

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1682

September Term, 2024

MARC C. GREBOW

v.

ALAN A. BOCK, ET AL.

Leahy,
Reed,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: April 29, 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 Maryland Rule 1-104(a)(2)(B).

In the Circuit Court for Baltimore County, Marc Grebow (“Marc”), the appellant, sued Alan A. Bock (“Alan”) and Steven Grebow (“Steven”), the appellees, for breach of contract, fraud, negligent misrepresentation, conversion, and civil conspiracy.¹ The case was tried to a jury on October 7 and 8, 2024, when Marc’s case-in-chief closed and Alan and Steven moved for judgment on all counts. The next day, the court heard argument and granted the motion. Judgment was entered, and this timely appeal followed.²

FACTS AND PROCEEDINGS

In the early 1990s, Alan and Steven started a business recycling used oil. Marc came to work for that business at a later date. Marc and Steven are brothers.

On August 15, 1996, the three formalized their business relationship by creating Mid-State Oil Refining, LLC (“MSOR”), of which Alan owned a 22.22% membership interest and the remaining 77.78% membership interest was owned by Mid-State Holding Company, LLC (“MSH”), which was formed at the same time. Steven owned a 50% membership interest in MSH. At first, Marc owned the remaining 50% membership interest in MSH directly, but later he transferred that interest to the Mid-State Holding

¹ Because two of the parties have the same last name, we will refer to the parties by their first names.

² Suit was filed by Marc, individually, and as trustee of Mid-State Holding ESBT (“the ESBT”), an electing small business trust as defined by 26 U.S.C. § 1361(e)(1). By order entered on December 3, 2021, the claims by Marc as trustee of the ESBT were dismissed because the ESBT no longer was in existence. That ruling is not at issue in this appeal.

ESBT, an electing small business trust (“ESBT”), which he created for tax purposes.³ MSH was a pass-through entity that had the sole purpose of receiving distributions from MSOR. Steven was the managing member of MSH.

Subsequently, in 2004, the same people formed Pennington Partners, LLC (“PP”), a real estate business that owned properties, including property leased by MSOR. The membership interests in PP were owned 26.32% by Alan, 36.84% by Steven, and 36.84% by Pennington Holdings, LLC (“PH”), an entity formed and solely owned by Marc.

Until 2012, Alan, Steven, and Marc all were employees of MSOR. Alan served as president from 1992 forward; Steven, who is a certified public accountant, dealt with the finances; and beginning in 2005, Marc handled day-to-day operations. MSOR’s Operating Agreement gave its Management Committee broad authority to make business decisions for the LLC.⁴

In June 2012, after conducting an investigation, Alan and Steven determined that Marc had stolen money from MSOR, loaned money to assist a competitor of MSOR, and taken steps to undermine a potentially profitable sale of MSOR. By action of the MSOR Management Committee, Marc was fired from employment.

³ Marc was the trustee and sole beneficiary of the ESBT. He named it Mid-State Holding ESBT, but it should not be confused with MSH, an entirely separate entity.

⁴ The Operating Agreement was moved into evidence. Section 6.1.2 states: “All powers of the Company shall be exercised by or under the authority of the Management Committee. Decisions of the Management Committee within its scope of authority shall be binding upon the Company and each Member.”

In 2015, in the Circuit Court for Anne Arundel County, Marc and PH brought suit seeking to judicially dissolve MSOR, MSH, and PP (“the Anne Arundel County Case”). Charles Kerr, Esquire, represented Marc, and Mark Maneche, Esquire, represented the defendants, which included Alan and Steven. The case was tried to the court for three days in March 2017. On June 27, 2017, the court issued a written opinion rejecting Marc’s claim on several bases, including that he could not seek equitable relief as he had “unclean hands.” In particular, the court found that Marc had stolen more than \$900,000 from MSOR and had loaned money to a competitor of MSOR. The court characterized Marc’s conduct with regard to MSOR as “fraudulent, illegal and inequitable[.]” After judgment was entered, Mr. Kerr, on July 14, 2017, noted an appeal to this Court on Marc’s behalf.

In February 2018, while the appeal was pending, Origin Baltimore Terminals, LLC, and Origin Baltimore Recycling, LLC, operating together under the name “Origin,” approached MSOR with a lucrative proposal to purchase the assets of MSOR, MSH, and PP. Alan and Steven negotiated the sale, which closed on March 7, 2018, when an Asset Purchase Agreement (“APA”) was executed. Pursuant to the terms of the APA, the assets of MSOR, MSH, and PP were purchased for approximately \$25 million dollars. Further under the terms of the APA, Alan’s and Steven’s employments by MSOR would end, and both were required to execute a five-year non-compete agreement. The proceeds of the sale were put in escrow for later distribution.

After the APA closed, MSOR paid bonuses to its employees. The bonuses totaled \$2.2 million dollars, including \$750,000 each to Alan and Steven. The bonuses had to have

been made by the MSOR Management Committee, as under the MSOR Operating Agreement, its authority would have encompassed decision-making in that regard, unless prohibited, and nothing in the Operating Agreement prohibited the Management Committee from granting bonuses to employees. The bonuses were paid effective March 28, 2018.

It is an understatement to say that the relationship between Alan and Steven, on the one hand, and Marc, on the other, was contentious. There had been litigation between them for years, and, as noted, the appeal in the Anne Arundel County Case remained pending. To make a clean break, it was agreed that Alan, Steven, Marc, MSOR, MSH, and PP would enter into a Mutual Release and that the proceeds of the APA, although determined and not changing, would be distributed after the Mutual Release was signed. From early April 2018, until June 14, 2018, the terms of the Mutual Release were negotiated by Freddie Traub, Esquire, on behalf of Marc, and Mr. Maneche, on behalf of Alan, Steven, MSOR, MSH, and PP.

On June 14, 2018, the terms of the Mutual Release having been agreed upon, it was fully executed. That date became its “Effective Date.” Marc’s appeal in the Anne Arundel County Case was voluntarily dismissed the following day. The terms of the Mutual Release spelled out how the proceeds of the APA were to be distributed to Alan, Steven, and Marc (in part directly and in part by payment to Marc’s ESBT).⁵ Soon after the Effective Date of

⁵ The Mutual Release states that MSOR would distribute \$5,833,500 to MSH, which would distribute one-half to Steven and one-half to Marc’s ESBT, resulting in their each
(continued...)

the Mutual Release, the proceeds held in escrow were paid out, and thereafter all monies payable to Alan, Steven, and Marc pursuant to the APA and the Mutual Release were paid.

In June 2021, Marc filed suit in the case at bar. The Amended Complaint, dated October 2, 2021, was the operative pleading. A jury trial was held for two days in October 2024. Marc called Mr. Traub, Mr. Kerr, and Steven as witnesses and testified on his own behalf. Mr. Maneche, a defense witness, testified out of order, during Marc's case.

To show the negotiations as they unfolded from April 10 to June 14, 2018, and the events of June 15, 2018, Mr. Traub identified drafts of the Mutual Release and accompanying emails that had been exchanged between him and Mr. Maneche and some emails to and from Mr. Kerr. The primary sticking point in the negotiations was paragraph

receiving \$2,916,750 from MSOR. Marc and Steven each would receive \$5,385,270 from PP, and an additional \$921,000 from PP for payments it had received on a promissory note. The total of all these payments came to \$9,223,020 each for Marc and Steven. In addition, MSOR was to pay MSH 77.78% of the amount held by MSOR as of the Effective Date of the Mutual Release and the same percentage of amounts received by MSOR after the Effective Date of the Mutual Release until MSOR was completely liquidated. MSH would distribute those sums one-half to Marc's ESBT and one-half to Steven. Also, PP would pay to PH (Marc's LLC) and Steven 36.84% each of amounts held by PP as of the Effective Date of the Mutual Release and the same percentage of amounts received by PP after the Effective Date until PP was completely liquidated.

Alan would receive a distribution of \$1,666,500 from MSOR; a distribution of \$3,847,460 from PP; and \$658,000 from PP for payments made on the promissory note. All those payments totaled \$6,171,960. In addition, he would receive from MSOR 22.22% of the amounts held by MSOR as of the Effective Date of the Mutual Release and the same percentage of amounts received by MSOR after the Effective Date until MSOR was completely liquidated. Likewise, Alan would receive 26.32% of monies held by PP on the Effective Date of the Mutual Release and the same percentage of amounts received by PP thereafter until PP was completely liquidated.

2, which concerned the financial documents Marc would be given prior to executing the Mutual Release.⁶ Marc wanted financial documents for MSOR, MSH, and PP from 2016 through the Effective Date of the Mutual Release, to include general ledgers for the companies. As Mr. Traub explained, general ledgers detail all deposits and withdrawals made during the time frame covered. Marc was intent upon obtaining the general ledgers because, as he testified, he “was trying to make sure that my brother and Alan weren’t robbing me blind.” Alan and Steven would not agree to provide the general ledgers because those documents showed client information that Marc could use for his own benefit in his business or could reveal to competitors.⁷ Given the parties’ past history, including the findings made in the Anne Arundel County Case, Alan and Steven did not trust Marc with that information.

The negotiations were at an impasse until the end of May 2018. The drafts from Mr. Traub included the language in paragraph 2 that Marc was insisting upon, by which he would receive the general ledgers of all three companies before signing the Mutual Release, and the responses from Mr. Maneche, on behalf of Alan and Steven, deleting that language as they would not agree to it. On June 6, 2018, Mr. Traub sent Mr. Maneche a revised draft

⁶ This did not concern the financial documents underlying the APA, which Marc already had been given.

⁷ In addition, because Alan and Steven had signed non-compete agreements as part of the APA, they were “concerned that by providing general ledger information to” Marc, who had engaged in competing businesses in the recent past, “that could be construed as a violation of” the non-compete agreements, thereby exposing Alan and Steven to liability for breach of contract.

of the Mutual Release that deleted the references to MSOR and MSH in paragraph 2, that is, removed the language requiring those two companies to provide financial information to Marc. Mr. Traub’s email says:

Notwithstanding [the deletions] and since you have advised that your clients will not provide the MSH and MSOR financial information until our client has delivered the signed [Mutual Release], we will send you the signed [Mutual Release] along with the Notice of Dismissal [of the appeal in the Anne Arundel County Case] to hold in escrow pending your delivery to me of the MSH and MSOR financial information for 2016 through the Effective Date at which time you will be authorized to deliver the signed [Mutual Release] and file the Notice of Dismissal with respect to the Appeal.

In other words, Mr. Traub was agreeing on behalf of Marc that the Mutual Release would not include an obligation by Alan and Steven to hand over the financial information before the Mutual Release was fully executed. Instead, Marc would accept delivery of the financial information after the release was fully executed, without that being specified in the release, but the filing of the notice of voluntary dismissal of the appeal in the Anne Arundel County Case (“Dismissal Notice”), which Marc agreed to do in the release, would not happen until after the financial information was turned over.

On June 12, 2018, Mr. Maneche emailed a response to Mr. Traub’s June 6 email, confirming that Mr. Traub would deliver to him a hard copy of the June 6 version of the Mutual Release, signed by Marc, and a hard copy of the Dismissal Notice, signed by Mr. Kerr, “both of which” he (Mr. Maneche) would hold “in escrow” pending delivery to Mr. Traub of a fully executed copy of the Mutual Release and “the MSH/MSOR financial information[.]” Mr. Maneche went on to say in the email that he would coordinate obtaining his clients’ signatures on the Mutual Release and that once he had received the

“MSH/MSOR financial information” from his clients, he would deliver the fully executed Mutual Release and the financial information to Mr. Traub “at the same time.” After that (i.e., “[f]ollowing confirmation of delivery” of the documents to Mr. Traub), he would “promptly” file the Dismissal Notice in this Court.

Mr. Traub testified that these emails constituted a “side deal” he and Mr. Maneche struck to break the logjam in negotiations. According to Mr. Traub, although the words “general ledger” were not used in the emails, “financial information,” as he and Mr. Maneche had been using those words, encompassed the general ledgers for MSOR and MSH.⁸

Marc executed the Mutual Release on June 13, 2018, and the other parties did so on June 14, 2018. Mr. Kerr had been kept in the loop. He had advised that he would be out of town that week due to a professional commitment. Mr. Maneche and Mr. Kerr agreed that Mr. Maneche was authorized to sign the Dismissal Notice on Mr. Kerr’s behalf so long as Mr. Maneche waited to file it until after he had provided the fully executed Mutual Release and the financial information for MSOR and MSH to Mr. Traub, as had been agreed upon.

On the morning of June 15, 2018, on Mr. Maneche’s instructions, the fully executed Mutual Release and the financial documents for MSOR were messengered to Mr. Traub’s office. Those documents did not include the general ledgers for MSOR or MSH. Mr.

⁸ The dispute had focused on the general ledgers for MSOR and MSH. Alan and Steven did not object to providing that information for PP. As it turned out, MSH did not have any general ledgers because its sole business was receiving distributions from MSOR. Accordingly, the dispute really was about the general ledgers for MSOR.

Maneche filed the Dismissal Notice at 12:27 p.m. that day. At 1:33 p.m., Mr. Traub sent an “angry” email to Mr. Maneche saying that the financial information he had received did not include the general ledgers for MSOR and MSH, and in fact did not include any documents for MSH; and for that reason, Mr. Maneche was not authorized to file the Dismissal Notice. (It appears that, at the time, Mr. Traub did not know that the Dismissal Notice already had been filed.) Mr. Traub testified that, in his view, the side agreement required Mr. Maneche to hand over the general ledgers for MSOR and MSH but Mr. Maneche intentionally withheld those documents, in violation of that agreement.

Soon thereafter, Mr. Maneche responded to Mr. Traub’s email by phone, leaving a voice mail, a transcription of which was moved into evidence. In it, Mr. Maneche said that “[t]here seems to be some misunderstanding[.]” He explained that, because MSH was a holding company, its only asset was MSOR, and therefore the only financial documents for MSH were the MSOR financials. It had none of its own. Mr. Maneche went on to say that he did not think general ledgers were part of the “financial information” they had agreed would be provided:

When you ask me for financials, as the term is generally understood, I gave you P & L’s and income statements. Those are financials. You didn’t ask me for general ledger stuff. Had you asked for the general ledger[,] I would have said no, because of two things. One, the general ledger contains customer information on there that your client [Marc] has misused in the past. And additionally, Steve Grebow has signed a non-compete agreement as part of the asset purchase agreement documents in this instance and providing customer information to Mark [sic] at this point, would be potentially a violation of that non-compete agreement. We’re not going to do that. If there’s specific information that your client is looking for that[] doesn’t involve disclosing customer informatio[n], we might be able to provide that. I’m happy to work with you to get you that type of information, if that’s what

he’s looking for. I’ll be in the office today until about 4:00 p.m. [Redacted.] I’d already filed the notice of dismissal well[] in advance of receiving[] your e-mail per our agreement, so that can’t be undone at this point. [Redacted.]

At 3:38 p.m. that same day, without having heard back from Mr. Traub, Mr. Maneche backtracked on his stance in the voice mail, emailing Mr. Traub as follows:

Notwithstanding my voice message to you and on further consideration in the interest of avoiding a dispute attached are general ledgers for MSOR for 2016 through April 2018. As I stated in my voice message, there are no financial statements for the pass-through entity MSH. I trust this resolves the matter.

The attached general ledgers showed all payments by MSOR, including the bonuses paid to Alan and Steven. There was no indication from Mr. Traub that the general ledgers as provided were not satisfactory. As noted, the distributions from the Origin sale then were made.

In summary, on June 15, 2018, the fully executed Mutual Release was delivered to Mr. Traub together with financial documents that did not include the general ledgers for MSOR, contrary to what, according to Mr. Traub, he and Mr. Maneche had agreed to. Later that same day, the general ledgers were provided to Mr. Traub. The Dismissal Notice was filed that same day but before, not after, the general ledgers were provided.

Mr. Kerr testified that his only role in these events was to file the Dismissal Notice. Because he was out of town, he had agreed that Mr. Maneche could do so on his behalf so long as the Dismissal Notice was filed after Mr. Traub had received the documents Mr. Maneche was supposed to provide. In fact, the Dismissal Notice was filed before the documents were provided, although on the same day.

Marc testified that he understood that pursuant to the side agreement he would be given the general ledgers for MSOR, in addition to income and expense statements and balance sheets, before the Dismissal Notice was filed. He learned that the general ledgers were not provided and then were provided later that same day, and that the appeal had been dismissed but not in accordance with Mr. Kerr's instruction that that happen after, not before, Mr. Traub had received all the documents agreed upon. Marc testified that he should have received 38% or 39% of the \$1,500,000 total amount of bonuses paid to Alan and Steven collectively (\$750,000 each). He estimated that the sum he was entitled to was about \$600,000. When asked whether the MSOR Management Committee had the authority to grant bonuses, he said he did not know.

Steven testified that he received a \$750,000 bonus, by direct deposit. Alan also received a \$750,000 bonus, by check. These were part of the \$2.2 million dollars in bonuses MSOR paid to its employees in appreciation of the APA with Origin. (Marc was not an employee of MSOR, and had not been since 2012.) Steven and Alan each signed a five-year non-compete agreement and ceased receiving their salaries from MSOR pursuant to the APA.

Marc rested his case, and the defendants moved for judgment on all counts. The next day, after lengthy arguments in favor and in opposition, the court made its ruling on the record, granting the motion.

The court explained that Marc was not complaining about the terms of the APA or about the monies he was entitled to be paid, and was paid, in accordance with the APA and

the Mutual Release. Nor was he taking the position that any of the representations and warranties in the APA or in the Mutual Release were violated. Rather, he was seeking damages based on the bonus money that Alan and Steven had received, totaling \$1.5 million dollars, asserting that he should have received about \$600,000 of that amount.

The court went on to say that the evidence Marc presented focused mainly on the side agreement between Mr. Traub and Mr. Maneche, on behalf of their clients, by which he (Marc) would receive financial information about MSOR, including the MSOR general ledgers, after the Mutual Release had been fully executed but before the Dismissal Notice was filed. Through Mr. Traub's testimony, Marc took the position that Mr. Maneche intentionally violated the side agreement by not providing the promised financial documents before the Dismissal Notice was filed. The court explained that Marc's evidence showed that he received the fully executed Mutual Release on June 15, 2018, and the financial information he wanted, including the general ledgers, later that same day, but the Dismissal Notice had been filed earlier in the day on June 15, 2018, before he received those financial documents.

The court determined that the evidence that a side agreement existed and was breached was weak. Nevertheless, because the pending motion was for judgment based on insufficiency of the evidence, it was to view the evidence in the light most favorable to Marc, as the non-moving party. Therefore, the court assumed that a side agreement had been formed, under which Marc was entitled to receive the general ledgers before the

Dismissal Notice was filed, and that the side agreement was breached because Marc received the general ledgers after the Dismissal Notice was filed.

The court further determined that Marc did not introduce any evidence causally connecting the breach of the side agreement to the damages he was claiming. More specifically, there was no evidence introduced that the filing of the Dismissal Notice before Marc received the general ledger documents made any difference with respect to the bonus money. “[T]he Court believes that there has to be at least some evidence of the causative link between the dismissal [of the appeal] and [Marc’s] damages.” In particular, there was no evidence that Marc would have done anything differently had he received the general ledger documents before the Dismissal Notice was filed. The evidence showed that Marc would not have done anything to “blow up” the APA,⁹ and indeed the sale of assets to Origin already had been completed and therefore was not capable of being “blown up.” The only evidence respecting the bonuses paid by MSOR to Alan and Steven (and other employees) was that, under the Operating Agreement, the MSOR Management Committee had the authority to pay bonuses and was not prohibited from doing so.

On this basis, the court found that Marc had not introduced evidence on which a fact finder could find all the elements of any of his claims. Accordingly, the court granted the defense motion for judgment on the basis of legally insufficient evidence.

⁹ Marc testified that he “wouldn’t have tried to blow up the Origin deal” but rather, “would have kept the money in escrow until it was worked out.”

QUESTION PRESENTED

Marc raises a number of questions on appeal, some of which are irrelevant, were not argued below, or are inconsistent with the position he took below. The ones that do not fall into one of those categories can be reduced to: Did the circuit court err in ruling that the evidence was legally insufficient to support any of his claims?¹⁰

STANDARD OF REVIEW

The trial court granted the appellees’ motion for judgment pursuant to Rule 2-519.

When ruling on such a motion,

[t]he trial judge must consider the evidence, including the inferences reasonably and logically drawn therefrom, in the light most favorable to the party against whom the motion is made. If there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied.

¹⁰ The questions posed by Marc are:

- I. Did the court violate the legal standards for granting a motion for judgment pursuant to Md. Rule 2-519?
- II. Did the appellees owe a fiduciary obligation to the appellant?
- III. Did the court utilize a restrictive standard when it analyzed the evidence of fraud and/or negligent misrepresentation?
- IV. Did appellant have a confidential relationship with appellees and was owed full disclosure of all relevant information of MSOR?
- V. Did appellant have independent tort claims aside from the contractual obligation or “side agreement”?
- VI. Did the dismissal of the appeal violate the parties [sic] contract, or “side agreement” and could not be easily undone?
- VII. Does the release bar this action?
- VIII. Was the courts [sic] analysis of the facts at the close of appellants [sic] case erroneous?

Barrett v. Nwaba, 165 Md. App. 281, 289 (2005) (cleaned up). A decision on the sufficiency of evidence is one of law, and therefore the standard of review is *de novo*. We apply the same standard set forth in Rule 2-519 in making our decision. *Dist. of Columbia v. Singleton*, 425 Md. 398, 406-07 (2012).

DISCUSSION

In its oral ruling from the bench, the court made clear that it was familiar with the standard for deciding a motion for judgment in a jury trial. The court explained that its decision would be based on the evidence adduced at trial and that it was viewing disputed facts in the light most favorable to Marc, as the non-moving party. It framed the question before it as whether, accepting the governing standard, the evidence adduced was legally sufficient to prove the elements of the claims asserted. With respect to those claims, the court homed in on whether Marc had introduced evidence to prove a causal link between the breaches alleged, whether of contract obligations or tort duties, and the damages claimed. *See MLT Enters., Inc. v. Miller*, 115 Md. App. 661, 674 (1997) (observing that whether a cause of action is in tort or contract, the plaintiff must prove that the defendant's breach of duty or contract was a proximate cause of the damages claimed). It concluded that he had not. We agree.

1. *Contract Claim*

The pertinent events in this case involved three contracts: the APA, by which the assets of MSOR, MSH, and PP were sold to Origin; the Mutual Release; and the side agreement between Mr. Traub and Mr. Maneche, on behalf of their clients. Marc did not

introduce any evidence that either the APA or the Mutual Release was breached. (The APA was not moved into evidence.) The focus of almost all of Marc’s evidence was the side agreement. That evidence consisted of witnesses and documents offered to show that the side agreement existed; that, notwithstanding that the words “general ledger” were not used in the emails between Mr. Traub and Mr. Maneche regarding the side agreement, the import of the side agreement was that once the Mutual Release was fully executed, it and the financial information Marc wanted, including general ledgers, would be delivered to Mr. Traub; that, until that happened, Mr. Maneche was not authorized to file the Dismissal Notice; and that Mr. Maneche, on behalf of his clients, breached the side agreement by not delivering the general ledgers to Mr. Traub before filing the Dismissal Notice. Thus, Marc claims, even though the general ledgers were delivered to Mr. Traub a few hours later, the side agreement had been breached.

For purposes of assessing whether the evidence was legally sufficient to prove the breach of contract claim based on the side agreement, we accept all of the above as having been proven. The central question, then, is whether that evidence could support Marc’s claim that the breach of the side agreement caused him to suffer the damages he was claiming. As recounted above, Marc was seeking damages of approximately \$600,000 of the \$1.5 million dollars in bonus money paid to Alan and Steven, collectively, in late March 2018.

“In a breach of contract action, upon proof of liability, the non-breaching party may recover damages for 1) the losses proximately caused by the breach, 2) that were

reasonably foreseeable, and 3) that have been proven with reasonable certainty.” *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 594 (2007). “In this context, ‘proximate cause’ means losses that actually resulted from the breach.” *Id.* In the case at bar, we must decide whether a reasonable jury could find from the facts in evidence and the reasonable inferences that could be drawn from those facts that the filing of the Dismissal Notice before, not after, Mr. Traub was given the general ledgers resulted in Marc’s being deprived of about \$600,000 of the bonus money paid to Alan and Steven.

Marc argues that if he had been provided the general ledgers, which show the bonus money paid to Alan and Steven (and all the other bonus money to employees) before the Dismissal Notice was filed, he could have demanded that the Dismissal Notice not be filed. He advances that argument even though 1) the Mutual Release required that, contemporaneously with execution of the Mutual Release, he provide counsel for Alan and Steven a Dismissal Notice signed by his counsel for filing, “in order to dismiss the Appeal in its entirety with prejudice”; and 2) the Mutual Release did not require Alan and Steven to provide Marc any financial information (including general ledgers) for MSOR *before* the Effective Date of the Mutual Release.¹¹ And the side agreement provided that Marc

¹¹ The Mutual Release required that financial information for PP be provided to Marc before the Effective Date, and that was done.

would be given the financial information for MSOR *with* the fully executed Mutual Release - - not before the Mutual Release was executed.¹²

Marc argues that the court should have focused on the prior drafts of the Mutual Release, which would have required that the financial information be turned over before the release was executed. The court properly declined to do so. The only effective release was the Mutual Release as fully executed on June 14, 2018, and its language is clear; as is the meaning of the side agreement, which was proposed and clearly set out by Marc's counsel, Mr. Traub, in his emails with Mr. Maneche.

Moreover, and importantly, Marc offered no proof that a refusal on his part to file the Dismissal Notice would have resulted in his not sustaining the claimed \$600,000 loss for which he was seeking damages. Nor could he have, because there was no relationship between the two. According to the MSOR Operating Agreement, the Management Committee had authority to exercise broad decision-making powers over the financial management of the business. Nothing in the Operating Agreement said or suggested that it lacked the authority to grant bonuses. There was no evidence of that, or that the Management Committee in some way violated any duty to the LLC by granting the bonuses

¹² It is worth noting that, had Marc refused to file the Dismissal Notice because he was not given the general ledgers for MSOR, Alan and Steven probably would have backed down and given them to him - - just as actually happened - - and he would have had no possible justification for breaching the Mutual Release by not filing the Dismissal Notice. Moreover, another point Marc makes - - that once he learned that the bonuses had been paid, he could have tried to renegotiated the release and possibly gotten more money for himself - - is completely speculative.

it did. The bonuses were given to employees of MSOR as a “thank you” for a financially lucrative sale of the company’s assets.

Knowing that he was not eligible for a bonus because he was not an employee of MSOR, Marc maintains that Alan and Steven should not have received bonuses, and if they had not, their bonus money would have gone to MSOR’s owners, including him, according to their interests. There was no evidence of any wrongdoing in the granting of bonuses to Alan and Steven, however, nor was there any evidence connecting the giving or not giving of bonuses to the breach of the side agreement. There simply was no proof that, had the side agreement not been breached, i.e., had the general ledgers been provided before the Dismissal Notice was filed, anything different would have happened respecting the bonus money to Alan and Steven, and therefore with respect to the \$600,000 in damages Marc was claiming.

In the absence of any evidence that Marc’s claimed loss was proximately caused by the breach of the side agreement, reasonable jurors could not have found in Marc’s favor on the breach of contract claim.

2. Fraud and Negligent Misrepresentation Claims

Marc’s amended complaint contained two counts alleging fraud and two counts alleging negligent misrepresentation. For each tort, one count was based on the APA and the Mutual Release and the other was based on Marc’s status as an owner, through his ESBT and MSH, of a 38.85% interest in MSOR. The claims stemmed from Marc’s allegation that Alan and Steven intentionally or negligently concealed or failed to disclose

that they had received bonus money they were not entitled to, which in turn deprived him of money he should have received. At trial, the only evidence that possibly could have supported these allegations concerned the bonuses paid to Alan and Steven.¹³

Causation is an element of actions for fraud and negligent misrepresentation. To prove fraud,

“a plaintiff must prove (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.”

Ellerin v. Fairfax Sav., F.S.B., 337 Md. 216, 229 (1995) (quoting *Nails v. S&R*, 334 Md. 398, 415 (1994)). The elements of fraud must be proven by clear and convincing evidence. *Md. Env't Tr. v. Gaynor*, 370 Md. 89, 97 (2002).

The elements of negligent misrepresentation or concealment are similar, although a duty to disclose must be proven and scienter need not be shown; and causation, i.e., that the misrepresentation (or concealment) resulted in the plaintiff's suffering a compensable injury, is a necessary element. See *Griesi v. Atl. Gen. Hosp. Corp.*, 360 Md. 1, 11 (2000).

¹³ The only evidence of other money they were paid was the money paid pursuant to the APA, which was not in evidence, and the Mutual Release, and there was no evidence that the money they received pursuant to the terms of the Mutual Release was not precisely what the release called for.

The damages elements of both causes of action are similar.¹⁴ *Twelve Knotts Ltd. P’ship v. Fireman’s Fund Ins. Co.*, 87 Md. App. 88, 101 (1991).

For much the same reasons we have detailed above respecting the breach of contract claim, and more, the evidence adduced at trial was legally insufficient to prove the element of causation of damages for all four of these claims. To the extent that Marc now seems to take the position that Alan and Steven should have informed him of the bonuses when they were made, that was not the position he took below. It was Mr. Traub who suggested that the parties enter into a side agreement by which the general ledgers would be provided to Marc after the Mutual Release was fully executed, and the parties agreed to that, as the final Mutual Release shows. And again, Marc did not introduce evidence to show that the failure to produce the general ledgers for MSOR at the time promised, instead of a few hours later, resulted in his suffering a loss compensable in damages.

3. *Conversion Claim*

In Maryland, conversion is an intentional tort that requires an act of “ownership or dominion” over another person’s personal property that denies or is inconsistent with the owner’s right to the property. *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md.

¹⁴ There is one exception, not relevant here. “[P]roof of fraud, without more, is sufficient for the availability of punitive damages.” *Ellerin*, 337 Md. at 239. In contrast, negligence ordinarily is insufficient for the availability of punitive damages unless the plaintiff also can prove “actual malice.” *Id.*; see *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 462 (1992). And of course, because negligent misrepresentation is a “claim sounding in negligence[,]” *Griesi*, 360 Md. at 12, the burden of persuasion is by a preponderance of the evidence.

249, 261 (2004) (cleaned up). The tort covers “nearly any wrongful exercise of dominion by one person over the personal property of another[.]” *Lawson v. Commonwealth Land Title Ins. Co.*, 69 Md. App. 476, 480 (1986). Originally, a defendant only could convert tangible personal property of the plaintiff. “[N]ow, however, a defendant can convert a plaintiff’s intangible property under certain circumstances. Specifically, a defendant converts a plaintiff’s intangible property where the defendant converts a document that embodies the plaintiff’s right to the plaintiff’s intangible property.” *Thompson v. UBS Fin. Servs., Inc.*, 443 Md. 47, 56-57 (2015) (cleaned up); *see also Allied Inv. Corp. v. Jasen*, 354 Md. 547, 564 (1999). Examples “could be a stock certificate, a promissory note, or a document that embodies the right to a life insurance policy[.]” *Thompson*, 443 Md. at 57 (citations omitted).

In the case at bar, Marc did not introduce evidence to show that the damages he was seeking resulted from a conversion by Alan and Steven of tangible personal property or of a document embodying his right to intangible property. Accordingly, the evidence adduced was legally insufficient to support a claim for conversion.

4. *Civil Conspiracy Claim*

A civil conspiracy is ““a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not itself illegal, with the further requirement that the act or the means employed must result in damages to the plaintiff.”” *Hoffman v. Stamper*, 385 Md. 1, 24 (2005) (quoting *Green v. Wash. Suburban Sanitary Comm’n*, 259 Md. 206, 221 (1970)). The plaintiff must

prove that, in furtherance of the agreement, an overt act was committed “that caused [him] to suffer actual injury.” *Id.* at 25. The *Hoffman* Court explained that civil conspiracy “is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff.” *Id.* at 25 (cleaned up) (quoting *Alleco Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 340 Md. 176, 189 (1995)). In other words, there must be a separate tortious act that causes the plaintiff harm; “the agreement to commit that act is not actionable on its own but rather is in the nature of an aggravating factor.” *Id.* One element of the tort is “[a]ctual legal damage resulting to the plaintiff” from the defendant’s actions. *Windesheim v. Larocca*, 443 Md. 312, 347 (2015) (quoting *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 154 (2007)).

In the case at bar, judgment properly was entered against Marc on his tort claims because the wrongs about which he presented evidence, if accepted as true, were not accompanied by evidence of resulting harm. Accordingly, as a matter of law, his claim for civil conspiracy also failed, and judgment properly was entered against him on that claim too.¹⁵

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

¹⁵ In his brief, Marc includes arguments concerning fiduciary obligations and confidential relationships that concern the duties underlying his fraud and negligent misrepresentation claims. The motion for judgment was granted on the basis of causation, not duty. He also asks whether the Mutual Release barred this action. Again, that was not a basis for the circuit court’s ruling. It is not necessary for us to address these issues. Likewise, we shall not address Alan and Steven’s argument that the court could have granted judgment on alternative bases.