. & Empl. § 9-402.1(c) (“If the Commission determines that an employer failed to properly classify an

individual as an employee, the Commission shall order the employer to secure compensation for the covered employee[.]”); *See also* Md. Code, Lab. & Empl. § 9-509(a) (“Except as otherwise provided in this title, the liability of an employer under this title is exclusive.”). Moreover, Mr. Awah failed to put forth any facts establishing a duty on the part of Barwood to classify him as a regular employee, let alone facts establishing a breach of that duty or proximate cause that led to his sustaining injury. *See Pace v. State*, 425 Md. 145, 154 (2012) (“To sufficiently plead a cause of action for negligence in Maryland, a plaintiff must ‘allege with certainty and definiteness, facts and circumstances sufficient to set forth (a) a duty owed by the defendant to the plaintiff, (b) a breach of that duty and (c) injury proximately resulting from that breach.’”) (citations omitted) (emphasis removed).

Mr. Awah, in his second claim entitled “Unsafe and Unhealthful Work Environment,” alleges negligence with respect to the condition of his taxicab; however, Mr. Awah failed to establish that Barwood owed him any duty regarding the deployment of the airbags in his taxicab, that Barwood breached said duty, or that said breach was the proximate cause of his injuries. *Id.* Mr. Awah’s reliance on Section 5-104 of the Labor and Employment Article of the Maryland Code does not support a negligence *per se* claim because the statute was not “‘designed to protect a specific class of persons which includes the plaintiff[.]’” *Moore v. Myers*, 161 Md. App. 349, 363 (2005) (quoting *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 79 (2003)) (discussing statutorily-created duties); *See also C & M Builders, LLC v. Strub*, 420 Md. 268, 282 (2011) (noting that the Maryland Occupational Safety and Health Act, in which § 5-104 is contained, cannot be used to establish negligence *per se*).

Mr. Awah’s third claim, “Failure to Provide Insurance Coverage,” is not recognized as an independent tort in Maryland. That claim also fails as a result of Mr. Awah’s continued conclusory allegations that Barwood had a duty to provide insurance coverage to him as well as that the breach of that duty was the proximate cause of his injuries. Mr. Awah’s reliance on Section 9-402 of the Labor and Employment Article of the Maryland Code does not support a negligence *per se* claim either, as that statute involves an employer’s duty to provide workman’s compensation insurance. *Id.* And, as with Mr. Awah’s first claim, the exclusive forum in which to raise a claim pursuant to § 9-402 would be by way of the State Workers’ Compensation Commission. Md. Code, Lab. & Empl. § 9-407(b); Md. Code, Lab. & Empl. § 9-509(a).

In his fourth claim, “Breach of Contract,” Mr. Awah casts all of his allegations regarding insurance coverage against Barwood, CRM, Potomac, and/or Bayland without identifying the entity with which he had a contractual relationship or the terms of that relationship.⁷ This ambiguity as to the existence of a contractual duty to provide insurance coverage must be construed against Mr. Awah. *See Heritage Harbour, LLC v. John J. Reynolds, Inc.*, 143 Md. App. 698, 705 (2002) (“Any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader.”) (quoting *Faya v. Almaraz*, 329 Md. 435, 444 (1993)). Mr. Awah’s allegations, thus, do not articulate a breach of contract claim. *See RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 655 (2010) (noting that “a complaint alleging a breach

⁷ In this appeal, Mr. Awah does not challenge the court’s ruling as it pertains to CRM, Potomac, or Bayland.

of contract ‘must of necessity allege **with certainty and definiteness** facts showing a contractual obligation owed by the defendant[.]’”) (citations omitted) (emphasis added).

Mr. Awah’s fifth claim, “Mental Anguish and Emotional Distress,” is not recognized in Maryland as an independent tort. *Alban v. Fiels*, 210 Md. App. 1, 16 (2013). If, however, Mr. Awah is claiming that Barwood’s failure to provide support following his accident was negligent and *caused* mental anguish and emotional distress, his claim would still fail, as he failed to plead any duty owed to him by Barwood to provide such support. Moreover, Mr. Awah erroneously asserts in support of his claim that Barwood violated Section 14-202(6) of the Commercial Law Article of the Maryland Code by placing “numerous harassing phone calls” to demand “rent payments.” That statute applies only in the context of consumer transactions. *See, e.g.*, Md. Code, Com. Law § 14-202 (proscribing various conduct by a “collector”); Md. Code, Com. Law § 14-201(b) (defining “collector” as “a person collecting or attempting to collect an alleged debt arising out of a consumer transaction.”). Mr. Awah’s payment of rent for his taxicab was not a consumer transaction. *See* Md. Code, Com. Law § 14-201(c) (defining “consumer transaction” as “any transaction involving a person seeking or acquiring real or personal property, services, money, or credit for personal, family, or household purposes.”).

With regard to Mr. Awah’s sixth claim, “Unjust Enrichment,” in order for such a claim to be properly pleaded, there must be sufficient facts that “(1) the plaintiff confer[red] a benefit upon the defendant; (2) the defendant kn[ew] or appreciate[d] the benefit; and (3) the defendant’s acceptance or retention of the benefit under the circumstances [was] such that it would be inequitable to allow the defendant to retain the benefit without the paying

of value in return.” *Benson v. State*, 389 Md. 615, 651-52 (2005). In the present case, Mr. Awah pleaded facts to show that Barwood charged him for the repairs to his vehicle, but he failed to plead facts sufficient to allege that Barwood was unjustly enriched.

Finally, the circuit court did not abuse its discretion in dismissing Mr. Awah’s complaint with prejudice, thus preventing Mr. Awah from amending his complaint a third time, particularly when Mr. Awah had not, even cursorily, alleged sufficient facts to establish the elements of his various causes of action. *See Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 727 (2007), *aff’d* 403 Md. 367 (2008) (“A trial court has discretion to dismiss a claim with prejudice if it fails to state a claim that could afford relief.”); *See also Gaskins v. Marshall Craft Associates, Inc.*, 110 Md. App. 705, 716 (1996) (holding that the court, in dismissing plaintiff’s complaint, did not abuse its discretion by denying plaintiff leave to amend where doing so would have been futile).

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