Circuit Court for Baltimore County
Case No.: 03-C-18-000442

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1861

September Term, 2019

ALI KALARESTAGI, et al.

v.

CATONSVILLE EYE ASSOCIATES, LLC.

Graeff,
Leahy,
Wells,

JJ.

Opinion by Wells, J.

Filed: January 29, 2021

This cross-appeal concerns a commercial lease that appellee, Catonsville Eye Associates, LLC, executed with appellant, MAH Mountain, LLC. MAH Mountain alleged that Catonsville Eye failed to pay rent for several months and sued in the District Court to recover back rent, which that court awarded.

Catonsville Eye appealed the decision to the Circuit Court for Baltimore County. In a separate lawsuit, Dr. Erick Gray, a principal of Catonsville Eye, alleged that Medhi and Ali Kalarestaghi,[1] principals of MAH Mountain, had induced him to sign the lease by fraud, among other allegations. The circuit court joined the two actions for trial.

After a two-day bench trial, the circuit court found in favor of MAH Mountain on three of four counts of the lawsuit, specifically, fraud, legal malpractice, and breach of the lease. But the circuit court issued a declaratory judgment in which it rewrote the lease to benefit Catonsville Eye. Additionally, the circuit court vacated the district court's judgment and remanded with instructions for the District Court to review the lease in light of how the circuit court had reformed it and to adjust the amount of back rent Catonsville Eye owed to MAH Mountain. MAH Mountain filed this timely appeal and Catonsville Eye filed a cross appeal.

MAH Mountain poses the following questions, which we have rephrased and renumbered:

1. Does the Declaratory Judgment Act permit a court to reform a contract?

[1] Ali Kalarestaghi testified that his surname is spelled "Kalarestaghi." The briefs and the caption of the appeal as it is now filed with this Court omit the "h." We shall use the appropriate spelling throughout the opinion but omit the "h" in the caption as that is the spelling under which the appeal was filed.

2. May a court exercise its equitable powers to reform a contract where no such relief was ever pled?
3. Did the circuit court properly find that Catonsville Eye proved fraud?
4. Did the circuit court commit reversible error in not dismissing a claim of legal malpractice prior to trial because Catonsville Eye did not designate an expert on the standard of care?

Catonsville Eye poses the following questions on the cross appeal, which we have rephrased and condensed:

1. Does the Declaratory Judgment Act permit a court to reform a contract if it finds that the contract was induced by fraud?
2. Did a finding of fraud as the basis to reform the contract under the Declaratory Judgment Act also require the court to sustain separate allegations of fraud and legal malpractice, despite Catonsville Eye not having proved damages?
3. Did the court properly deny a motion *in limine* about the need for a standard of care expert to testify for Catonsville Eye on its legal malpractice claim?
4. Did the court improperly dismiss Catonsville Eye's claim for punitive damages?

For the reasons we will discuss, we conclude that the circuit court erred in reforming the lease when issuing a declaratory judgment. Despite finding that the lease was induced by fraud, the court was unable to exercise its equitable powers to rewrite the lease absent a demand for such relief. Additionally, we hold that the circuit court properly found that Ali did not commit legal malpractice chiefly because the proof was inadequate.

Consequently, we vacate the declaratory judgment, as well as the $4,000 rent credit to Catonsville Eye, and remand to the circuit court so that the court may reassess the proof presented **only** on the fraud count (Count I). The court's decision on that particular count was predicated on the erroneously issued declaratory judgment. We conclude that the court did not commit reversible error in not finding all of the elements of legal malpractice.

I. BACKGROUND

A. The Negotiations

Sometime in November or December 2016, Dr. Erick Gray, a principal of Catonsville Eye Associates, was interested in relocating the business to a location near Maryland Route 40. A new office building being constructed at 6567 Baltimore National Pike in Catonsville offered him that opportunity. Dr. Gray contacted Mehdi Kalarestaghi, an owner of the building. The two set up a meeting to discuss leasing options and were joined by Mr. Kalarestaghi's son, Ali, and Dr. Gray's business partner, Dr. Norman Fine.

Dr. Gray testified that during the meeting he and Dr. Fine expressed interest in relocating to a middle or end space in the Kalarestaghis' building, but Dr. Gray was adamant that he and Dr. Fine could not afford to pay rent at the new address and at their current location, 40 West Rolling Road. The lease at Rolling Road ran through December 2017. Ali Kalarestaghi, an attorney, offered to review the Rolling Road lease. Dr. Gray testified that Ali later said that in his legal opinion, the Rolling Road lease would end in August, not December 2017. Dr. Gray said he relied on Ali's advice and went forward with the negotiations, which, in January 2017, resulted in Dr. Gray receiving a version of the lease which he did not sign.

For various reasons, the negotiations stalled and restarted over several months. Dr. Gray testified that during this time he developed what he thought was a friendship with Medhi Kalarestaghi, who referred to himself simply as "K," and encouraged Dr. Gray to do the same.[2] At one point, when Dr. Fine began to reconsider the move, K offered to become Dr. Gray's business partner, evenly splitting the profits and in return providing office space rent-free in the new building. That plan fell through, but negotiations continued.

On March 24, 2017, K sent another version of a lease to Dr. Gray, who testified that he looked at it "in general." He noticed that the start date was August, which corresponded to when Ali had said the Rolling Road lease would end. Dr. Gray said he did nothing with this copy of the lease. He did not sign it, show it to an attorney, or review it further.

B. Pivotal Day: April 4, 2017

About four days later, April 4, Dr. Gray said he got a "frantic" call from K. According to Dr. Gray, K said that his bank "required that he show that he got money in from [Dr. Gray] as a tenant and asked [Dr. Gray] to come over with a check for a security deposit and a first month's rent." Dr. Gray did as he was asked and arrived at K's office within hours with a check for $21,500, reflecting four months' rent of $4,500 ($18,000) to act as a security deposit with the balance ($4,500) to be used as the first month's rent. By

[2] And we mean no disrespect in referring to Medhi Kalarestaghi as "K," and Ali by his first name only for the purposes of avoiding confusion about which of the Kalarestaghis we are referring.

agreement, $1,000 was deducted as Ali's contribution for reviewing the Rolling Road lease.

Although Dr. Gray had the check, K explained that the bank needed a signed copy of the lease, too. Dr. Gray had not brought the last iteration of the March 24 lease with him. So, K called Ali and asked him to bring a copy of the lease. According to Dr. Gray, within several minutes, Ali arrived with two copies of the lease. Dr. Gray testified that he told the Kalarestaghis that he had not reviewed the lease thoroughly. According to Dr. Gray, K "promised me that he would make any and all changes that I wanted to the lease, that he was not going to cheat me." And Ali said that "he would make any changes his father told him to do." According to Dr. Gray, Ali "shuffled it up this way and got to the signature page like this, folded it like this … you could only see the signature page." Dr. Gray signed the lease and then K signed it. Dr. Gray left with a copy of the lease.

C. May to August 2017: The Build-Out

Dr. Gray testified that Catonsville Eye began the build-out of the office space starting around May or June, including the construction of a wall separating the optometry business from another tenant, a GEICO office. Dr. Gray said that Catonsville Eye spent about $104,000 for this work which continued throughout the summer. During this same time frame, May to August 2017, Dr. Gray said he was receiving rent invoices from MAH Mountain, LLC, the Kalarestaghis' company. The rent notices included a fee to maintain common areas (CAM) of the building. Jerrold Samuel, MAH's account manager, confirmed that he sent the rent notices, including the increasing CAM fees through part of

2017. On cross-examination, Samuel also admitted that he had not given Catonsville Eye credit for a month's rent, and so, the rent payment schedule started with May 2017.

As a result of the rent notices he kept receiving, Dr. Gray testified that sometime in August he called K to ask what was going on. Dr. Gray explained that he thought, based on prior negotiations, that his rent payments did not begin until November 2017. He told K he did not understand why he had been getting rent notices when Catonsville Eye had not yet moved and, based on prior discussions, he thought he was to get free rent during the build-out period. According to Dr. Gray, K told him, "Don't worry about it." There were no further discussions. "That was it."

Later, Dr. Gray received an invoice for the September rent. He admitted he did not pay it, because he thought he was still within the months for "the build-out allowance." But the September rent notice prompted Dr. Gray to call K again. Feeling that their discussions were, as Dr. Gray put it, "unsettled," he and K spoke about the situation and, according to Dr. Gray, the two agreed that Catonsville Eye would begin paying rent in November.

D. September 2017: An Attorney Reviews the Lease

While Dr. Gray gave no additional details about the September conversation with K, his testimony revealed that after that telephone call he took a copy of the lease to an attorney. From the attorney's review of the lease, Dr. Gray learned that the lease he had signed obligated Catonsville Eye to pay rent beginning in May 2017, obligated Catonsville Eye to pay for the installation of a bathroom without a reimbursement credit, and

Catonsville Eye would not get a credit for Ali's legal services up to $5,000, as Dr. Gray thought.

Upon his attorney's advice, Dr. Gray sent the November rent check with what Dr. Gray called "a restrictive endorsement"[3] and a proposed amendment to the lease. Although it was unclear what the amendment said, Dr. Gray's testimony suggested it included the three points previously mentioned that were missing from the signed lease.

E. December 2017: MAH Sues Catonsville Eye for Unpaid Rent

Upon receipt of the November rent check, K texted Dr. Gray the following:

> Dr Gray[,] we finally found the envelope and the check from your attorney[.] Here is the problem[.] I said to you it is ok for you to pay rent as of November and we both agree[d] that way the problem [was] solved and now the rent [will] be on time[.] But now your attorney wants to modify the lease[.] My son and the law firm that I deal with [are] saying absolutely not[.] [S]o we are back to square one.
>
> I really don't understand all of this. I let go almost $30,000 to make you happy and you are fitting (sic) me for nickels just b[e]c[ause] [n]ow your attorney wants to start the lease as of November[.] So it[']s up to you[.] I am really getting tired of this[.] I have done my best for you but it seems like it isn't good enough[.] You want to save penn[ies] with me but w[i]lling to pay you[r] attorney $$$$[.][4]

On December 6, 2017, MAH sued Catonsville Eye in the District Court of Maryland for unpaid rent from June through December 2017 at a monthly rental rate of $4,764.68,

[3] Under Maryland Code Annotated, (1975, 2013 Rep'l Vol.), Com. Law Article, section 3-204(a)(ii): "'Indorsement means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of … restricting payment of the instrument."

[4] During his testimony, Dr. Gray was asked to read this text message. What appears in the transcript is different from what the text message actually said. We reprint the actual text message as it appears in Plaintiff's exhibit 36.

plus late charges, for a total of $34,782.16. After a hearing, in which Dr. Gray and the Kalarestaghis testified, the District Court found in MAH's favor and granted a judgment in the amount MAH demanded.

D. Proceedings in the Circuit Court

1. Catonsville Eye's Lawsuit

Dr. Gray and Catonsville Eye appealed the District Court's decision to the Circuit Court for Baltimore County. In addition, they filed a four-count lawsuit against MAH. Count I alleged that Dr. Gray had been induced to sign the lease by fraud. Count II alleged that Ali had committed legal malpractice for, essentially guaranteeing, in Dr. Gray's opinion, that Catonsville Eye could get out of the Rolling Road lease in August 2017, several months before the stated December 31, 2017 termination date. Count III alleged that MAH breached the lease by not giving Dr. Gray an accounting for the CAM charges, as requested. And, Count IV requested a declaratory judgment with four specific declarations: (1) that the lease start on November 1, 2017; (2) that Catonsville Eye receive a credit of $9,000 for the construction of a bathroom ($5,000) and the demising wall ($4,000); (3) that Catonsville Eye receive a credit for CAM fees charged before it took possession of the leased space; and (4) that Catonsville Eye could terminate the lease based on MAH's breach of Section 7 of the lease by not giving Catonsville Eye an accounting of the CAM fees.

The circuit court joined the two actions and set the matters for trial on August 14 and 15, 2019. The trial testimony unfolded as has been described. Notably, K did not testify. At the end of Catonsville Eye's case-in-chief, the court dismissed Count III, largely

without objection, finding that they had not proven that MAH refused to give an accounting of the CAM fees. The court found that the evidence was that Dr. Gray paid the CAM fees and those costs were explained to him. After counsels' closing arguments, the court took the matter under advisement.

2. The Circuit Court's Ruling

On September 20, 2019, the circuit court issued its written factual findings and order. The circuit court first dealt with the District Court judgment. As that appeal was "on the record," the circuit court reviewed the record of the proceedings below and concluded that the District Court should have considered the terms of the lease when it calculated the back rent, which it did not do. The circuit court vacated the District Court's judgment and remanded for that court to consider the lease in light of the circuit court's ruling on Catonsville Eye's lawsuit.

As for that lawsuit, with regard to Count I, alleging fraud, the court found that the Kalarestaghis did not tell Dr. Gray that the lease he signed was not the last version he had received on March 24, that the Kalarestaghi's knew that this was the case, but persuaded Dr. Gray to sign the lease with promises that any "problems" he had with the lease would be remedied. The court believed that Dr. Gray justifiably relied on those promises and signed the lease. But the court found that Dr. Gray had not proven damages, based solely on the declaratory judgment the court issued. As will be noted, the court changed the lease's starting date from May to November 2017. Thus, in the court's view, Catonsville Eye's obligation to pay the May through September rent was now erased, so, in the court's opinion, Catonsville Eye had no damages.

Regarding Count II, Ali's alleged legal malpractice, the court determined that Catonsville Eye failed to prove damages associated with Ali's representation. Thus, the court ruled that Count II failed for lack of proof.

Finally, the court issued Catonsville Eye a declaratory judgment, finding that the Kalarestaghis fraudulently induced Dr. Gray to sign the lease. The court then rewrote the lease by, essentially, changing it to the March 24 version that Dr. Gray said he thought he was signing. As noted, the most significant change was that the court changed the starting date of the lease from May to November 2017. The court also gave Catonsville Eye a $4,000 rent credit.[5] The court denied joint requests for counsel fees. Both MAH and Catonsville Eye filed timely appeals. Additional facts will be introduced, as necessary.

II. DISCUSSION

A. Standard of Review

This case was tried without a jury. Accordingly, we look to Rule 8-131(c), which states in its entirety:

> (c) Action Tried Without a Jury. When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"[T]his Court 'will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the

[5] Originally, the court gave Catonsville Eye a $5,000 rent credit. Upon MAH's motion to alter the judgment, the court modified the order to give Catonsville Eye a $4,000 rent credit to reflect the cost of constructing the demising wall.

credibility of the witnesses.'" *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (citations omitted). "If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *Id*. But the trial court's legal rulings are accorded no deference and we exercise our independent review to determine whether the trial court was legally correct. *Credible Behavior Health, Inc. v. Johnson*, 466 Md. 380, 388 (2020) (explaining that "[w]hen the trial court's order 'involves an interpretation and application of Maryland statutory [or] case law, [the appellate] [c]ourt must determine whether the lower court's conclusions are legally correct under a de novo standard of review'" (alterations in original) (citations omitted)).

B. The Court's Declaratory Judgment

Both parties focus their respective appeals on the propriety of the circuit court's declaratory judgment. MAH contends that the circuit court improperly reformed the lease. They assert that Catonsville Eye never requested contract reformation in any of its pleadings, nor did it move for such relief at trial. Without a basis on which to reform the lease, the circuit court could not invoke its equitable powers to simply rewrite the lease when issuing a declaratory judgment. Catonsville Eye argues that after finding that the Kalarestaghis committed fraud, the court was within its authority to rewrite the lease by adjusting the terms to reflect those of the March 24 lease that Dr. Gray believed he was signing. In rebuttal, MAH says that the court went further than just putting the terms of the March 24 lease in place, because the court modified even those terms. Specifically, MAH notes that the March 24 lease required Catonsville Eye to take the property "as is"

and pay for the construction of the demising wall, but the circuit court gave Catonsville Eye a $4,000 credit for the wall's construction.

1. The Declaratory Judgment Act

Section 3-409(a) of Courts and Judicial Proceedings ("CJ") Article of the Annotated Code of Maryland (1973, 2020 Rep'l Vol.), describes, generally, when declaratory judgments are appropriate:

> (a) Except as provided in subsection (d) of this section, a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceedings, and if:
>
> (1) An actual controversy exists between the contending parties;
>
> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
>
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

More specific to the dispute at issue here, section 3-406 explains that declaratory judgments may be granted to:

> Any person interested under a deed, will, trust, land patent, **written contract, or other writing constituting a contract**, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule, or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

(Emphasis supplied). Importantly, section 3-407 states the scope of the Declaratory Judgment Act with respect to contracts: "A contract may be *construed* before or after a breach of the contract." CJ § 3-407 (emphasis supplied).

What is at issue in this appeal is the distinction between "construe" and "reform," and what the Declaratory Judgment Act allows Maryland courts to do in declaratory judgment actions. In construing contracts, Maryland courts are charged with "ascertain[ing] and effectuat[ing] the intention of the contracting parties" so long as the ascertained and effectuated intention is not "at odds with an established principle of law." *Phila. Indem. Ins. Co. v. Md. Yacht Club, Inc.*, 129 Md. App. 455, 467 (1999) (citing *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 290–91 (1996), *aff'd*, 346 Md. 122 (1997). Reformation of a contract, by contrast, involves altering "a written instrument to make it conform to the real intention of the parties, when the evidence is so clear, strong and convincing as to leave no reasonable doubt that a mutual mistake was made in the instrument contrary to their agreement." *Hoffman v. Chapman*, 182 Md. 208, 210 (1943) (citing *Gaver v. Gaver*, 119 Md. 634, 639 (1913); *England v. Gardiner*, 154 Md. 510, 515 (1928); *Brockmeyer v. Norris*, 177 Md. 466, 473 (1940)).

CJ section 3-407 permits Maryland courts to construe contracts in declaratory judgment actions. Indeed, a narrow reading of the Declaratory Judgment Act—especially section 3-407's "construe" wording—might lead to an interpretation that the Act allows contracts to be construed by courts but not reformed by courts on declaratory judgment. First, such a narrow interpretation would likely conflict with the construction and purpose of the Declaratory Judgment Act, which states that "[t]his subtitle is remedial" and "shall be liberally construed and administered." CJ § 3-402. Such a liberal construction is reflected in "the broad, inclusive language of § 3-406[.]" *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 478 (2004). Still, a liberal construction does not make the bounds

of declaratory judgments limitless, however, as "[d]eclaratory relief . . . is barred by some statutory and judicially-crafted restrictions in limited circumstances" such as "when a special form of remedy is otherwise provided by statute[,] in the absence of a justiciable controversy . . . [or] where the primary jurisdiction doctrine properly is implicated." *Id.* (citing *Md.-Nat'l Capital Park & Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 595 (1978), *Md. State Admin. Bd. of Election Laws v. Talbot Cty*, 316 Md. 332, 339 (1989), and *Luskin's Inc. v. Consumer Prot. Div.*, 338 Md. 188 (1995)). Despite these narrow limitations, it nonetheless remains the legislative policy for the Act to "'be liberally construed and administered.'" *Abington Ctr. Assocs. Ltd. P'ship v. Balt. Cty.*, 115 Md. App. 580, 591 (1997) (quoting CJ § 3-402).

While we have not found a Maryland appellate decision involving reformation of a contract at declaratory judgment, a reported opinion from this Court interpreting reformation of a trust on declaratory judgment seems helpful. In *LaSalle Bank, N.A. v. Reeves*, the appellant filed "for declaratory relief, seeking, in essence, reformation of the erroneously drawn deed of trust." 173 Md. App. 392, 399 (2007). Although not specified in section 3-407, trusts are mentioned alongside declaratory judgment purposes in section 3-406 ("Any person interested under a deed, will, **trust**, land patent, **written contract**, or **other writing constituting a contract** . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations under it.") (emphasis supplied). Although this Court remanded the case to the Circuit Court for St. Mary's County, it did so due to the trial

court's erroneous interpretation and application of the doctrine of laches and not because of reformation of the trust on declaratory judgment.

Significantly, however, even though this Court did not remand the case because of the trial court's reformation of a contract on declaratory judgment, the Court noted that the statutory relief that the appellant sought in the form of a declaration of rights actually "raised the purely equitable cause of action of reformation[,]" and the Court understood the case "as such because such equitable relief was properly invoked." *LaSalle Bank, N.A.*, 173 Md. App. at 412. Accordingly, *LaSalle* illustrates that where reformation of a contract would otherwise be equitable, such reformation is inappropriate in a declaratory judgment action:

> A suit for a declaratory judgment is neither legal nor equitable, but is sui generis, and is neither wholly a suit in equity nor wholly an action at law. Declaratory relief may take on the color of either equity or law, depending on the issues presented and the relief sought; that is, a declaratory judgment action assumes the nature of the controversy at issue. The legal or equitable nature of a declaratory judgment proceeding thus may be determined by the pleadings, the relief sought, and the nature of each case. When proceedings for a declaratory judgment are in the nature of equity, appropriate equitable principles are called into play, whereas when such proceedings are in the nature of an action at law, legal principles are used for the determination of the issues presented.
>
> A petition for a declaratory judgment is not a proceeding in equity merely because in form the procedure may be equitable, since declaratory relief is available either in courts of equity or in courts of law. A proceeding for a declaratory judgment is not converted into an equitable action merely because the court may grant a temporary restraining order to maintain the status quo pending an adjudication with respect to the rights, status, and other legal relations of the parties. Likewise, an issue that is essentially legal in nature is not transformed into an equitable one by virtue of the fact that declaratory, rather than affirmative, relief is sought.

Id. at 411-12 (quoting 26 C.J.S. *Declaratory Judgments* § 109 (2006)). This appears to be in line with the "nature of a declaratory judgment [being] supplemental rather than [] superseding" equitable relief. *Reid v. State*, 239 Md. App. 1, 10–11 (2018). Indeed, the Declaratory Judgment Act "was intended to 'supplement, not to supersede, existing remedies at law and in equity, and accordingly where an immediate cause of action exists for which one of the existing remedies is available and adequate, a proceeding for declaratory judgment is not appropriate within the contemplation of the Act.'" *Id.* (citations omitted). Similarly, the Act is described as "fundamentally remedial and auxiliary. Its object is to supplement and enlarge procedural relief in a field not wholly or adequately occupied by subsisting remedies of law and equity." *Id.* (citation omitted).

At the same time, even if the trial court erroneously provided the equitable relief of reformation in what was raised as a declaratory judgment action, remand on this ground alone would seemingly be inconsistent with *LaSalle*'s application that reviewed the case as an equitable action on appeal. In sum, therefore, under the *LaSalle* approach, reformation achieved in the trial court that is equitable will be upheld on appeal only if it meets the requirements of an equitable cause of action rather than the standards for a declaratory action.

2. Contract Reformation

As summarized in *Md. Port Admin. v. John W. Brawner Contracting Co.*, "one of two circumstances must exist before a court of equity will reform a written contract: either there must be mutual mistake, or there must be fraud, duress, or inequitable conduct." 303

Md. 44, 59 (1985). In the first scenario, that of mutual mistake, the Court of Appeals has long held as

> settled principle that a court of equity will reform a written instrument to make it conform to the real intention of the parties, when the evidence is so clear, strong, and convincing as to leave no reasonable doubt that a mutual mistake was made in the instrument contrary to their agreement.

Hoffman, 182 Md. 208, 210 (1943). A mutual mistake exists when it is "conclusively established that both parties understood the contract as it is alleged it ought to have been expressed, and as in fact it was, but for the mistake alleged in reducing it to writing." *Flester v. Ohio Cas. Ins. Co.*, 269 Md. 544, 557 (1973) (citing *Auto. Ins. Co. v. Shapiro*, 151 Md. 383, 387 (1926)). Additionally, such a mutual mistake must be one of fact, and not of law, for contract reformation to be possible. *Janusz v. Gilliam*, 404 Md. 524, 536 (2008).

In the second scenario, a plaintiff must allege fraud, duress, or other inequitable conduct. In instances of reformation due to fraud, relevant here, the party seeking relief must specifically allege fraud with particularity. *Creamer v. Helferstay*, 294 Md. 107, 122 (1982) (citing *Boyle v. Md. State Fair*, 150 Md. 333 (1926)). Fraud allegations that amount to "no more than a bald allegation of fraud with no supporting facts[,]" however, are "insufficient to state a cause of action" in which reformation can be granted based on fraud. *Sims v. Ryland Grp., Inc.*, 37 Md. App. 470, 473 (1977).

Regardless, "'[t]he request for the reformation of a written instrument is one for unusual relief.'" *Hous. Equity Corp. v. Joyce*, 265 Md. 570, 580 (1972) (citing *Moyer v.*

Title Guarantee Co., 227 Md. 499, 504 (1962)). The granting of reformation as a form of relief

> differs from rescission . . . [as] the instrument remains in force and effect, but in a modified, or changed, form; hence, before granting the high remedy of reformation, ***the proof must not only establish that the written agreement was not the agreement intended by the parties***, ***but also what was the agreement contemplated by them at the time it was executed.*** And in many cases, the evidence, for the main part, is oral testimony.

Id. (Emphasis supplied).

Reforming a contract has been described by the Court of Appeals as both a "difficult and delicate task[,]" and thus Maryland courts have "consistently required proof of the highest order" to reform a contract. *Hous. Equity Corp.*, 265 Md. at 580. The party seeking the reformation "'must not only show clearly and beyond doubt that there has been a mistake,'" but that party must also "'show with equal clearness and certainty the exact and precise form and import that the instrument ought to be made to assume, in order that it may express and effectuate what was really intended by the parties.'" *Id.* at 581 (quoting *Keedy v. Nally*, 63 Md. 311, 316 (1885)). In instances of contract reformation due to mutual mistake, for example, "'the precise agreement which the parties intended but failed to express must be proven beyond a reasonable doubt . . . [a]nd the evidence required for this purpose must be of the strongest character and the proof must be convincing.'" *Id.* (quoting *White v. Shaffer*, 130 Md. 351, 360 (1917)) (internal citations omitted). Indeed, reformation has been referred to as the "high remedy" that will not be granted "upon a probability nor even upon a mere preponderance of the evidence, but only upon certainty of error." *Brockmeyer*, 177 Md. at 473 (citations omitted). In instances in which this

certainty of error is not met for reformation actions that are based on mutual mistake, the "high remedy" of relief may not be granted. *Hous. Equity Corp.*, 265 Md. at 581.

3. A Trial Court Cannot Reform a Contract Absent a Pleading that Requests Such Relief

We now consider whether a trial court can reform a contract when the parties to the action did not plead for reformation. Whether a pleading is required before a party can obtain relief varies across jurisdictions. For instance, Montana requires not only that the pleadings expressly mention reformation, but also that this pleading is contained in a separate cause of action. *See Russell v. Reliance Ins. Co.*, 645 S.W.2d 166, 170 (Mo.App.1982) ("Where recovery is based upon a policy not issued, or upon language not used, fairness seems to demand that reformation be sought in a separate action or count."). Maryland's law, however, has been comparatively described as more relaxed, as this state's courts understand "reformation [to be] a remedy, [and thus] the remedy is available despite a lack of a specific request in the pleadings." (citing *LaSalle Bank, N.A.*, 173 Md. App. at 411-12)).

As was the case with the prior issue of whether contracts could be reformed in declaratory judgment actions, *LaSalle* is instructive. There, this Court looked to the legal encyclopedia *Corpus Juris Secundum*, which this Court describes as "clearly reflect[ing] the state of Maryland law" with respect to pleading requirements for contract reformation. *See* 76 C.J.S. Reformation of Instruments § 77. In Maryland, "'[a] proper case for the reformation of interests must be made by the pleadings, and, in order to make out a good cause of action, the pleadings should allege in clear . . . language . . . every element

necessary to entitle the complainant to equitable relief.'" *LaSalle Bank, N.A.*, 173 Md. App. at 412 (quoting 76 C.J.S. Reformation of Instruments § 77). Moreover, in order "'[f]or reformation to be granted, it is necessary under some authority that a specific request for equitable relief, or a plea for reformation be made, but under other authority the remedy is available despite the absence of a specific request in the pleadings." *Id.* at 412-13 (citing 76 C.J.S. Reformation of Instruments § 77).

Still, although our prior opinion instructs that "'pleading[s] should allege in clear . . . language . . . every element necessary to entitle the complainant to equitable relief[,]'" *id.* at 413 (citing 76 C.J.S. Reformation of Instruments § 77), such a requirement is not so strict unlike the requirements in states like Montana where pleadings must explicitly state reformation. Instead, in Maryland, it is enough that the "complaint contain[] **allegations sufficient enough to sustain an action for reformation**," which would allow the "prayer for relief [to] be properly construed as a request for equitable relief." *Id.* at 413 (emphasis added). Accordingly, this conclusion thus necessarily requires that in order for a trial court to reform a legal instrument such as a contract, the complaint must at the very least put forward "allegations sufficient enough to sustain an action for reformation." *Id.* Such a complaint may or may not expressly call for reformation, but nonetheless, the complaint must at a minimum invoke this specific equitable relief. *See id.*

A review of the pleadings leads us to conclude that, on several grounds, the trial court erred in reforming the lease when issuing a declaratory judgment. *First*, Catonsville Eye's Second Amended Complaint does not explicitly seek reformation of the lease in any of the four counts. For example, Count I, alleged fraud and demanded compensatory and

punitive damages, not reformation. Count II, alleged legal malpractice and asked only for monetary damages. Count III alleged breach of lease, and likewise, specifically asked for monetary damages. And Count IV sought a declaratory judgment, and asked for four specific declarations, none of which were for reformation. *Second*, we cannot construe anything in the pleadings as an implicit equitable demand for reformation of the lease. Had it been made, we would have found unpersuasive an argument that the catch-all language used in the pleadings, "such other and further relief as its cause may require," was a sufficient plea for the "high remedy" of reforming the lease. *Brockmeyer*, 177 Md. at 473. *Third*, Catonsville Eye's demand for money damages suggests that the relief they sought was not the reformation of the lease but rather, its cancellation or rescission.

4. Contract Rescission

In Maryland, contracts are presumed valid. *Vincent v. Palmer*, 179 Md. 365, 370-72 (1941). Indeed, Maryland "public policy considerations favor the enforcement" of contracts. *Maslow v. Vanguri*, 168 Md. App. 298, 316 (2006). However, rescission or the ending of a contract may be achieved by the mutual consent of both parties. Still, rescission of contract absent the consent of one party may be available, but only in situations in which a court makes a finding that a party has materially breached the contract, that the agreement is unconscionable, or that the contract is a result of fraud, duress, or undue influence. *Vincent*, 179 Md. at 371-72. As Catonsville Eye does not allege duress, undue influence, or unconscionability, we examine rescission only in the contexts of material breach and fraud.

In instances of material breach, such as where one party has materially breached the contract, the other party has the right to rescind it. *Maslow*, 168 Md. App. at 323-24 (citing *Washington Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 728 (1978). Still, however,

> rescission will not be granted "for casual or unimportant breaches, but only for a substantial breach tending to defeat the object of the contract." *Vincent*, 179 Md. at 373[]. Instead, rescission is permitted when "the act failed to be performed [goes] to the root of the contract or ... render[s] the performance of the rest of the contract a thing different in substance from that which was contracted for." *Traylor[v. Grafton]*, 273 Md.[649, 687, (1975)]. Put another way, rescission is not available as a remedy when the breach is "slight." *Speed v. Bailey*, 153 Md. 655, 660 (1927).

Maslow, 168 Md. App. at 324. Therefore, when one party has substantially performed a contract, a court may not rescind the contract due to a material breach but instead may only award damages. *Id.* (quoting *Traylor*, 273 Md. at 797).

In the fraud context, parties are charged with the obligation of promptly electing to either rescind the contract or to ratify it and claim damages. *Merrit v. Craig*, 130 Md. App. 350, 358 (2000) (citing *Wolin v. Zenith Homes, Inc.*, 219 Md. 242, 250-51 (1959)), *cert. denied*, 361 U.S. 831 (1959). If there is any acquiescence, ratification, or estoppel of the contract, then rescission will be precluded. *Id.* This election is judged from the time of the discovery of the fraudulent misrepresentation:

> Upon the discovery . . . of the fraudulent misrepresentation, the purchaser ha[s] to elect between two rights. He [i]s put to the choice of repudiating or ratifying the conveyance, although the transaction ha[s] been fully completed by conveyance and payment. If he adopt[s] the first alternative he repudiate[s] the conveyance and s[eeks] its rescission and a restoration of his situation before the contract; but if he cho[oses] the second, he ratifie[s] the grant [but] c[an] obtain damages to redress the injury inflicted by the false and fraudulent representation. These rights [a]re inconsistent

> and mutually exclusive, and the discovery put[s] the purchaser to a prompt election.

Wolin, 219 Md. at 250-51 (citing *Telma v. Gingell*, 157 Md. 411, 412 (1929)). Prompt repudiation is judged by whether the right to waive was "exercised within a reasonable time, which is determined, in large part, by whether the period has been long enough to result in prejudice." *Cutler v. Sugarman Org., Ltd.*, 88 Md. App. 567, 578 (1991). At a minimum, in instances of rescission due to fraud, the party seeking rescission must notify the other party and show an unconditional willingness to return any benefit received and any consideration given in order to meet the prompt repudiation threshold. *Id.*

5. Conclusion

As previously noted, Catonsville Eye did not explicitly ask the court to reform the lease, but instead demanded money damages. We interpret this to mean that they sought to end the lease and requested monetary compensation because of MAH's breach. To support this conclusion, we observe that one of the four declarations that Catonsville Eye requested in Count IV was that it was "*entitled to* ***terminate*** *the Lease as a result of Defendant MAH's breach of Section 7 of the Lease*." (Emphasis supplied). As far as demonstrating the intent behind the pleadings, this language strongly suggests Catonsville Eye sought to end the lease and be restored to its position before the lease was signed with an award of monetary damages. *Wolin*, 219 Md. at 250-51 ("[H]e repudiate[s] the conveyance and s[eeks] its rescission and a restoration of his situation before the contract.")

We conclude that Catonsville Eye's pleadings did not explicitly nor implicitly request the equitable relief of reforming the lease. As such, there was no means at law for

the court to have reformed the lease absent an explicit pleading or an intent evinced in the pleadings. Consequently, we reverse the circuit court's entry of a declaratory judgment and vacate the $4,000 rent credit to Catonsville Eye that issued from it.

C. The Fraud Count

By the circuit court's reasoning, Catonsville Eye could not prove fraud *only* because it could not show damages. This supposed failure of proof rested exclusively on the circuit court changing the starting date of the lease from May to November. Recall that Catonsville Eye claimed fraud damages in the amount of rent it had to pay under the lease for the months of May through September as a result of the District Court judgement. With the reformation, the circuit court reasoned, Catonsville Eye had no damages since the lease now started on the date that Dr. Gray thought it should. Thus, in the circuit court's view, without any provable damages, the fraud count failed.

To recover damages in action for fraud, a plaintiff must prove five elements. The plaintiff must establish

> (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.

See Nails v. S & R, Inc., 334 Md. 398, 415 (1994) (citations therein). Each element must be proven by clear and convincing evidence. *Sass v. Andrew*, 152 Md. App. 406, 428 (2003).

Because reformation was not pled, if fraud is proven, rescission then is the only remedy available to Catonsville Eye. We remand to the circuit court to determine whether the lease was induced by fraud. On remand, if the court finds by clear and convincing evidence that Catonsville Eye has proven the five elements of fraud, then Catonsville Eye should either: repudiate the lease or ratify it. *Wolin*, 219 Md. at 250-51. In the case of repudiation, Catonsville Eye may seek damages to restore it to its position before signing the lease. *Id*. In the case of ratification, they may pursue damages they claim were inflicted as a result of the fraud. *Id*.

In its brief, Catonsville Eye argues the trial court erred in dismissing the punitive damages claim. We agree. Upon consideration of the fraud count, the trier of fact may also consider the propriety of punitive damages. In *Owens–Illinois v. Zenobia*, 325 Md. 420, 460 (1992), the Court of Appeals explained that in a fraud case, a jury may award punitive damages only when a plaintiff has demonstrated by clear and convincing evidence that the defendant acted with "actual malice." The Court defined the term "actual malice" as "conduct of the defendant characterized by evil motive, intent to injure, ill will, or fraud." *Id*. And in *Ellerin v. Fairfax Savings, F.S.B*., 337 Md. 216, 241(1995), the Court made clear that, "Maryland law has limited the availability of punitive damages to situations in which the defendant's conduct is characterized by knowing and deliberate wrongdoing." Consequently, if Catonsville Eye proves all of the elements of fraud, the trier of fact may consider whether punitive damages are appropriate upon clear and convincing evidence that MAH also acted with "actual malice." *Zenobia*, 325 Md. at 460.

If, on the other hand, Catonsville Eye cannot prove each element of fraud by the stated standard of proof, then absent some other defense, the lease is valid and enforceable. *Vincent*, 179 Md. at 370-72.

D. The Legal Malpractice Count

Catonsville Eye claims that the circuit court erred in not finding that Ali Kalarestaghi committed legal malpractice. Catonsville Eye's claim is predicated on Ali's supposed unqualified assertion that the Rolling Road lease would end in August 2017, five months earlier than the December 31, 2017 date stated in that lease. Dr. Gray averred that Ali's opinion led him to rent space from the Kalarestaghis because, as has been noted, he and Dr. Fine did not want to pay rent at two locations. Before this Court, Catonsville Eye claims that on its face, Ali's unqualified assertion about the ending date of the Rolling Road lease constituted legal malpractice, since, in their opinion, no attorney could guarantee an outcome. The Kalarestaghis argue that the circuit court did not err in finding that Ali's opinion did not qualify as legal malpractice. Further, they insist the court erred in not requiring Catonsville Eye to produce an expert to testify that Ali violated the standard of care. We agree with the Kalarestaghis and explain.

In order to prevail on a claim for legal malpractice, a former client must prove "(1) the attorney's employment, (2) the attorney's neglect of a reasonable duty, and (3) loss to the client proximately caused by that neglect of duty." *Suder v. Whiteford, Taylor, Preston, LLC*, 413 Md. 230, 239 (2010) (quoting *Thomas v. Bethea*, 351 Md. 513, 528–29 (1998)). A legal malpractice action, therefore, is like any other negligence claim which requires that a plaintiff prove duty, breach, causation, and damage. The absence of any one of those

elements will defeat a cause of action in tort. As such, a cause of action arises "'when facts exist to support each element.'" *Supik v. Bodie, Nagle, Dolina, Smith and Hobbs, LLC*, 152 Md. App 698, 717-18 (2003) (citing *Owens–Illinois v. Armstrong*, 326 Md. 107, 121 (1992)). Further, the Court of Appeals has held that in legal malpractice actions, expert opinion on the standard of care may be required in certain circumstances. *Central Cab Co. v. Clarke*, 259 Md. 542, 551 (1970). Such expert testimony may not be required where the alleged violation is so clear that a layman could perceive it. *Id*. *Accord Fishow v. Simpson*, 55 Md. App. 312, 318-19 (1983) ("[But] the limitation on the requirement for expert testimony, therefore, is in that class of cases where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence from the facts.")

We think Catonsville Eye's allegation of Ali's malpractice required expert testimony. Ali's unqualified opinion about the date that the Rolling Road lease ended did not require an expert to explain why such an opinion might have led Dr. Gray to rely on that statement. The end date of the Rolling Road lease undoubtedly would affect Dr. Gray's decision to pursue leasing with the Kalarestaghis. If Dr. Gray could get out of his then-current lease sooner that he thought, he would be inclined to rent from the Kalarestaghis. On the other hand, a layman would not necessarily know which of the standards of professional conduct Ali allegedly violated. That knowledge would form the basis of a finding of legal malpractice. We, therefore, agree with the Kalarestaghis that an expert was needed.

That said, we still will not disturb the circuit court's finding that Ali did not commit legal malpractice. On review, our task is limited to deciding whether the circuit court's

factual findings were supported by substantial evidence in the record: "The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *L.W. Wolfe Enters., Inc.*, 165 Md. App. at 343. Moreover, the trial court is presumed to know the law and follow it properly. *Lamalfa v. Hearn*, 457 Md. 350, 389 (2018); *see also Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) ("It is a well-established principle that trial judges are presumed to know the law and apply it properly." (cleaned up)). Here, the trial court found that Catonsville Eye could not prove all the required elements of legal malpractice. We defer to the trial court's evaluation of the facts and will not reverse absent clear error. Further, absent a showing that the court misapplied the law, which Catonsville Eye has not shown, reversal on this ground is not required.

E. One Last Issue

Finally, we have no jurisdiction over the District Court case. *Jakana Woodworks, Inc. v. Montgomery Cty.*, 344 Md. 584, 594 (1997); *see also* Md. R. 12-305 (stating that the Court of Appeals has appellate jurisdiction over the "determination[s] in any case in which a circuit court has rendered a final judgment on appeal from the District Court"). However, on remand from this Court, we respectfully ask the circuit court to re-evaluate its decision regarding the District Court appeal. The circuit court's decision requiring the District Court to recalculate the rent Catonsville Eye owed to MAH was based on the erroneously reformed lease. Because we reverse that judgment, we think it reasonable for the circuit court to reconsider its instructions to the District Court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED. THE DECLARATORY JUDGMENT HEREIN IS STRICKEN. THE AWARD OF A $4,000 RENT CREDIT IS VACATED. CONSISTENT WITH THIS OPINION, THE COURT SHOULD REASSESS THE PROOF ON THE FRAUD COUNT ONLY. BOTH SIDES TO EQUALLY SHARE THE COSTS.