Circuit Court for Montgomery County
Case No.: 483475V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2061

September Term, 2023

HERMAN M. BRAUDE

v.

JOHN JERRY ROBB

Nazarian,
Zic,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: May 27, 2025

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

Appellant, Herman Braude, sued appellee, John Robb, in the Circuit Court for Montgomery County for breach of contract, breach of fiduciary duty, and fraud.[1] Following a bench trial, the circuit court found in favor of Mr. Robb. On appeal, Mr. Braude raises six questions, which we have rephrased and consolidated into five[2]:

I. Did the circuit court err in declining to give collateral estoppel effect to the Maryland Racing Commission's ruling that Mr. Robb prevented Mr. Braude from claiming a certain horse?

II. Did the circuit court err in finding that the parties did not have an enforceable oral contract under the theories of traditional contract law or detrimental reliance?

[1] This is Mr. Braude's second appeal on these claims. At the first trial, the court found for Mr. Robb. On appeal, we reversed and remanded for a retrial. *See Braude v. Robb*, 255 Md. App. 383 (2022).

[2] In his appellate brief, Mr. Braude presents his questions as follows:

1. Did the [c]ircuit [c]ourt err in failing to give collateral estoppel effect to the decision of the Maryland Racing Commission holding that Mr. Robb prevented Mr. Braude from claiming the horse named Hydra?

2. Did the [c]ircuit [c]ourt err in finding that . . . there was no enforceable contract between Mr. Braude and Mr. Robb?

3. Did the [c]ircuit [c]ourt err in failing to consider whether Mr. Braude could recover under detrimental reliance as set forth in Restatement of Contracts (Second) § 90 (promissory estoppel)?

4. Did the [c]ircuit [c]ourt err by denying Mr. Braude's breach of fiduciary duty claim?

5. Did the [c]ircuit [c]ourt err by denying Mr. Braude's fraud claim?

6. Did the [c]ircuit [c]ourt err in finding that Mr. Braude failed to prove damages?

III. Did the circuit court err in denying Mr. Braude's breach of fiduciary duty claim?

IV. Did the circuit court err in denying Mr. Braude's fraud claim?

V. Did the circuit court err in finding that Mr. Braude failed to prove damages?

For the reasons that follow, we shall affirm the judgment.[3]

FACTS

The parties have been involved in horse racing for over fifty years. Mr. Braude is a horse racing enthusiast and owner of horses; Mr. Robb is a horse trainer, who owns his own stable. For close to thirty years, Mr. Robb was Mr. Braude's horse trainer. The dispute in this case centers on whether there was an enforceable oral agreement between the parties that Mr. Robb would claim for Mr. Braude a horse named "Hydra" in a "claiming race" on January 4, 2020, at Laurel Park Racetrack. The relevant events occurred between January 2 to January 4, 2020. We present the facts elicited at trial in the light most favorable to Mr. Robb.

Thursday, January 2, 2020

On the morning of January 2, 2020, Mr. Braude and Mr. Robb spoke over the telephone about several horse-related matters. In particular, they discussed Mr. Braude renewing his owner's license[4] in order to enter his horse "Big Boots" in the second race at

[3] At all relevant times, Mr. Braude, who practiced law for over fifty years, has been self-represented.

[4] The Maryland Racing Commission requires both owners and trainers to have licenses for their horses to race. *See* Code of Maryland Regulations ("COMAR") 09.10.01.25. Licenses expire at the end of each year. *Id.*

Laurel Park racetrack on January 4th, and whether Mr. Braude would be interested in claiming Hydra, a one-year-old horse running in a $25,000 "claiming race" in the eighth race that same day.

In a "claiming race," all the horses racing are for sale at the same price. Prospective purchasers cannot physically examine a horse prior to the race but they may visually inspect the horse when it is brought into the paddock area before the start of the race. Claiming a horse involves "dropping" a claim slip signed either by the prospective owner or an authorized agent with the name of the horse, the prospective owner, and the trainer into a lock box located in the Racing Office not later than ten minutes before the start of the race.

Mr. Robb testified that he tries to distribute his horse picks in claiming races between his owners evenly, and that over the years, he had claimed at least twenty-five horses for Mr. Braude. According to Mr. Robb, even though he charges a fee, he does not earn a profit training horses. Rather, his profits come from sharing the purses won by the horses he trains.

Mr. Braude expressed an interest but told Mr. Robb that he did not then have the money necessary to buy Hydra. Mr. Braude said he thought he might be able to get the money, and Mr. Robb testified that he told him to let him know. At that point, Mr. Robb did not know whether Mr. Braude would be able to raise the funds because there were many times over the years that Mr. Braude had not been able to come through with the money. When that happens, Mr. Robb loses the opportunity to make a claim and train the horse. Both parties agreed that a $25,000 claim, by Maryland standards, is a large claim.

After the telephone call with Mr. Robb, Mr. Braude instructed Ms. Dodd, his legal secretary, to follow up with Mr. Robb. The court found that Ms. Dodd and Mr. Robb had texted that afternoon about updating Mr. Braude's owner's license and how to wire money to the track, but that they never communicated about claiming Hydra.

Friday, January 3, 2020

Around 12:30 p.m. the following day, having heard nothing further from Mr. Braude or Ms. Dodd, Mr. Robb checked with the Racing Office to see if money required to make the claim had been deposited into Mr. Braude's racing account. It had not. In its written opinion, the circuit court credited Mr. Robb's testimony that he did not follow up directly with Mr. Braude after the January 2, 2020 telephone conversation because he had specifically told Mr. Braude to call him if he "got the money together," and, because Mr. Braude had a history of not coming up with funds, Mr. Robb did not want to embarrass Mr. Braude by asking about the money.

Mr. Robb testified to reaching out to Mr. Eugene Gould, who owned about a dozen horses trained by Mr. Robb, about claiming Hydra. He explained that he had offered the claim to someone else but had not heard back. This testimony was supported by Mr. Gould's testimony that Mr. Robb told him about a good horse in a claiming race the following day (January 4, 2020) and asked whether, if Mr. Robb's plans with another person fell through, he would be interested. Mr. Gould told Mr. Robb that he was "in[.]" At 1:35 p.m., Ms. Dodd wired $25,000 into Mr. Braude's racing account at Laurel Park but neither she nor Mr. Braude informed Mr. Robb that those funds had been deposited.

Race day: Saturday, January 4, 2020

Sometime between 9 a.m. and 10 a.m. on January 4, 2020, Mr. Robb reached out to Mr. Gould and asked Mr. Gould to meet him at the racetrack to sign the claim slip for Hydra. A few hours later, around 12:15 p.m., Mr. Braude went to the Bookkeeper's Office in the Racing Office. There, he learned that he still needed an additional $1,500 in the account for Maryland sales taxes to make a successful claim for Hydra. He deposited that amount into his racing account with the cash he had on him.

Having earlier received Mr. Gould's signed claim slip for Hydra, Mr. Robb met with Mr. Braude around 1:00 p.m. prior to the start of Big Boots's race. Big Boots was owned by Mr. Braude and trained by Mr. Robb. It was then that Mr. Braude showed Mr. Robb his racing account statement reflecting that there was $26,500 in his account. He was angry Mr. Robb had not told him about the additional $1,500 in sales tax owed to make the claim. Mr. Robb countered that Mr. Braude had claimed dozens of horses over many years, and that the sales tax was always collected on a claim.

At this point, the parties' testimony starts to differ. Mr. Robb testified that he told Mr. Braude that it was then too late for him to claim Hydra because he had "moved on" with another owner. According to Mr. Robb, Mr. Braude acted like he did not want to hear what Mr. Robb said. Denying Mr. Robb's account of what had occurred, Mr. Braude testified that he had told Mr. Robb that he thought Hydra "was a good claim despite the cost," and that Mr. Robb had agreed. According to Mr. Braude, they had also agreed to meet at the paddocks to examine Hydra before her race. The court credited Mr. Robb's version of events and not Mr. Braude's.

A few hours later, Mr. Robb saw Mr. Braude "hanging around acting like he didn't want to accept" that it was too late to have Mr. Robb make the claim for him. So, at 3:20 p.m., Mr. Robb sent Mr. Braude a text stating: "Not going in for the horse for you too big a gamble you need safer runners right now[.]" The court acknowledged that text was not "altogether truthful," but that it made clear that Mr. Robb was not going to drop a claim slip for him. In the court's view, the text appeared "to be an attempt by Mr. Robb to soften the fact that Mr. Braude had missed his opportunity, and to make Mr. Braude feel better."

Around 3:30 p.m., the parties had a second interaction in the paddock area prior to the eighth race involving Hydra. Again, their respective versions of what occurred differed. Mr. Robb testified that he asked Mr. Braude if he had received his text, and Mr. Braude responded, "What text?" Mr. Robb told him, "I texted you an hour ago and I'm not taking the horse for you." Mr. Braude testified that he told Mr. Robb, "I'll see you after the 8th race[,]" and when he did, Mr. Robb responded that Hydra looks "gimpy," to which Mr. Braude said, she "looks fine" and for Mr. Robb to "drop the slip." According to Mr. Braude, Mr. Robb said he would. Mr. Robb denied Mr. Braude's version of what happened during that exchange, and the court credited Mr. Robb's version of events.

After the race but before the results were final, Mr. Braude retrieved his cell phone from his car and called Mr. Robb to see if his claim had been successful, Mr. Robb replied that he did not know because there might be a "shake." A "shake" meant that there was more than one claimant for Hydra, and the winner would be determined by a public drawing. After the official results were in, Mr. Robb knew that Mr. Gould was the successful claimant of Hydra, but when Mr. Braude called, Mr. Robb told him that he had

been "outshook." The court found that Mr. Robb's statements about a "shake" were not truthful and "ill[-]advised," but it reasoned that Mr. Robb did so "to soften the fact that Mr. Braude acted too late for Mr. Robb to make the claim for Mr. Braude."

Later that evening, Mr. Braude learned from the official race report that Mr. Gould was Hydra's new owner and that Mr. Robb was the new trainer. Furious, Mr. Braude called Mr. Robb and fired him. Mr. Braude hired a new trainer less than two hours later.

Procedural history

The following Monday, Mr. Braude filed a protest with the Maryland Stewards. He claimed that Mr. Robb's deceit and misrepresentation had prevented him from claiming Hydra in violation of the Code of Maryland Regulations ("COMAR") 09.10.01.07(L)(2)(a), which prohibits preventing an owner from claiming a horse in a claiming race.[5] After a hearing in late January 2020, the Stewards ruled that Mr. Robb had advised Mr. Braude that he was not putting the claim in for him but that did not prevent Mr. Braude from claiming Hydra. Because Mr. Gould had signed the claim slip that Mr. Robb had timely dropped in the claim box, Mr. Gould's claim for Hydra was valid.

[5] The Maryland State Racing Commission (the "MRC"), which was created by the Maryland General Assembly as part of the Department of Licensing and Regulation, has the jurisdiction and power to "adopt regulations and conditions to govern racing and betting on racing in the State" of Maryland. *See* Md. Code Ann., Business Regulation ("Bus. Reg."), § 11-210(a)(1) and COMAR 09.10.01-06 (delineating the powers of the Commission). A power the MRC grants to the Stewards is the power and duty "to regulate and govern the conduct of all racing officials and of all owners, trainers, jockeys, grooms, and other persons attendant on horses during, before, and after races[.]" COMAR 09.10.01.45(J).

In September 2020, Mr. Braude filed a three-count complaint against Mr. Robb in the circuit court alleging breach of contract, breach of fiduciary duty, and fraud. Roughly three months later, Mr. Braude appealed the Stewards' decision to the Maryland Racing Commission (the "MRC").[6] Because of the Covid-19 pandemic, the MRC did not hold a hearing until January 2022. Prior to resolution by the MRC, the circuit court had held a bench trial on Mr. Braude's complaint and granted judgment to Mr. Robb in June 2021. Mr. Braude appealed to this Court.

The MRC held a hearing on January 4, 2022. A month later, it determined that Mr. Robb had prevented Mr. Braude from claiming Hydra in violation of COMAR 09.10.01.07(L)(2)(a). That decision was not appealed.

On July 29, 2022, we reversed and remanded the circuit court case for a new trial because the court had failed to make findings of fact. In doing so, we declined to address Mr. Braude's request that we give collateral estoppel effect to the MRC decision because it had been decided after the circuit court's ruling. Prior to the retrial, Mr. Braude moved the circuit court to give collateral estoppel effect to the MRC's decision. The court declined to do so. Following a bench trial, the circuit court again granted judgment for Mr. Robb. Mr. Braude now appeals from that judgment.

[6] We perceive no exhaustion requirement here. Although the statute provides for an appeal from an MRC ruling to the circuit court, there is nothing in the statute that requires a complaint to be filed with the MRC. *See* Bus. Reg. § 11-309. *Cf. Green Healthcare Sols., LLC v. Natalie M. LaPrade Md. Med. Cannabis Comm'n*, 254 Md. App. 547, 571 (2022) ("Because there was no administrative review remedy authorized by statute or an administrative scheme providing for such relief, there was no exhaustion requirement[.]").

DISCUSSION

Standard of Review

When reviewing bench trial decisions, we give "due regard to the opportunity of the trial court to judge the credibility of the witnesses[,]" and we do not set aside a trial court's judgment on the evidence unless it is clearly erroneous. Md. Rule 8-131(c). We view the evidence in the light most favorable to the party who prevailed at trial. *Brault Graham, LLC v. Law Offs. of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (2013). But if the trial court does not make findings of fact, "no presumption as to" those findings will arise as made merely from the decision, and there is no reason for the reviewing court to view the evidence "with an evidentiary slant in favor of the appellee[.]" *Burroughs Int'l Co. v. Datronics Eng'rs, Inc.*, 254 Md. 327, 338 (1969) (cleaned up). In contrast to factual findings, we review a trial court's legal findings de novo. *MBC Realty, LLC v. Mayor & City Council of Baltimore*, 192 Md. App. 218, 233 (2010).

I.

Mr. Braude contends on appeal that the circuit court erred by not giving collateral estoppel effect to the MRC's ruling that Mr. Robb prevented Mr. Braude from claiming Hydra. Mr. Robb responds that the circuit court properly declined to apply the doctrine of collateral estoppel.

Collateral estoppel applies "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and [when] the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Garrity v. Md. State Bd. of Plumbing*, 447 Md.

359, 368 (2016) (cleaned up). Two main principles guide its application: judicial economy and fairness. *Id*.

These principles are reflected in four elements to be answered in the affirmative: (1) the issue decided in the prior adjudication is identical to the one presented in the action in question; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted is a party or in privity with a party to the prior adjudication; and (4) the party against whom the plea is asserted was given a fair opportunity to be heard on the issue. *Id.* at 369. The party mutuality requirement, the third element, is relaxed if the other elements of collateral estoppel are satisfied. *Id*. Whether collateral estoppel applies is a question of law that we review de novo. *Id*. at 368.

The *Garrity* Court expressly recognized the doctrine of offensive, non-mutual collateral estoppel, but it has been implicitly recognized in Maryland for years. Estoppel is offensive when it is invoked by a plaintiff and defensive when invoked by a defendant. *Id*. at 369. Mutual estoppel occurs when the parties in the second suit "are the same as, or in privity with, those who participated in the first litigation." *Id*. at 368-69. However, when either the plaintiff or the defendant in the second proceeding was not a party in the first proceeding, application of collateral estoppel is considered "non-mutual." *Id*. at 369.

The *Garrity* Court reasoned that the application of offensive, non-mutual collateral estoppel did not as effectively promote the twin objectives of collateral estoppel, efficiency and fairness, as did traditional defensive collateral estoppel. It explained that defensive collateral estoppel incentivizes plaintiffs to join all potential defendants in a single action while offensive collateral estoppel does the opposite. *Id*. at 370. In addition, offensive

collateral estoppel is potentially unfair when: (1) the defendant did not have an incentive to "vigorously" defend against the first litigation, as for example where only small or nominal damages were previously at issue; (2) the judgment relied upon was itself inconsistent with one or more previous judgments; and (3) the second action allowed for "procedural opportunities unavailable in the first action that could readily cause a different result." *Id*. at 370-71 (quotation marks and citation omitted). The Court further stated that an offensive, non-mutual collateral estoppel raised concerns of judicial economy and fairness are to be addressed before the four doctrinal elements. It further noted that circuit courts "should have broad discretion to determine when offensive non-mutual collateral estoppel should be applied." *Id*. at 371. In sum, although the mutuality requirement is generally relaxed when the other three elements of collateral estoppel are present, addressing the twin goals of judicial economy and fairness first in offensive, non-mutual cases is an important protection against that relaxation.

Garrity is instructive in this case. There, the Consumer Protection Division (the "CPD") of Maryland's Office of the Attorney General issued a statement of charges against Wayne Garrity, Sr., a licensed master plumber, alleging that he had engaged in over 7,000 unfair and deceptive trade practices in violation of the Maryland Consumer Protection Act (the "CPA"). *Id*. at 365. At the hearing before an administrative law judge ("ALJ"), the CPD submitted eighty-four exhibits and called twenty-four witnesses. *Id*. at 364. Garrity submitted only one exhibit, called no witnesses, and when called to testify invoked his Fifth Amendment right against compelled self-incrimination. *Id*. The CPD adopted the ALJ's proposed decision finding that Garrity had violated the CPA, and imposed over a

million dollars in restitution, civil penalties, and costs. *Id*. at 365. Afterwards, the Maryland State Board of Plumbing (the "Board') filed a complaint against Garrity, alleging his violation of the Maryland Plumbing Act ("MPA"). *Id*. at 366. At the hearing before the Board, counsel for the Board moved, and the Board admitted, the CPD's Final Order as evidence. *Id.* In its Final Order, the Board applied collateral estoppel and adopted the findings of fact made by the CPD. *Id*. at 367. Based on those findings, the Board concluded that Garrity had violated the MPA, revoked Garrity's master plumber license, and imposed a $75,000 civil penalty. *Id.*

This Court affirmed on appeal, as did our Supreme Court. In doing so, that Court first addressed the issues of judicial economy and fairness. *Id*. at 376-78. It noted that both proceedings took place before administrative agencies, both of which were constrained to charge violations of their own statutes. *Id*. at 376. Noting that a penalty of more than a million dollars cannot be characterized as "small and nominal" and that revocation of his license was a foreseeable consequence of an adverse ruling from the CPD, the Court determined that precluding Garrity from relitigating facts in the Board proceeding that were already established before the CPD served judicial economy, and was not unfair to Garrity because he "had every incentive to defend vigorously the CPD's allegations." *Id*. at 376-77 (quotation marks omitted). In addition, the previous judgments were not inconsistent. *Id*. at 377. Concluding then that the four elements of collateral estoppel were satisfied, the Court affirmed.

In the case now before us, the circuit court denied Mr. Braude's pretrial motion to apply collateral estoppel to the MRC's ruling that Mr. Robb had prevented Mr. Braude

from claiming Hydra. It found that collateral estoppel did not apply because none of the four collateral estoppel elements were present.

More specifically, the circuit court found, without expressly addressing judicial economy and fairness, that: the issues before the MRC and the circuit court were not identical; there was no final judgment by the MRC on the issues raised before the circuit court because they were not raised in the MRC; the parties were not the same or in privity in the two actions because Mr. Robb was neither a party nor in privity with the Stewards and only participated as a witness; and Mr. Robb did not have a fair opportunity to be heard at the MRC hearing because he did not have an opportunity to seek discovery, present evidence, or examine witnesses.

We reach the same conclusion, but because this case, like *Garrity*, involves offensive, non-mutual collateral estoppel, our analysis begins with the twin goals of judicial economy and fairness. Mr. Braude, who was the plaintiff in the prior proceedings, is seeking to apply the doctrine of collateral estoppel. It is non-mutual because Mr. Robb was neither a party nor in privity with a party at the MRC proceeding. That proceeding was styled, *In the Matter of Herman Braude*, and the parties were Mr. Braude, who was self-represented, and the Stewards, who were represented by their attorney. The Stewards' attorney expressly advised the MRC during the hearing that the "case here today is not against Mr. Robb" and that Mr. Robb had "not been put on notice that he's facing any kind of" penalty from the MRC. *Cf. Augustine v. Wolf*, 264 Md. App. 1, 21 (2024) (explaining that case law demonstrates that children are not "inherently in privity" with their parents as they may not have identical motivations (citing *Cochran v. Griffith Energy Servs., Inc.*,

426 Md. 134, 146 (2012) (holding that "context is key" in a privity determination))). *See also Bank of New York Mellon v. Georg*, 456 Md. 616, 658 (2017) (stating that the privity element focuses on "whether the interests of the party against whom estoppel is sought were fully represented, with the same incentives, by another party in the prior matter" (quotation marks and citation omitted)).

To the extent that the goal of judicial economy could lean in favor of applying collateral estoppel, we are persuaded that the fairness goal leans more against it. Here, the prior rulings were totally inconsistent. Whereas the Stewards ruled that Mr. Robb did not prevent Mr. Braude from claiming Hydra, and the MRC ruled that he had. But even though the MRC reached that conclusion, it did not impose any remedy or penalty because, as even Mr. Braude apparently recognized at the MRC hearing, the then-current regulations provided no remedy, it could not.[7] Mr. Braude, however, was seeking over $100,000 in damages in his circuit court case. COMAR 09.10.04.06(E) does provide that "an applicant or a licensee who may be affected by a decision of the [MRC] shall be given the opportunity" to be represented by counsel, examine witnesses, testify, and produce relevant testimony and evidence, but because he was not subject to any penalties or other consequences in the MRC proceeding, Mr. Robb was never so advised. Thus, no traditional procedural safeguards promoting fairness were at play.

[7] In its decision, the MRC stated that it agreed with Mr. Braude "that Jerry Robb's inaction prevented the claim of Hydra. However, there is no remedy at this juncture, but [it] will examine its current regulations to address the claiming process in the future."

Based on the fairness principle, applying offensive, non-mutual collateral estoppel on these facts would be inappropriate without necessarily reaching the four doctrinal elements. That said, elements three and four clearly are not satisfied. Mr. Robb was neither a party or in privity with a party in the MRC proceeding nor did he have a full opportunity to be heard at that proceeding. For these reasons, we hold that the circuit court neither erred nor abused its discretion in declining to apply offensive, non-mutual collateral estoppel in this case.

II.

Mr. Braude argues that the circuit court erred in finding that the parties did not have an enforceable oral contract, either under traditional contract law or under the theory of detrimental reliance. Mr. Robb disagrees, as do we. We shall address each argument in turn.

A. Contract law

Mr. Braude argues that the circuit court erred in finding that the parties did not have an enforceable oral contract because Mr. Braude did not timely accept Mr. Robb's offer to claim Hydra for him. He directs us to two pieces of evidence he claims shows that he timely accepted Mr. Robb's offer to claim Hydra: (1) two text messages between Mr. Robb and Mr. Braude's secretary on January 3, 2024,[8] and (2) Mr. Braude's act of wiring $25,000 to

[8] An exhibit admitted into evidence shows that at 10:32 a.m. on Friday, January 3, 2020, Ms. Dodd texted Mr. Robb: "Hi Jerry – I need your SS number and date of birth for this authorized agent form[.]" After he responded, she texted him: "Do you know the wire info to send money to track? Bookkeeper doesn't answer her phone – I'll keep trying[.]" Mr. Robb texted back, "No you need to get her[.]"

his racing account that day. Mr. Braude also takes issue with the circuit court's finding that, to form a binding contract, Mr. Braude should have accepted the offer within twenty-four hours of Hydra's race. Mr. Robb, of course, does not agree.

Generally speaking, "a contract is defined as a promise or set of promises for breach of which the law gives a remedy[.]" *Maslow v. Vanguri*, 168 Md. App. 298, 321 (quotation marks and citations omitted), *cert. denied*, 393 Md. 478 (2006). "A contract is formed when an unrevoked offer made by one person is accepted by another." *Cnty. Comm'rs for Carroll Cnty. v. Forty W. Builders, Inc.*, 178 Md. App. 328, 377 (2008) (quotation marks and citation omitted). A contract may be oral or written, expressed or implied.

"It is equally well established that an enforceable contract must express with definiteness and certainty the nature and extent of the parties' obligations." *Id*. "It is hornbook law[,]" however, that when an offer states no specified time for acceptance, it must be accepted "within a time reasonable under the circumstances or the offer will lapse and a subsequent attempt to accept will be of no affect." *Barnes v. Euster*, 240 Md. 603, 607 (1965). *See also Moore v. Donegal Mut. Ins. Co.*, 247 Md. App. 682, 690 (2020). "Whether a party accepted an offer within a reasonable amount of time generally is a question of fact for the trier of fact to decide." *Id.*

Maryland applies the principle of the objective interpretation of contracts, which means "we look at what a reasonably prudent person in the same position would have understood as to the meaning of the agreement." *Cochran v. Norkunas*, 398 Md. 1, 16-17 (2007).

The circuit court found that, on Thursday, January 2, 2020, Mr. Robb offered to claim Hydra for Mr. Braude on January 4, but Mr. Braude did not accept that offer at that time. Rather, he responded that he was interested but did not then have $25,000 to make the claim but he would see if he could gather the funds. Mr. Robb told Mr. Braude to let him know if he got the necessary money. The circuit court also found that Mr. Braude knew Mr. Robb was a trainer to multiple owners; that he earns money from training horses he claims for owners; and that he spreads his recommendations and opportunities for claiming horses among those owners depending on the circumstances. From those findings, the circuit court reasoned that Mr. Braude knew or should have known that Mr. Robb was likely to approach other owners with the Hydra opportunity if it was not timely accepted by Mr. Braude. The court stated in its written opinion:

> The limited interactions between Ms. Dodd and Mr. Robb by text on January 2, 2020 were not sufficient to put Mr. Robb on notice that Mr. Braude had the funds necessary to go forward and wanted to do so; *i.e.*, that the offer was accepted. Although Ms. Dodd deposited $25,000 into Mr. Braude's account later on January 3, 2020, neither she nor Mr. Braude informed Mr. Robb that his offer was accepted, that Mr. Braude was able to accumulate the money needed to make the claim, that he had deposited the funds, or that he wanted to go forward. Mr. Braude knew or should have known that he needed $26,500 in his racing account to claim a horse in a $25,000 claiming race. He did not have the full amount in his racing account until 12:30 p.m. on the day of the race, January 4, 2020. Mr. Braude's first attempt to accept Mr. Robb's offer was at approximately 1:00 p.m. on January 4, 2020.

The court held, as a matter of fact and law that a "reasonable time for Mr. Braude to accept Mr. Robb's offer . . . would have been within 24 hours prior to the start of the 8th race, at the absolute latest." The court concluded that less than three hours before the start time for the 8th race was not reasonable.

Contrary to Mr. Braude's assertions, the circuit court did not "ignore" the two text messages between Ms. Dodd and Mr. Robb. We do agree with Mr. Braude that the circuit court erred in stating that the text messages occurred on January 2, when, in fact, they occurred on the morning of January 3. That factual error, however, in no way affects the court's decision because the text messages between Ms. Dodd and Mr. Robb in no way indicates an acceptance of Mr. Robb's offer by Mr. Braude. Nor was the act of wiring $25,000 into his racing account an acceptance of the offer for two reasons. Not only was the wiring of funds not communicated to Mr. Robb, the money wired was also not sufficient to claim Hydra. The circuit court found as a fact that the first time Mr. Braude told Mr. Robb that he had the money and wanted to claim Hydra was three hours before the race, which, in the court's view, was too late to accept the original offer. Under an objective theory of contracts, and given the above facts including their prior dealing and the $25,000 claiming price, we hold that the court's factual determinations in this regard were not clearly erroneous, and it did not err as a matter of law in its determination of what was a reasonable time to accept the offer.[9]

[9] Mr. Braude baldly argues that he "substantially" accepted the offer when he wired the $25,000 into his racing account. Because Mr. Braude cites no law to support this argument, we need not address it any further than we already have.

B. Detrimental reliance

Mr. Braude contends that the circuit court erred in not finding an enforceable contract between the parties based on the theory of detrimental reliance.[10] Again, Mr. Robb disagrees.

Detrimental reliance "is an alternative means of obtaining contractual relief." *Md. Transp. Auth. Police Lodge #34 of the Fraternal Ord. of Police, Inc. v. Md. Transp. Auth.*, 195 Md. App. 124, 215 (2010), *rev'd on other grounds*, 420 Md. 141 (2011). *See also Pavel Enters., Inc. v. A.S. Johnson Co.*, 342 Md. 143, 169 (1996) ("[T]here are different ways to prove that a contractual relationship exists . . . . Traditional bilateral contract theory is one. Detrimental reliance can be another."). In *Pavel*, our Supreme Court adopted the four-part test to establish a claim for detrimental reliance from the *Restatement (Second) of Contracts* § 90(1) (1979):

> 1. a clear and definite promise;
>
> 2. where the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee;
>
> 3. which does induce actual and reasonable action or forbearance by the promisee; and
>
> 4. causes a detriment which can only be avoided by the enforcement of the promise.

[10] The terms promissory estoppel and detrimental reliance are often used interchangeably. We shall use detrimental reliance for the reasons explained by the Maryland Supreme Court in *Pavel Enterprises, Inc. v. A.S. Johnson Co., Inc.*, 342 Md. 143, 146 n.1 (1996).

Pavel, 342 Md. at 166 (emphasis omitted). When these elements are satisfied, detrimental reliance may enforce a promise that would not otherwise be enforced.

Mr. Braude baldly argues on appeal, without advancing any facts or citing any law supporting his argument, that all four elements of detrimental reliance were present: "Mr. Robb made a clear and definite promise to [Mr. Braude] to submit a claim slip for Hydra"; the promise "reasonably induced Mr. Braude to rely on Mr. Robb's representation"; and Mr. Braude relied on this representation that Mr. Robb, who had been his agent for thirty years and had claimed over twenty-five horses for him, would drop a claim slip for him.

As stated above, the circuit court found that "Mr. Braude did not let Mr. Robb know in a reasonable timeframe that he indeed was able to put the funds together and wanted [him] to claim the horse[.]" Additionally, the court found that at 1:00 p.m. on the day of the race, Mr. Robb told Mr. Braude that he would not claim Hydra for him. In the court's view, Mr. Braude, upon learning that Mr. Robb would not claim Hydra for him, could have claimed Hydra with another trainer. Therefore, the circuit court concluded that Mr. Braude failed to satisfy all four of the detrimental reliance elements. We hold that the circuit court did not err.

III.

Mr. Braude contends that the circuit court erred in not finding that Mr. Robb, who was his agent, breached his fiduciary duty to him. Mr. Robb disagrees.

"Agency is the fiduciary relation which results from the manifestation of consent by one person [the principal] to another [the agent] that the other shall act on his behalf and subject to his control and consent by the other so to act." *Ins. Co. of N. Am. v. Miller*, 362

Md. 361, 373 (2001) (quotation marks and citations omitted). "The ultimate question is of intent." *Id*.

In *Green v. H & R Block, Inc.*, 355 Md. 488, 517 (1999) our Supreme Court set out the well-established duties owed generally by an agent to the principal:

> An agent has "a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency." RESTATEMENT (SECOND) OF AGENCY § 387 (1958). We have recognized the
>
> > "universal principle in the law of agency, that the powers of the agent are to be exercised for the benefit of the principal *only, and not of the agent or of third parties.*"

(Some quotation marks and citations omitted.) In other words, "an agent is under a strict duty to avoid any conflict between his or her self-interest and that of the principal[.]" *Miller*, 362 Md. at 380. *See also C-E-I-R, Inc. v. Comput. Dynamics Corp.*, 229 Md. 357, 366 (1962) ("It is an elementary principle that fundamental duties of an agent are loyalty to the interest of his principal and the need to avoid any conflict between that interest and his own self-interest." (quotation marks and citation omitted)). An agent is "not to place himself or voluntarily permit himself to be placed in a position where his own interests or those of any other person whom he has undertaken to represent may conflict with the interests of his principal." *Green*, 355 Md. at 518 (quotation marks and citation omitted).

Here, the circuit court denied Mr. Braude's breach of fiduciary duty claim because, in the absence of an exclusive agency agreement between the parties related to claiming Hydra specifically or horses generally, there could be no breach of a fiduciary duty by Mr. Robb.

On appeal, Mr. Braude asserts that Mr. Robb owed him a fiduciary duty to claim Hydra for him because Mr. Robb was his longtime agent and horse trainer, and that he had made Mr. Robb his authorized agent in all horse racing matters.[11] He admits that he could have dropped a claim slip for Hydra himself, but he argues that he was harmed because Mr. Robb did not disclose to him that he was "going to drop the claim slip" for Mr. Gould.

Notwithstanding having been Mr. Braude's agent in horse racing matters and working together for many years, Mr. Robb was not his exclusive agent. Mr. Robb argues that there was no evidence of an enforceable agreement to claim Hydra, or evidence of an exclusive agency agreement, and thus no evidence supporting a fiduciary duty. We hold that the circuit court did not err in finding for Mr. Robb on the breach of fiduciary duty claim.

IV.

Mr. Braude contends that the circuit court erred when it failed to find that Mr. Robb had defrauded him. Mr. Robb disagrees.

In *Swinson v. Lords Landing Village Condominium*, 360 Md. 462, 476 (2000), our Supreme Court set out the elements of fraud:

> To recover in a tort action for fraudulent misrepresentation, a plaintiff must prove that a false representation was made, that its falsity was either

[11] Sometime before noon on Saturday, January 4, 2020, Mr. Braude filed with the Racing Office a signed "Authorized Agent" form that stated: "I have this day appointed John J. Robb . . . as an agent to act for me for the year 2020 in all matters pertaining to the racing of horses . . . under the Rules of Racing adopted by the Maryland Racing Commission." It further authorized Mr. Robb "to collect all purses and other money due from the associations racing under the jurisdiction of the Maryland Racing Commission for the year 2020 with authority to endorse checks of such association." There is no indication that Mr. Robb was aware of the appointment.

> known to the maker or that the representation was made with such reckless indifference to the truth as to be equivalent to actual knowledge of falsity, that the representation was made for the purpose of defrauding the plaintiff, that the plaintiff not only relied on the representation but had a right to rely on it and would not have done the thing from which the injury arose had the misrepresentation not been made, and that the plaintiff actually suffered damage directly resulting from the misrepresentation.

Here, the circuit court addressed Mr. Braude's two alleged misrepresentations by Mr. Robb and found neither actionable.[12] On appeal, Mr. Braude provides some case law on fraud, but he does not direct us to any facts or argument that the circuit court's ruling was clearly erroneous. In his reply brief, again without context, he cites the MRC's decision that "Mr. Robb's inaction in failing to advise [Mr. Braude] that he would not be making a claim for the horse 'Hydra' on his behalf prevented [Mr. Braude] from submitting his own claim for the horse 'Hydra.'"

Because he did not raise his MRC argument in his appellate brief, Mr. Braude's argument is not preserved for our review. *Cf. Elder v. Smith*, 183 Md. App. 647, 651 n.4 (2008) (stating that, absent an issue on subject matter jurisdiction, we will not consider new arguments raised for the first time in a reply brief), *aff'd*, 412 Md. 288 (2010). Nor did he raise the MRC argument in the circuit court. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). *See also DiCicco v. Baltimore Cnty.*, 232 Md. App. 218, 224-25 (2017) (stating that a contention not raised or considered below

[12] Mr. Braude alleged before the circuit court that Mr. Robb had made the following false statements: (1) just prior to Hydra's race that he would go to the Racing Office and drop a claim slip for Hydra for Mr. Braude; and (2) after Hydra's race that Mr. Braude was "outshook" by a third party.

is not properly before an appellate court). Moreover, the determination of when Mr. Robb told Mr. Braude that he would not be dropping the claim slip for him was a credibility finding that the trial court saw differently than the MRC.

V.

Mr. Braude contends that the circuit court erred in finding that he had failed to establish damages due to Mr. Robb's (in)actions. This contention fails because, as explained above, Mr. Braude did not succeed on any of the theories he pursued. Without an enforceable cause of action, there can be no claim for damages.

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