Circuit Court for Baltimore City
Case No. 24-C-20-005148

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2091

September Term, 2021

DAVID C. MANOOGIAN

v.

COPPIN STATE UNIVERSITY

Berger,
Nazarian,
Albright,

JJ.

Opinion by Nazarian, J.

Filed: December 7, 2022

David Manoogian sued Coppin State University (the "University") in the Circuit Court for Baltimore City, alleging that he was dismissed from its Helene Fuld School of Nursing unlawfully, after he twice failed a required course. The University moved to dismiss the complaint under Maryland Rule 2-322(b), arguing that Mr. Manoogian's claims were barred educational malpractice claims, derivative of the barred claims, or otherwise weren't pleaded with sufficient particularity. The circuit court agreed with the University and dismissed the case. We agree that the facts alleged in Mr. Manoogian's complaint do not and cannot amount to tortious conduct on the part of the University and we affirm the dismissal.

I. BACKGROUND

When reviewing a dismissal of a complaint for failure to state a claim on which relief may be granted, "we take as true all well pleaded material facts as well as all inferences reasonably based upon them." *Hunter v. Bd. of Educ. of Montgomery Cnty.*, 292 Md. 481, 483 (1982). "The inferences drawn in favor of the plaintiff, however, must be *reasonable* ones." *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 267 (2018) (cleaned up).

Mr. Manoogian's twelve-count complaint described his dismissal from the University in June 2019 after he failed to achieve a passing grade in a course required for a Bachelor of Science in nursing. He alleged that the University, through its instructors and administrators, incorrectly determined that he failed the course because the instructor assigned and utilized an out-of-date edition of the textbook. The crux of his complaint

alleged that his "instructor was apparently unaware of (or apathetic to) current evidence-based nursing best practices[,] (*i.e.*, the basis for the current nursing standard-of-care)," and, impliedly, that grading his exam against the material in the newer edition would yield a passing result.

Mr. Manoogian's factual allegations are simultaneously extensive and generalized. According to the complaint, issues first arose in Mr. Manoogian's course of study during the Fall semester of 2017, when he "wrote an academic concern letter" to the College of Health Professions Dean, Dr. Tracy L. Murray, about a course. He sent three additional letters to Dean Murray and to the Chair of the Nursing School, Dr. Danita Tolson, in the Spring of 2018 about two other courses. The basis for these letters is never detailed, but he alleges that instructors and administrators "belligerently refused to consider [his] tactfully proffered facts and reasons, and refused to act" on the issues he raised. He asserts further that he followed up with the Assistant Vice President for Academic Operations within the University's Office of the Provost, Dr. Rolande Murray ("AVP Murray"), but "has never received a response in writing on these matters, as required."

The course that led to Mr. Manoogian's dismissal from the nursing school was called "Critical Care Nursing." The syllabi for both the Fall 2018 and Spring 2019 Critical Care Nursing courses, both taught by Dr. Charlotte Wood, assigned the 2016 8th Edition of the Ignatavicius & Workman textbook entitled "Medical-surgical nursing: Patient-Centered collaborative care." Mr. Manoogian instead "chose to use the current 2018 9th

edition" for both courses, a textbook entitled "Medical-surgical nursing: Concepts for interprofessional collaborative care."

Despite relying on an unassigned textbook, Mr. Manoogian "suspected something was wrong with Dr. Wood's grading when [he] was readily able to pass a practice" registered nurse's exam in Fall 2018 but failed the Fall 2018 Critical Care Nursing course. He registered to retake the course with Dr. Wood in the Spring semester of 2019, and again relied on the unassigned 9th edition textbook. Mr. Manoogian's "suspicions regarding Dr. Wood's grading were renewed" when, again, he was "readily able to pass" the practice registered nurse's exam late in the Spring 2019 semester but received a second failing grade in the Critical Care Nursing course that same spring.

On June 4, 2019, Mr. Manoogian met with Dr. Wood to discuss the grading of two of his exams. As a result of that meeting, he emailed Dr. Wood, along with Chair Tolson and Dean Murray, with "signed copies of [an] academic concern form and grade review request form" with attachments that, he alleges, showed that "approximately ten percent" of Dr. Wood's model answers conflicted with the 9th edition textbook Mr. Manoogian had been using in his studies. "[T]his conclusion was reached by [Mr. Manoogian] comparing Dr. Wood's given answers for affirmative exam credit with the evidence-based nursing best practices (*i.e.*, the basis for the current nursing standard-of-care) published within [the unassigned 9th edition textbook]."

Mr. Manoogian met with Dr. Wood again later that month to discuss the course's comprehensive final exam, as well as the two exams he reviewed in the earlier meeting. In

that meeting, "Dr. Wood stated that she would neither discuss nor act upon" the "factual analysis" in Mr. Manoogian's June 4 academic concern form and grade review request, but Dr. Wood signed the grade review form and stated she would give it to Chair Tolson. Mr. Manoogian left the meeting after Dr. Wood would not allow him to take additional notes.

Later that afternoon, Chair Tolson and Dr. Wood asked Mr. Manoogian to meet in person with Chair Tolson and sign his June 4 grade review form a second time. Mr. Manoogian refused, claiming that a second signature was not required legally and stating that "because of their prior untruthfulness . . . he would not physically meet . . . without a professional stenographer recording and transcribing (for which [he] would pay no more than half)." Chair Tolson and Dean Murray declined to meet Mr. Manoogian with a stenographer present.

That same afternoon, he received his letter of dismissal dated June 14 from the University. The letter was signed by Dean Murray and was copied to Chair Tolson. He received a second letter of dismissal, also dated June 14, on July 15, 2019, which he took to mean Chair Tolson and Dean Murray "had no intention of considering" his June 4 "factual analysis regarding Dr. Wood's error rate . . . ."

On July 26, he received a voice message from Dean Murray stating that his June 4 grade review form was sufficient and that Chair Tolson "would move forward with a factual analysis of the objective evidence provided by [Mr. Manoogian]." Mr. Manoogian sought to confirm this through emails dated July 31 and August 5. In his August 5 email, he also "reiterated [his] approximately nine (9) prior requests . . . for a full and complete

copy of [his] Spring 2019 [Critical Care Nursing] course comprehensive final exam, including all exam questions, all of [his] answers for each exam question, and the purportedly correct answers from Dr. Wood for each exam question so [he] could analyze for errors by Dr. Wood." Also on July 29, Mr. Manoogian emailed Chair Tolson and Dean Murray "officially requesting reversal and expungement of the wrongful dismissal . . . using the largely inapplicable official [nursing school] form . . . ."

On August 13, Mr. Manoogian received an email from Chair Tolson stating that Mr. Manoogian had been offered meetings to discuss his grades and declined, and that "[a]fter review of the documents presented the student earned a grade of 'D.'" The email also stated that he may apply for reinstatement to the nursing school. That day, he emailed Dean Murray appealing Chair Tolson's decision and again requested copies of his final exam and answers and reversal of his dismissal from the program.

On August 27, Mr. Manoogian was permitted to read the Spring 2019 Critical Care Nursing comprehensive final exam; he began taking notes and was ordered to stop by Dean Murray. As a result of this review, he emailed Dean Murray on September 7 with alleged errors made by Dr. Wood in her grading. On September 26, 2019, Mr. Manoogian received an email from Dean Murray stating that "[b]ased on my independent review of the documentation, interview, the faculty and chairperson review," his final grade was a D. It contained no substantive response to Mr. Manoogian's conflicting evidence from the 9th edition of the textbook for "current evidence-based best practices (*i.e.,* the basis for the current nursing standard-of-care)," which, he argued (via email to AVP Murray later that

day), should prevail. AVP Murray responded on January 30, 2020 that "[t]he independent reviewer concluded that all but 2 [final] exam questions were proper and were correctly graded." Mr. Manoogian continues to assert that the review was insufficient because his evidence regarding the "current evidence-based nursing best practices" remain unrefuted.

In his twelve-count complaint, Mr. Manoogian raised claims of (1) *respondeat superior*; (2) breach of implied warranty; (3) fraud by intentional misrepresentation; (4) fraud by concealment, deceit, or non-disclosure; (5) fraud by negligent misrepresentation; (6) constructive fraud; (7) civil conspiracy; (8) aiding and abetting; (9) tortious interference with prospective advantage; (10) defamation; (11) invasion of privacy – false light; and (12) professional malpractice. He sought damages (both punitive and compensatory), attorney's fees, and asked the court to order the University to change all of his exam scores, reverse his expungement, retroactively graduate him with a Bachelor of Science in nursing, and authorize him to take the licensing exam.

The University moved to dismiss the complaint on the ground that Mr. Manoogian's claims are barred as non-cognizable educational malpractice claims, citing *Hunter v. Board of Education of Montgomery County*, 292 Md. at 481. The University pointed to Mr. Manoogian's allegations that he failed the courses because "the syllabi for both offerings of the course identified the assigned textbook as the 2016 8th Edition . . . , but that he instead decided to use the 2018 9th Edition Textbook . . . ." "In short," the University argued, Mr. Manoogian "challenge[d] the substantive academic decisions of the University regarding the choice of textbook used in the class and the grading of his exams. This is

precisely the type of educational malpractice claim barred by *Hunter* . . . and its progeny." It also argued that all of Mr. Manoogian's other claims "fail for lack of specificity or because they are not stand-alone claims."

The trial court granted the University's motion and dismissed Mr. Manoogian's complaint:

> [Mr. Manoogian's] claims are barred by Maryland law. As Maryland's appellate courts have made clear, for example, in *Hunter versus Board of Education of Montgomery County*, 292 Md. 481; *Taylor versus Baltimore City Public Schools*, 138 Md. App. 747; and *Gurbani versus Johns Hopkins Health Systems*, 237 Md. App. 261[,] that there is no claim available for educational malpractice.
>
> The Court finds that the vast majority of claims presented before the Court are founded upon or related to what amounts to educational malpractice. Furthermore, the Court agrees with the [University] that [Mr. Manoogian] has failed to plead fraud-based claims with particularity required by Maryland law. The Court also finds that the fraud-based claims are also pled as derivatives of his claims that are founded upon educational malpractice, which the Court has already determined to be barred by Maryland law.
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> As to the claims for defamation and false light, the Court further finds that the complaint fails to state a claim upon which relief can be granted. The complaint fails to identify any false statement made about [Mr. Manoogian] by [the University representatives] to a third party; it fails to state to whom false statements were made; and fails to identify with particularity any false statement.
>
> Finally, as to [Mr. Manoogian's] conspiracy, aiding and abetting, and respondeat superior claims, the Court finds that these are all founded upon the same substantive claims the

> Court has already deemed insufficient as a matter of law; and, therefore, the Court finds those counts fail as well.

Mr. Manoogian filed a timely appeal from the circuit court's written order. We discuss additional facts as necessary below.

II. DISCUSSION

This appeal presents one question for our review: whether the trial court erred in dismissing Mr. Manoogian's complaint for failure to state a claim for which relief can be granted.[1] We review a trial court's dismissal of a complaint for failure to state a claim for legal correctness. *See Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 193 (2012). "In order to withstand a motion to dismiss for failure to state a cause of action, the plaintiff must allege facts that, if proved, would entitle him or her to relief." *Pittway Corp. v.*

[1] Mr. Manoogian stated his Questions Presented as follows:

> Did the Circuit Court abuse its discretion granting Defendant-Appellee's Motion to Dismiss based upon the unanalyzed adoption of Defendant-Appellee's jargon term "educational malpractice?"
>
> Did the Circuit Court abuse its discretion by failing to presume the truth of the facts (and all reasonable inferences therefrom) as alleged by Plaintiff-Appellant in the Complaint?

The University stated its Questions Presented as follows:

> 1. Did Mr. Manoogian's complaint bring non-cognizable claims for educational malpractice, where they were based on allegations that his exams were improperly graded and that a different textbook should have been used?
>
> 2. If preserved for appellate review, would an amended complaint be futile?

Collins, 409 Md. 218, 238–39 (2009) (*citing Arfaa v. Martino*, 404 Md. 364, 380–81 (2008)).

A decision to dismiss is legally correct if "'the allegations [in the complaint] and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted.'" *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 496–97 (2014) (*quoting RRC Ne., LLC v. BAA Md. Inc.*, 413 Md. 638, 643–44 (2010)). But "[t]he well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.'" *Id.* at 497 (*quoting RCC Ne., LLC*, 413 Md. at 644).

A. Counts 2 (Breach Of Implied Warranty), 9 (Tortious Interference With Prospective Advantage), And 12 (Professional Malpractice) Are Barred Educational Malpractice Claims.

Mr. Manoogian asserts that we should "allow[] a trial on the merits for Complaints against a professional educator and/or an educational entity where the Complaint cogently alleges objective scientific falsehoods, misleading information, and/or mistakes of material fact being taught and/or scored as true or correct." But Counts 2 (breach of implied warranty), 9 (tortious interference with prospective advantage), and 12 (professional malpractice) all allege in some capacity that the University had a duty to provide accurate instruction and failed to do so. In support of those counts, in fact, Mr. Manoogian alleges repeatedly that his instructors failed to "provide accurate factual instruction and grading

consistent with common professional understanding (*i.e.*, the evidence-based current nursing best practices—*i.e.*, the basis for the current nursing standard-of-care)."

The titles of each count notwithstanding, the question is whether each asserts a claim for educational malpractice, a claim that is not cognizable under Maryland law. *Hunter*, 292 Md. at 484; *Gurbani*, 237 Md. App. 261, 315 (2018). The broad body of case law, both Maryland and federal, "overwhelmingly favors judicial deference to academic decisions at all levels of education." *Gurbani*, 237 Md. App. at 293. The answer in each instance turns on whether Mr. Manoogian's dismissal was premised on an "academic decision" of the University, relying on "professional judgment." *Id.* at 295 (cleaned up). And it was.

In *Hunter*, the seminal educational malpractice case, the Court of Appeals held that aggrieved students and parents cannot bring claims sounding in negligence and seeking money damages against a school. 292 Md. at 484. There, parents of a public elementary schooler accused the school system of evaluating their child negligently and having their child repeat first grade materials while physically placed in second grade, causing "embarrassment," "learning deficiencies," and "depletion of ego strength." *Id.* at 484. But the Court held that "the gravamen of petitioners' claim in this case sounds in negligence, asserting damages for the alleged failure of the school system to properly educate . . . ." *Id.* After analyzing other jurisdictions' approaches in rejecting educational malpractice claims, the Court agreed that money damages are "a singularly inappropriate remedy for asserted errors in the educational process." *Id.* at 487. Those kinds of claims "would in effect

position the courts of this State as overseers of both the day-to-day operation of our educational process as well as the formulation of its governing policies." *Id.* at 488.

Hunter was expanded by this Court in *Gurbani v. Johns Hopkins*, 237 Md. App. at 261. In that case, a medical student brought an action against her clinical instructors and school after the instructors gave her negative evaluations and dismissed her from the school's residency program. *Id.* at 287. We held that her claims for breach of contract, tortious interference, and negligence were improper educational malpractice claims based on "academic decision[s]" that were "the result of a careful and deliberate exercise of professional judgment." *Id.* at 297. Quoting *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78, 90 (1978), we noted that "'the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decisionmaking.'" *Gurbani*, 237 Md. App. at 294. For that reason, we defer to academic institutions' "decision[s] result[ing] from the actual exercise of professional judgment," *id.* at 298, and we held in that instance that Dr. Gurbani "may not use the courts to nullify their academic decisions." *Id.* at 315.

Mr. Manoogian tries to distinguish *Hunter* and *Gurbani* by arguing that those cases turned on "subjective assessments" rather than questions of "scientific evidence and facts," the latter of which, he argues, are capable of oversight by the courts. He "posits [that] it is a self-evident truism that Courts and Juries are finders of fact, and the instant case unquestionably centers upon material questions of fact and science for which expert

witness[es] are readily available at a trial on the merits." But his is a distinction without a difference: each of Mr. Manoogian's claims rests on the premise that Dr. Wood assigned the wrong textbook, and each, at its core, improperly seeks redress for his dissatisfaction with the quality of education he received at the University.[2] At the hearing on the University's motion, Mr. Manoogian conceded that the complaint alleges "that the course instructor not only *gave incorrect instruction* and gave incorrectly marked answers on her exam, but failed utterly to consider the facts when presented to her from the assigned textbook most current edition." (Emphasis added.) If that's not an allegation of educational malpractice, it's hard to imagine what is.

It is not the courts' role to second-guess the University's curriculum and decide for ourselves whether it "provide[s] accurate factual instruction and grading consistent with common professional understanding" as Mr. Manoogian asks us (and the circuit court before us) to do here. By his own account, Mr. Manoogian "*chose* to use the current 2018 9th edition" for both courses, a move that flouted the directions in the course syllabi.

[2] Mr. Manoogian's claim for tortious interference with prospective advantage (Count 9) also fails because "'plaintiffs must identify a possible future relationship which is likely to occur, absent the interference, with specificity.'" *Mixter v. Farmer*, 215 Md. App. 536, 549 (2013) (*quoting Baron Fin. Corp. v. Natanzon*, 471 F. Supp. 2d 535, 546 (D. Md. 2006)); *see also Baron Fin. Corp.*, 471 F. Supp. 2d at 542 (stating there is no cause of action to recover for tortious interference with one's occupation or livelihood in general, but there must be interference with existing or anticipated business relationships). The complaint points to no potential relationship and alleges only that he had an expectation to obtain his degree and sit for a licensing exam. Mr. Manoogian fails as well to allege a viable claim for breach of implied warranty (Count 2). Implied warranties apply to the sales of goods, not to services (*i.e.*, education). *Roberts v. Suburban Hosp. Ass'n*, 73 Md. App. 1, 8, 16 (1987) (*citing* Md. Code, §§ 2-314, 2-315 of the Commercial Law ("CL") Article).

(Emphasis added.) And it's impossible to consider his claims without reviewing the academic decision of his instructor to assign a particular textbook, or in this case a particular edition of a textbook.

The University's academic decision of what constitutes education around "nursing best practices" is a subjective assessment of educational quality, of which judicial review is consistently rejected by Maryland courts and state and federal courts. *See Gurbani*, 237 Md. App. at 294–95 ("In the Court's view, '[a] graduate or professional school is, after all, the best judge of its students' academic performance and their ability to master the required curriculum.'" (*quoting Horowitz*, 435 U.S. at 85 n.2)); *Lovelace v. Se. Mass. Univ.*, 793 F.2d 419, 426 (1st Cir. 1986) (holding courts have no business intruding in matters of "course content" and "grading policy" which are "core university concerns"); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) (a university must have freedom "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (citation omitted)). This is, without a doubt, a "decision result[ing] from the actual exercise of professional judgment," and thus one that we cannot disturb. *Gurbani*, 237 Md. App. at 298. The circuit court dismissed Counts 2, 9, and 12 properly for failure to state a claim for which relief can be granted.

B. Counts 3 Through 6 (Fraud Claims) And Counts 10 (Defamation) And 11 (False Light) Are Barred For Failure To Plead With Sufficient Specificity.

To the extent that Mr. Manoogian's fraud-based claims don't rise or fall on the outcome of the educational negligence claims, as Counts 1, 7, and 8 do (see below), the

circuit court found properly that Mr. Manoogian's fraud-based claims and defamation/false light claims were not pled with sufficient specificity. At the hearing in the circuit court, Mr. Manoogian argued that the defamatory statements were the "allegations of my ignorance as to the correct answers for the exams." And in his appeal, he asserts that "the Complaint clearly implies communication between and among [University] faculty and staff ridiculing [Mr. Manoogian's] alleged ignorance (and probably much worse)." When responding to argument that his complaint lacks specificity, he cites generally to paragraphs 1–63 of his complaint. But the language in those paragraphs can't satisfy the pleading standards for these claims.

1. The fraud claims fail because Mr. Manoogian doesn't plead any specific misrepresentations made by the University.

Mr. Manoogian's complaint lacks the specificity required to state a claim for fraud. "Maryland courts have long required parties to plead fraud with particularity":

> The requirement of particularity ordinarily means that a plaintiff must identify who made what false statement, when, and in what manner (*i.e.*, orally, in writing, etc.); why the statement is false; and why a finder of fact would have reason to conclude that the defendant acted with scienter (*i.e.*, that the defendant either knew that the statement was false or acted with reckless disregard for its truth) and with the intention to persuade others to rely on the false statement.

McCormick v. Medtronic, Inc., 219 Md. App. 485, 527–28 (2014) (citation omitted). The only misrepresentation we can infer from the complaint is that the University gave the wrong exam answers to Mr. Manoogian or didn't complete a proper review of his academic concern forms and grade review requests.

Counts 3 (fraud by intentional misrepresentation) and 5 (fraud by negligent misrepresentation) refer vaguely to the University making "one or more misrepresentation(s) of material fact(s)," but contain no specificity about what the misrepresentations were or what they allegedly misrepresented. Mr. Manoogian doesn't point to any specific "false representation" of the defendants, doesn't specify who made any such statement(s) and to whom, or describe the manner in which the statement(s) was made (*e.g.*, written or oral, etc.). The "nexus between the facts and the conclusion" in Mr. Manoogian's complaint take the form of pure speculation, *see McMahon v. Piazze*, 162 Md. App. 588, 597 (2005), and drawing all "*reasonable*" inferences in favor of Mr. Manoogian can't resolve this issue in his favor. *See Gurbani*, 237 Md. App. at 267 (cleaned up).

With respect to Count 4 (fraud by concealment, deceit, or non-disclosure), Mr. Manoogian alleged generally that the University had the duty to disclose Dr. Wood's exam questions, his answers, and the "purportedly correct answers." But the factual allegations he uses to support his claims contradict the broader assertion. He *was* given access to the exams—indeed, he refers repeatedly to the "factual analysis" he gave to the University by "comparing Dr. Wood's given answers for affirmative exam credit with the evidence-based nursing best practices (*i.e.*, the basis for the current nursing standard-of-care) published within [the 9th edition textbook]." He admitted he was "permitted to read a hardcopy of the Spring 2019 [Critical Care Nursing] comprehensive final exam . . . [and] took notes so he could later analyze for errors by Dr. Wood." And even if the University withheld some

exam answers from Mr. Manoogian, that was a reasonable academic decision entitled to deference, especially since Mr. Manoogian was afforded opportunity to apply for reinstatement and the exam may be re-used. *See Gurbani*, 237 Md. App. at 295 ("judges 'may not override [an academic decision] unless it is such a substantial departure from accepted academic norms as to demonstrate that the person . . . responsible did not actually exercise professional judgment'" (*quoting Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985))).

Likewise, with respect to Count 6 (constructive fraud), Mr. Manoogian alleged broadly that he was in a confidential relationship with the University through its policies and professional ethical obligations and that the University breached its duties to him in a way that "violated a confidence" with Mr. Manoogian or "injured the public interest." But constructive fraud is the unintentional deception or misrepresentation that causes injury to another, *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 421 (2006) (*citing* Black's Law Dictionary 286 (8th ed. 2004)), and has "the inherent requirement that the person or entity defrauded must have been in some way deceived or misled by the actions of the person or entity alleged to have committed the fraud." *Id.* Again, the complaint fails to allege any specific deception by the University independent from his educational malpractice allegations.

Reading the complaint in a light most favorable to Mr. Manoogian, and drawing all reasonable inferences in his favor, we cannot find any misrepresentation or non-disclosure that the University allegedly made that could have contributed to Mr. Manoogian's ultimate

dismissal from the University's nursing program. His claims turn entirely on the same allegations underlying his educational malpractice claims, and given the deference we give to academic institutions making professional, academic decisions, *Gurbani*, 237 Md. App. at 294–96, we can't and won't disturb the circuit court's decision here.

2. The defamation and false light claims fail because Mr. Manoogian hasn't pleaded any specific public disclosures.

Mr. Manoogian also challenges the circuit court's dismissal of his defamation and false light claims. Defamation is the publication of a false "defamatory statement" that "'tends to expose a person to public scorn, hatred, contempt, or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person.'" *Independent Newspapers, Inc. v. Brodie*, 407 Md. 415, 441 (2009) (*quoting Offen v. Brenner*, 402 Md. 191, 198–99 (2007)). And like the fraud claims, "'bald assertions and conclusory statements by the pleader will not suffice.'" *Aleti v. Metro. Balt., LLC*, 251 Md. App. 482, 498 (2021) (*quoting RRC Ne., LLC*, 413 Md. at 644); *see also Barclay v. Castruccio*, 469 Md. 368, 373–74 (2020) ("Mere conclusory charges that are not factual allegations may not be considered." (citation omitted)). In addition, false light invasion of privacy liability "requires publicity, meaning that 'the disclosure of the private facts must be a public disclosure, and not a private one.'" *Furman v. Sheppard*, 130 Md. App. 67, 77 (2000) (*quoting Hollander v. Lubow*, 277 Md. 47, 57 (1976)).

Mr. Manoogian alleged that University employees "made or repeated one or more false verbal statement(s) tending to expose [him] to public scorn, hatred, contempt, or ridicule." With each of these claims, though, Mr. Manoogian fails to identify the "false

verbal statement(s)" or to whom they were made, nor does he allege any "misrepresentation to one or more third person(s)"—let alone that any misrepresentation was made publicly. By all accounts—most importantly, Mr. Manoogian's—the allegations involve private communications between University employees and Mr. Manoogian. The circuit court properly dismissed these claims.

C. Counts 1 (*Respondeat Superior*), 7 (Civil Conspiracy), And 8 (Aiding & Abetting) Are Barred Derivative Claims.

The circuit court also correctly found that Mr. Manoogian's *respondeat superior*, civil conspiracy, and aiding and abetting claims, Counts 1, 7, and 8, respectively, derive entirely from his barred educational malpractice claims. Each of these claims relies on otherwise tortious conduct—an employer can respond only to an employee's actionable tort, and claims for conspiracy and aiding and abetting require an underlying tortious act. *See Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 296 (2018) ("*Respondeat superior* is 'a means of holding employers . . . vicariously liable for the tortious conduct of an employee . . . .'") (*quoting Serio v. Baltimore County*, 384 Md. 373, 397–98 (2004)); *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 154 (2007) ("Conspiracy is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff." (cleaned up)); *Alleco, Inc. v. Harry & Jeanette Weinberg Found., Inc.*, 99 Md. App. 696, 700–01 (1994) (no standalone tort liability for aiding and abetting someone else in committing a tort). In all three counts, the alleged tort underlying these claims is the alleged educational malpractice that, for the reasons discussed above, is not

actionable. Because these claims sink or swim along with the educational malpractice claims, the trial court properly dismissed them as well.

D. Mr. Manoogian Concedes That Amendment Would Be Futile.

Under Maryland Rule 2-322(c), "If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend." And here, the court did not expressly grant leave to amend. "Ordinarily, . . . when a circuit court dismisses a complaint for a pleading defect, it should afford the plaintiff an opportunity to amend the complaint and to correct the defect." *McCormick*, 219 Md. App. at 528–29 (*citing Thomas v. Ford Motor Co.*, 48 Md. App. 617, 631–32 (1981)). But a trial court's decision on a motion for leave to amend a complaint is reviewed for abuse of discretion. *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443–44 (2002). And we agree with the University that the circuit court didn't abuse its discretion because amendment would be futile. Mr. Manoogian, for his part, admits as much in his briefs, stating that "amending the Complaint for 'particularity' would merely be a typographical exercise" involving cross-referencing the facts as already presented in his complaint. Having reviewed Mr. Manoogian's complaint carefully, we agree with the circuit court that he doesn't allege any conduct that could entitle him to relief under Maryland law and he concedes that he has no additional facts to allege. We affirm the circuit court's dismissal of his complaint without leave to amend.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.