

Circuit Court for Baltimore City
Case No. 24-C-18-001555

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2454

September Term, 2019

LESLIE W. KIDNER
and
CHRISTOPHER R. WATSON

v.

TRACEY S. WATSON

Fader, C.J.
Reed,
Zic,

JJ.

Opinion by Zic, J.

Filed: October 14, 2021

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Leslie Kidner and Christopher Watson, appellants, filed a complaint against Tracey Watson, appellee, in the Circuit Court for Baltimore City, which alleged eight causes of action. Four counts were alleged to have been committed by appellee in her capacity as the trustee of a trust: intentional misrepresentation (Count I), conversion (Count II), negligence (Count III), and breach of fiduciary duty (Count IV). The other four causes of action were alleged to have been committed by appellee in her personal capacity: intentional misrepresentation (Count V), conversion (Count VI), negligence (Count VII), and breach of fiduciary duty (Count VIII).

Appellee filed a motion to dismiss all counts for failure to state a claim upon which relief can be granted. Following a hearing, the court granted appellee’s motion in part and dismissed Counts I, II, III, IV, and VIII. Then, following a second motions hearing, the court dismissed Counts V, VI, and VII, but permitted appellants to amend their complaint to add a ninth count: tortious interference with an expected inheritance (Count IX). Appellee subsequently moved to dismiss that count for failure to state a claim. Following a third hearing, the court granted appellee’s motion and dismissed Count IX.¹

In this appeal, appellants present four questions,² which we have rephrased and consolidated into a single question:

¹ As detailed in the Background section, the three motions hearings were before three different judges.

² Appellants posed the following four questions:

1. Was the trial court’s dismissal of Counts I, II, III and IV of the Appellants’ Complaint legally correct when the

1. Did the circuit court err in dismissing each of the counts in appellants’ complaint?

For the following reasons, we hold that the circuit court should permit appellants to proceed on Count IV, breach of fiduciary duty, and Count IX, tortious interference with an expected inheritance. We also hold that the court did not err in dismissing the remaining counts. We therefore vacate in part and affirm in part the judgments of the court.

BACKGROUND

Given the procedural posture of this case—an appeal from a motion to dismiss for failure to state a claim upon which relief can be granted—the following facts are adopted from the amended complaint, which we presume as true.

Circuit Court has jurisdiction to hear such claims under Annotated Code of Maryland, Estates and Trusts Article, §14.5-908 (2019), and because the Appellants requested relief as set forth in Annotated Code of Maryland, Estates and Trusts Article, §14.5-901 (2019)?

2. Was the trial court’s dismissal of Counts IV and VIII of the Appellants’ Complaint legally correct when Maryland law recognizes breach of trust and breach of fiduciary duty as cognizable claims?
3. Was the trial court’s dismissal of Counts V, VI, and VII of the Appellants’ Complaint legally correct when the Appellants have standing to bring such claims under Maryland [l]aw and the Appellee has a legal duty to the Appellants?
4. Was the trial court’s dismissal of Count IX of the Appellants’ Complaint legally correct when intentional interference with expected inheritance is necessary to afford complete, but traditional relief and there are probate assets and non-probate assets?

Appellants and appellee are siblings. In 2011, appellee became the trustee of a trust (“Trust”) that had been created pursuant to the last will and testament of the parties’ mother, Jean Watson (“Mother”), who had passed away in 2009. The parties’ father, David Watson (“Father”), was the beneficiary of the Trust. Around that same time, appellee also began assisting Father with his finances, which involved making various distributions out of Father’s assets.

In 2016, Father passed away. In accordance with the terms of the Trust, appellants and appellee became the beneficiaries of the Trust. Appellants expected the Trust to contain approximately \$148,521.74, a portion of which they expected to receive. Appellants also expected to receive a share of Father’s other assets, which they believed totaled \$1.7 million.

Shortly after Father’s death, an estate was opened, and a will was admitted for probate. A personal representative was thereafter named, and letters of administration were issued by the Orphans’ Court for Baltimore City.

Around that same time, appellants discovered that the assets they had expected to receive upon Father’s death had been “significantly depleted.” Several months later, appellants filed a Caveat Action in the Orphans’ Court, contesting the validity of Father’s will. The personal representative subsequently resigned, and no one was appointed as his replacement. The Orphans’ Court stayed the Caveat Action pending the outcome of litigation in the circuit court.

On March 20, 2018, appellants filed their original complaint in the Circuit Court for Baltimore City, which set forth the eight causes of action.

Counts I, II, III, and IV

The primary allegation in Counts I, II, III, and IV was that appellee, in her capacity as trustee of the Trust, had failed to distribute to appellants their share of the Trust assets, which totaled \$148,521.74. Count I, which was titled “Intentional Misrepresentation,” alleged that appellee, in failing to distribute said assets, intentionally failed to disclose certain facts to the detriment of appellants. Count II, which was titled “Conversion,” alleged that appellee converted appellants’ share of the Trust assets as her own. Count III, which was titled “Negligence,” alleged that appellee acted negligently in failing to disclose and distribute said assets. Count IV, which was titled “Breach of Trust and Breach of Fiduciary Duty,” alleged that appellee’s failure to disclose and distribute the Trust assets was a breach of her fiduciary duty. In each of the four counts, appellants asked for damages in the amount of \$148,521.74, plus interest, costs, and attorneys’ fees. In Count IV, appellants also asked for various equitable relief, including that the court assume jurisdiction over the Trust; appellee be ordered to restore the monies she withdrew from the Trust; appellee be removed as trustee; appellee’s compensation as trustee be reduced or denied; and a lien or constructive trust be placed over the Trust assets.

Counts V, VI, VII, and VIII

Counts V, VI, VII, and VIII were lodged against appellee personally. The primary allegation in those counts was that appellee, in assisting Father with his other assets in the years leading up to his death, wrongfully made various distributions for her sole benefit and to the detriment of Father, Father’s estate, and, by extension, appellants, who expected to receive a share of Father’s substantial assets upon his death.

Count V, which was titled “Intentional Misrepresentation,” alleged that appellee, in making distributions for her sole benefit while managing Father’s assets prior to his death, wrongfully concealed her actions. Count VI, which was titled “Conversion,” alleged that appellee had wrongfully converted Father’s assets for her benefit and to the detriment of Father’s estate and appellants. Count VII, which was titled “Negligence,” alleged that appellee had a duty to manage Father’s assets so as not to deplete them and that she violated that duty by distributing those assets for her sole benefit. Count VIII, which was titled “Breach of Fiduciary Duty,” alleged that appellee, as part of a confidential relationship she had with Father, had a fiduciary duty to disclose, account, and distribute Father’s assets to his estate and appellants and that appellee, in failing to perform those obligations, violated her fiduciary duty. In each of the four counts, appellants asked for damages in the amount of \$500,000.00, plus interest, costs, and attorneys’ fees. In Count VIII, appellants also asked for various equitable relief, including that appellee be ordered to restore the monies she had taken and that a lien be imposed on her interest in certain real property.

Dismissal of Counts I, II, III, IV, and VIII

On May 7, 2019, appellee filed a “Motion to Dismiss And/Or for Summary Judgment.” The circuit court held the first of three hearings in this case on June 26, 2019. At the first hearing, appellee argued that Count I (intentional misrepresentation as trustee), Count II (conversion as trustee), Count III (negligence as trustee), and Count IV (breach of fiduciary duty as trustee) should be dismissed because they were “common law tort claims” and thus were not viable causes of action against appellee in her capacity as trustee. Appellee further argued that Count IV (breach of fiduciary duty as trustee) and Count VIII (breach of fiduciary duty, personally) should be dismissed because breach of fiduciary duty was not a recognized cause of action in Maryland. As to Count V (intentional misrepresentation, personally) and Count VII (negligence, personally), appellee argued that appellants failed to plead that she had a duty to appellants in her personal capacity. Appellee also argued, as to Count VI (conversion, personally), that appellants failed to plead that they had any ownership interest in Father’s assets.

In an amended order³ dated July 15, 2019, the circuit court granted appellee’s motion as to Counts I, II, III, IV, and VIII and dismissed those counts. In so doing, the court found that Counts I, II, III, and IV “should have been brought up through the Estates and Trust action.” The court also found, as to Count VIII, that “there is no

³ The original order stated that appellee’s “Motion to Dismiss and/or Summary Judgment” was granted as to Counts I, II, III, IV, and VIII and denied as to Counts V, VI, and VII. The amended order ruled the same but clarified that the motion was to be granted in part and denied in part and further found “that Breach of Fiduciary Duty is not a separate cause of action.”

separate cause of action for breach of fiduciary duty.” The court denied appellee’s motion as to Counts V, VI, and VII, finding that there were “material facts that can only be decided by a trier of fact.”

Dismissal of Counts V, VI, and VII

At a second motions hearing on August 20, 2019, appellee made an oral motion to dismiss Counts V (intentional misrepresentation, personally), VI (conversion, personally), and VII (negligence, personally) for failure to state a claim, raising the same arguments she had raised in her original motion to dismiss. After hearing arguments from both parties, the circuit court issued an order the same day, which granted the motion on the grounds that appellants had failed to state a claim upon which relief could be granted. The court, citing the “four corners of the complaint,” found that Counts V and VII failed because appellants had not alleged that appellee owed them a legal duty. As to Count VI, the court found that appellants had not shown that they had a possessory interest in Father’s assets at the time of the alleged conversion. The court did, however, grant appellants leave to amend the complaint to state a claim for tortious interference with an expected inheritance.

Count IX

On September 4, 2019, appellants amended their complaint to include a ninth count, which was titled “Tortious Interference with an Expected Inheritance,” against appellee personally. In that count, appellants alleged that (1) they expected to receive an inheritance from Father’s estate; (2) there was a reasonable certainty that their expectancy

would have been realized but for appellee’s interference; (3) appellee, knowing of the expectancy, intentionally interfered; (4) appellee engaged in tortious conduct toward Father that included fraud, duress, conversion and undue influence; and (5) appellants had been damaged as a result of appellee’s actions. Appellants asked for damages in the amount of \$1,178,725.62, plus costs, interest, and attorneys’ fees.

Dismissal of Count IX

Appellee thereafter filed a motion to dismiss or, in the alternative, motion for summary judgment on Count IX. On January 29, 2020, the circuit court held a hearing on that motion. The circuit court subsequently granted the motion and dismissed Count IX in an order dated January 30, 2020. The court found that appellants’ claim was not cognizable and that, even if it were, appellants failed to set forth sufficient facts to make out such a claim. The court also ruled, in the alternative, that summary judgment was appropriate. Based on the pleadings and the facts presented by the parties at the hearing, the court found that there was no genuine dispute of material fact that the PNC account and the Trust were non-probate assets and that the appellee would be entitled to judgment as a matter of law. Appellants then noted this appeal.

DISCUSSION

I. PARTIES’ CONTENTIONS

Appellants contend that the circuit court erred in dismissing their complaint. Specifically, appellants maintain that the court erred in determining that Count I (intentional misrepresentation as trustee), Count II (conversion as trustee), Count III

(negligence as trustee), and Count IV (breach of fiduciary duty as trustee) needed to be brought “up through the estates and trusts action.” Appellants also maintain that Count IV (breach of fiduciary duty as trustee) and Count VIII (breach of fiduciary duty, personally) should not have been dismissed because Maryland law recognizes breach of trust and breach of fiduciary duty as cognizable claims.

Appellants further assert that Count V (intentional misrepresentation, personally), Count VI (conversion, personally), and Count VII (negligence, personally) should not have been dismissed because appellants had standing to sue as interested persons of Father’s estate and because their rights as legatees were “substantially affected by peculiar circumstances: fraud, collusion, undue influence and conversion on the part of the Appellee.” Finally, appellants claim that the dismissal of Count IX (tortious interference with an expected inheritance) was legally incorrect because “the intentional interference with [an] expected inheritance is necessary to afford complete, but traditional relief and there were probate assets and non-probate assets.”

Appellee argues that the circuit court properly dismissed Counts I, II, and III because trustees are not subject to tort claims. Appellee contends that the court correctly dismissed Counts IV and VIII because Maryland does not recognize breach of fiduciary duty as an independent cause of action. As to the remaining counts, appellee claims that the court’s reasoning for dismissing those claims was legally correct.

II. STANDARD OF REVIEW

“A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings.” *Ricketts v. Ricketts*, 393 Md. 479, 491 (2006) (quoting *Afamefune ex rel. Afamefune v. Suburban Hosp., Inc.*, 385 Md. 677, 682 n.4 (2005)). “When deciding whether to grant a motion to dismiss a complaint as a matter of law, a trial court is to assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff.” *Ceccone v. Carroll Home Servs., LLC*, 454 Md. 680, 691 (2017). Those facts, however, “must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.” *State Center, LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 497 (2014) (quoting *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010)). “Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.” *Ricketts*, 393 Md. at 492. “When an appellate court reviews a trial court’s grant of a motion to dismiss, the appellate court applies the same standard to assess whether the trial court’s decision was legally correct.” *Ceccone*, 454 Md. at 691.

If, in ruling on a motion to dismiss, a court considers matters outside of the pleadings, the court must treat the motion to dismiss as a motion for summary judgment pursuant to Maryland Rule 2-501. *D’Aoust v. Diamond*, 424 Md. 549, 572-73 (2012). Under that rule, a court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and

that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501. “In reviewing the grant of summary judgment, the appellate court asks whether it was legally correct, without deference to the trial court.” *Muse-Ariyoh v. Bd. of Educ. of Prince George’s County*, 235 Md. App. 221, 235 (2017). “We evaluate ‘the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-pleaded facts against the moving party[.]’” *Id.* (quoting *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 263 (2017)). “In conducting our review of a grant of a motion for summary judgment, we consider ‘only the grounds upon which the trial court relied in granting summary judgment.’” *D’Aoust*, 424 Md. at 575 (quoting *River Walk Apartments, LLC v. Twigg*, 396 Md. 527, 541-42 (2007)).

III. ANALYSIS

After the circuit court issued its rulings, there have been two significant cases decided by the Court of Appeals that affect our approach in this case: *Barclay v. Castruccio*, 469 Md. 368 (2020) and *Plank v. Cherneski*, 469 Md. 548 (2020), which recognized independent causes of actions for tortious interference with an expected inheritance and breach of fiduciary duty, respectively. While we acknowledge that the circuit court did not have the benefit of this guidance from the Court of Appeals at the time of its rulings, we vacate the circuit court’s orders as to Counts IV and IX in light of *Barclay’s* and *Plank’s* recognition of these causes of actions. We also conclude that the court correctly dismissed the remaining counts.

A. Count IX

We begin our analysis by discussing Count IX (tortious interference with an expected inheritance). The tort was first recognized by the Court of Appeals in *Barclay v. Castruccio*. 469 Md. at 390. There, the Court adopted the standards set forth in Section 19 of the Third Restatement of Torts, which provides:

- (1) A defendant is subject to liability for interference with an inheritance or gift if:
 - (a) the plaintiff had a reasonable expectation of receiving an inheritance or gift;
 - (b) the defendant committed an intentional and independent legal wrong;
 - (c) the defendant’s purpose was to interfere with the plaintiff’s expectancy;
 - (d) the defendant’s conduct caused the expectancy to fail; and
 - (e) the plaintiff suffered economic loss^[4] as a result.

⁴ Section 19(1)(e) of the Third Restatement of Torts states that the plaintiff must have “suffered *economic loss* as a result” of the defendant’s conduct. Restatement (Third) of Torts: Liab. for Econ. Harm § 19 (Am. L. Inst. 2020) (emphasis added). In listing the elements of § 19 in *Barclay*, however, the Court of Appeals detailed subsection (1)(e) as “the plaintiff suffered *injury* as a result.” 469 Md. at 377 (emphasis added). Yet, the Court also stated in its conclusion: “In sum, we recognize the tort of intentional interference with a prospective gift or inheritance, and *adopt the standards set forth in Section 19 of the Third Restatement of Torts.*” *Id.* at 390 (emphasis added). Because the Court declared that it adopted the standards set forth in § 19, we use “economic loss” as enumerated in § 19. Nevertheless, we note that the difference between “economic loss” and “injury” is immaterial for this case.

- (2) A claim under this Section is not available to a plaintiff who had the right to seek a remedy for the same claim in a probate court.

Restatement (Third) of Torts: Liab. for Econ. Harm § 19 (Am. L. Inst. 2020); *Barclay*, 469 Md. at 377 (listing the elements).

In adopting the tort of intentional interference with an inheritance or gift, the Court of Appeals noted that such an action “offers an opportunity for litigants to recover directly from a bad actor, rather than from an estate.” *Barclay*, 469 Md. at 380-81 (quoting Rebecca M. Murphy & Samantha M. Clark, *A New Hope: Tortious Interference with an Expected Inheritance in Rhode Island*, 22 Roger Williams U. L. Rev. 531, 567 (2017)). The Court observed that, where a probate court can remove a provision that had been added to a will by way of fraud, the court “cannot add to the will a provision that is not there nor can the probate court bring into being a will which the testator was prevented from making and executing by fraud.” *Barclay*, 469 Md. at 381 (quoting *Dewitt v. Duce*, 408 So. 2d 216, 219 n.7 (Fla. 1981)). The Court highlighted the following example:

[I]f a testator executes a will benefiting two heirs, and one heir later convinces the testator to change the will in his favor using fraud, at the testator’s death, the malfeasant heir can only benefit. The original will still benefits both heirs, so even if the later will is voided through a will contest because it was procured by fraud, the bad actor can still take under the will. Worse still, the bad actor’s attorneys’ fees will generally be paid by the estate. Arguably, then, the tortfeasor risks nothing by engaging in tortious conduct that interferes with a third party’s expected inheritance.

Barclay, 469 Md. at 381 (alteration in original) (quoting Murphy & Clark, *supra*, at 568).

The Court of Appeals noted, however, that the tort is not available when a plaintiff can bring the same claim in probate court, “even if it offers less generous relief than would be attainable in tort.” *Barclay*, 469 Md. at 382 (quoting Restatement (Third) of Torts: Liab. for Econ. Harm § 19 cmt. c). The Court also noted that, although there was “no explicit requirement that the . . . interference occur at a specific time or include personal contact by the [tortfeasor] with the third party,” there nevertheless must be some relationship in which the tortfeasor interfered. *Barclay*, 469 Md. at 383-88. That is, “at the time of the alleged interference, there must be something to interfere with, i.e., a current or prospective relationship or contract.” *Id.* at 383.

Here, the circuit court dismissed appellants’ Count IX in part because, according to the court, the tort of intentional interference with a prospective inheritance was not a cognizable claim. That said, when the court issued its decision, *Barclay* had yet to be decided, and neither appellants nor the court had the benefit of the *Barclay* holding in the proceedings below. *Barclay* makes clear, however, that Maryland recognizes the tort of intentional interference with a prospective inheritance. Given the change in the legal landscape brought about by *Barclay*, we think it would be prudent for appellants to be permitted to amend their Count IX in light of *Barclay* and vacate the circuit court’s ruling as to Count IX. Upon that amendment, and assuming that appellee renews her motion to dismiss, the court should evaluate the sufficiency of the pleading pursuant to *Barclay*.

We recognize that the circuit court also granted, in the alternative, appellee’s motion for summary judgment, finding that appellee was entitled to judgment as a matter

of law. Because we hold that appellants should be permitted to amend their Count IX, we vacate the court’s grant of summary judgment. Again, once appellants have amended their complaint, the court should assess the sufficiency of that claim pursuant to *Barclay*. We express no view as to the merits of appellants’ claim.

B. Counts IV and VIII

We next turn to Count IV (breach of fiduciary duty as trustee) and Count VIII (breach of fiduciary duty, personally). In *Plank v. Cherneski*, the Court of Appeals held that “breach of fiduciary duty may be actionable as an independent cause of action.” 469 Md. at 597. The Court explained that, to establish such a breach, “a plaintiff must show: ‘(i) the existence of a fiduciary relationship; (ii) breach of the duty owed by the fiduciary to the beneficiary; and (iii) harm to the beneficiary.’” *Id.* at 599 (quoting *Froelich v. Erickson*, 96 F. Supp. 2d 507, 526 (D. Md. 2000)). The Court stated that the remedy for the breach depends “upon the type of fiduciary relationship, and the remedies provided by law, whether by statute, common law or contract.” *Plank*, 469 Md. at 599. The Court stated further that “a court should consider the nature of the fiduciary relationship and possible remedies afforded for a breach, on a case-by-case basis.” *Id.* The Court cautioned that its holding did “not mean that every breach will sound in tort, with an attendant right to a jury trial and monetary damages.” *Id.* Rather, “[t]he remedy will be dependent upon the specific law applicable to the specific fiduciary relationship at issue.” *Id.* at 599-600.

The type of fiduciary relationship at issue in the present case, i.e., one between a trustee and beneficiaries of a trust, is recognized by the Maryland Trust Act, which is set forth in Title 14.5 of the Estates and Trusts Article of the Maryland Code. *See also Plank*, 469 Md. at 598 (quoting Deborah A. DeMott, *Relationships of Trust and Confidence in the Workplace*, 100 Cornell L. Rev. 1255, 1261 (2015)) (“Well-known examples of habitual or categorical fiduciary relationships include those between trustees and beneficiaries[.]”). Within that statutory scheme, a trustee has certain express duties, which includes that the “trustee shall administer the trust solely in the interests of the beneficiaries.” Md. Code Ann., Est. & Trusts § 14.5-802(a). The statutory scheme also expressly states that “[a] violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust” and that such a breach “may occur by reason of an action or by reason of a failure to act.” Est. & Trusts § 14.5-901(a). Finally, the statutory scheme sets forth certain equitable remedies available to a court in the event of a breach, including compelling the trustee to perform certain duties or redress a breach, ordering the trustee to account, removing the trustee, and reducing or denying compensation to the trustee. Est. & Trusts § 14.5-901(b). The statutory scheme further provides that a trustee who commits a breach is liable to the beneficiaries “for the greater of: (1) [t]he amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or (2) [t]he profit the trustee made by reason of the breach.” Est. & Trusts § 14.5-902(a).

Turning to the allegations in appellants’ Count IV, we hold that appellants pled sufficient facts to establish a prima facie claim for breach of fiduciary duty in light of *Plank*. Although *Plank* was not decided at the time of the circuit court’s ruling, appellants alleged: (1) the existence of a fiduciary relationship between them and appellee by way of the Trust; (2) a breach of appellee’s fiduciary duty by alleging that appellee failed to safeguard and then wrongfully converted trust assets totaling \$148,521.74; and (3) that they had been harmed by appellee’s breach by alleging that they did not receive said assets. As for the requested relief, all of the equitable remedies requested by appellants are set forth in § 14.5-901(b) of the Estates and Trusts Article. Moreover, the monetary damages of \$148,521.74 that appellants requested as compensation for the breach were pled as the amount necessary to restore the value of the Trust property to what they would have been had the alleged breach not occurred. Est. & Trusts § 14.5-902(a). Appellants, however, also sought non-equitable relief, such as punitive damages. Because “beneficiar[ies]’ remedies [are] limited to whatever rights [they] had in equity,”⁵ punitive damages are not available under Count IV. *Plank*, 469 Md. at 597; see *Kann v. Kann*, 344 Md. 689, 703 (1997) (“[T]he remedies of the beneficiary against the trustee are exclusively equitable.”).

In short, appellants “describe[d] a fiduciary relationship, identifie[d] a breach, and request[ed] a remedy historically recognized by statute, contract, or common law

⁵ A beneficiary, however, can maintain an action at law in situations “where the trustee’s duty is immediately and unconditionally to pay money or to transfer a chattel to the beneficiary.” *Kann v. Kann*, 344 Md. 689, 703 (1997).

applicable to the specific type of fiduciary relationship and [alleged] the specific breach.” *Plank*, 469 Md. at 599. Given *Plank*’s recognition of breach of fiduciary duty as an independent cause of action, we vacate the court’s ruling to permit the appellants to proceed on Count IV to the extent they are seeking appropriate equitable relief. *Id.*

Conversely, Count VIII (breach of fiduciary duty, personally) is not an actionable claim. In that count, appellants failed to plead any facts establishing a legally recognized fiduciary relationship between them and appellee, other than the one created by the Trust. Thus, even under the recent ruling in *Plank*, appellants’ Count VIII failed to state a claim upon which relief can be granted, and the circuit court was correct in dismissing it.

C. Counts I, II, III, V, VI, and VII

Lastly, we hold that the circuit court was correct in dismissing the remaining counts. As a preliminary matter, we note that the court dismissed Counts I, II, and III because, according to the court, those counts “should have been brought up through the Estates and Trust action.” It is unclear from the record exactly what the court meant when it made that statement, thus we cannot affirm on the grounds provided by the court. We may, however, affirm on other grounds. *See Norman v. Borison*, 192 Md. App. 405, 419 (2010) (quoting *State v. Rush*, 174 Md. App. 259, 289 (2007), *aff’d in part and rev’d in part on other grounds*, 403 Md. 68 (2008)) (noting that, in reviewing the granting of a motion to dismiss for failure to state a claim, “the appellate court may affirm the court’s decision on any ground adequately shown by the record”).

Count I (intentional misrepresentation as trustee), Count II (conversion as trustee), and Count III (negligence as trustee), were all tort claims. Such claims are not actionable against appellee in her capacity as trustee. *Kann*, 344 Md. at 710-13 (holding that a plaintiff cannot recover tort damages for an alleged breach of a fiduciary duty by a trustee); *see also Plank*, 469 Md. at 600 (recognizing the *Kann* holding). Moreover, Counts I, II, and III were identical to Count IV in that they all alleged essentially the same wrong—that appellee breached her duty as trustee, denied appellants their share of the Trust assets, and caused appellants to lose \$148,521.74. Thus, if any damages are to be awarded, they should be awarded solely under Count IV. *See Jacob v. Davis*, 128 Md. App. 433, 468 (1999) (“The equitable nature of a beneficiary’s claims . . . does not preclude the beneficiary from recovering compensatory damages against a trustee under proper circumstances.”).

As to Count V (intentional misrepresentation, personally), appellants alleged that appellee failed to disclose certain material facts. Appellants did not, however, allege any facts showing that appellee had a legal duty to appellants. *See Crystal v. Midatlantic Cardiovascular Assocs., P.A.*, 227 Md. App. 213, 231-32 (2016) (quotation omitted) (“To prevail on a claim of fraudulent concealment, a plaintiff must show that . . . the defendant owed a duty to the plaintiff to disclose a material fact[.]”). Similarly, in their Count VII (negligence, personally), appellants failed to set forth any facts establishing that appellee owed them a legal duty. *See Remsburg v. Montgomery*, 376 Md. 568, 582 (2003) (quotations omitted) (“[F]or a plaintiff to state a prima facie claim in negligence, he or

she must allege facts demonstrating . . . that the defendant was under a duty to protect the plaintiff from injury[.]”). Thus, Counts V and VII failed to state a claim upon which relief can be granted.

Appellants’ Count VI (conversion, personally) also failed to state a claim upon which relief can be granted. To maintain such an action, appellants were required to allege that they “had a property interest in [the] property that was allegedly converted.” *Brass Metal Prods., Inc. v. E-J Enters., Inc.*, 189 Md. App. 310, 339 (2009). Appellants made no such allegation, as the facts set forth in their complaint stated that the property allegedly converted, Father’s assets, belonged to Father, not appellants. That appellants may have ultimately become the beneficiaries of those assets is inconsequential in terms of the viability of Count VI. *See Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 64 (1986) (“[I]n order to recover for conversion one must either have been in actual possession or have had the right to *immediate possession*.”).

Finally, we note that Counts V, VI, VII, and VIII also included legal claims made by appellants on behalf of Father’s estate. Appellants do not have standing to bring such claims. *See Rosebrock v. E. Shore Emergency Physicians, LLC*, 221 Md. App. 1, 12 (2015) (noting that only a personal representative may bring an action on a decedent’s behalf). Appellants, relying on *Turk v. Grossman*, 176 Md. 644 (1939), claim that someone other than a personal representative may bring an action on behalf of an estate “where the rights of a legatee, devisee or creditor are substantially affected by peculiar circumstances.” *Id.* at 669. Appellants’ reliance on *Turk* is misplaced. The “peculiar

circumstances” discussed in that case involved “fraud or collusion on the part of the personal representative and the person against whom the suit is brought; and the refusal or inability of the representative to act.” *Id.* Appellants did not claim fraud or collusion on the part of the personal representative.

CONCLUSION

In sum, we vacate the circuit court’s rulings as to Count IV (breach of fiduciary duty as trustee) and Count IX (tortious interference with an expected inheritance), as both are recognized causes of action. We also vacate the court’s alternative grant of summary judgment as to Count IX. Finally, we hold that the court did not err in dismissing Count I (intentional misrepresentation as trustee), Count II (conversion as trustee), Count III (negligence as trustee), Count V (intentional misrepresentation, personally), Count VI (conversion, personally), Count VII (negligence, personally), and Count VIII (breach of fiduciary duty, personally), as appellants failed to state a claim for which relief could be granted as to each of those counts.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND VACATED IN PART; CASE
REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID ONE-HALF BY APPELLANTS AND
ONE-HALF BY APPELLEE.**