Circuit Court for Baltimore City
Case No. 24-C-23-005186

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2507

September Term, 2024

JAMES HAMILTON, ET AL.

v.

CAMM CONCRETE, LLC

Nazarian,
Reed,
Hotten, Michele D.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 23, 2026

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

In 2022, Reverend James Hamilton and Lindsay Hebert, PhD (the “Homeowners”) entered into a contract with CAMM Concrete, LLC (“CAMM”) to increase the size of the basement of their home in Baltimore City (the “Home”) through a process called “underpinning.” During CAMM’s second day on the job, however, one of its workers became trapped briefly in a hole he was digging when wet, muddy soil collapsed on him. CAMM told the Homeowners that its workers had encountered “unforeseen conditions” and that it would not continue with the project out of concern for its workers’ safety. After the engineer the Homeowners hired to plan and supervise the project assured them that the underpinning still could be completed safely, they hired a second contractor, Stronghold Builders, LLC (“Stronghold”), to finish the job. About a month into Stronghold’s work on the project, the Home exhibited signs of severe structural damage.

The Homeowners filed suit against the engineer, CAMM, and Stronghold in the Circuit Court for Baltimore City. In their complaint, they alleged that CAMM had breached their contract when it abandoned the underpinning project and that it had performed its work on the project negligently. As a result of CAMM’s conduct, they alleged, the Home sustained severe structural damage that they needed to repair at considerable expense. Later, the Homeowners moved for summary judgment on their breach of contract claim, and CAMM moved for summary judgment on both of the Homeowners’ claims. CAMM asserted in its motion that the negligence of the engineer and Stronghold in completing the project was a superseding cause of the damage to the Home that relieved it of liability and that a clause in its contract with the Homeowners limited its liability under either of the

Homeowners' claims to the amount they had paid it already. The circuit court granted both motions and entered judgment against CAMM on the contract claim in the amount of $1,200. On appeal, the Homeowners contend that the circuit court erred in granting CAMM's motion for summary judgment. We affirm.

I. BACKGROUND

The Homeowners purchased the Home late in the summer of 2020. After speaking with several neighbors who had had similar work done on their houses, they decided to hire a contractor to underpin the Home and increase the amount of space in their basement. Underpinning is the process of constructing a new foundation under a building's existing one. The Homeowners intended to use this process to drop the floor of their basement and increase its height. After underpinning the basement, the Homeowners planned to finish the space and renovate it.

The first step for the Homeowners was to hire an engineer to draw up plans for the underpinning project and supervise the contractor's work. At their neighbors' suggestion, they reached out to Robin Hoory (the "Engineer"), who informed them that he had forty years of engineering experience and had worked on several underpinnings in the city, including for houses in their neighborhood. The Homeowners hired the Engineer for their underpinning project based on his expertise.

The Engineer then created a set of plans for the project. The plans included several drawings and steps for the contractor to follow during construction. According to the plans, the contractor was to mark the basement walls in three-foot sections and label consecutive

sections as one, two, and three in repeating sequence, as shown in the Engineer's drawings. Then, the contractor was to excavate 4.25 feet below each of the sections labeled "one"; pour concrete with a strength of 4,000 pounds per square inch ("psi") into the excavated hole under each "one" segment after erecting "forms" to help the concrete retain its shape once poured; ensure that the concrete was "well vibrated" to make sure it would flow into the entire area to be filled with concrete and prevent the formation of voids, or holes in the concrete; and install reinforcement bars and dowels between the newly poured concrete segments and the existing foundation to help hold the segments and foundation together. The plans instructed the contractor to repeat these steps for the segments labeled "two," then again for the segments labeled "three." They instructed the contractor also to provide "temporary shoring" along the center length of the basement to a depth of eight feet to support the first-floor joists during the underpinning process. The Baltimore City Department of Housing and Community Development approved the plans and issued a permit for the project in November 2021.

After the Engineer finished preparing the project plans, the Homeowners began soliciting bids from contractors. CAMM was one of those contractors. The Homeowners first learned of CAMM when, shortly after they started researching underpinning, they came across an informational video on the process that CAMM had posted on a video sharing website. The Homeowners reached out to CAMM by phone during their solicitation process and the Homeowners, the Engineer, and CAMM's chief operating officer, Melvin Valle, met multiple times both in person and over the phone between July

2021 and January 2022. During these discussions, the Engineer and the Homeowners informed Mr. Valle that the Home sat in an area with a high water table and asked about CAMM's experience with underground water drainage and the methods CAMM employed typically to divert excess water while doing underpinning work. Mr. Valle assured the Homeowners and the Engineer that CAMM had done hundreds of underpinnings and dealt with high water tables frequently. Having visited the Home, taken various measurements, and checked out the Home's sump pump, he told the Homeowners that CAMM could handle the job. CAMM bid for the project in January 2022, and the Homeowners accepted the bid based largely on Mr. Valle's confidence.

CAMM then provided the Homeowners with a Construction/Service Agreement (the "Contract") for the underpinning project. The cost of the project under the Contract was $50,168, which included $1,200 in permit fees. The Contract also contained a description of the work. According to the description, CAMM would mark the basement walls based on the Engineer's drawings, "[i]nstall [the] perimeter underpins per [the Engineer's] specifications," and dig out the rest of the basement to the "finished floor height" of eight feet. Finally, the Contract provided that CAMM would repour the basement slab—which it would need to remove to dig out the basement—with 3,500 psi concrete and clean out any construction-related debris before leaving the site.

In addition, the Contract contained a clause limiting CAMM's liability from any cause of action, including breach of contract or negligence, to the amount paid by the Homeowners to CAMM at the time the claim arose:

> Notwithstanding anything to the contrary herein, [CAMM's] maximum liability hereunder, arising from an[y] cause whatsoever, whether based in contract, tort (including negligence), strict liability or any other theory of law, shall not exceed the aggregate amount paid to [CAMM] hereunder.

Before signing the Contract, the Homeowners asked a relative, a sitting federal judge, to review it with them section-by-section. According to the Homeowners, this relative did not "hav[e] any issues or objections" to the Contract after reviewing the document thoroughly. The Homeowners contacted CAMM after reviewing the Contract and asked CAMM to update the document to specify that it would use 4,000 psi concrete, as the Engineer's plans required. CAMM assured them that it would use 4,000 psi concrete for the job but didn't update the Contract. The Homeowners signed the Contract and paid CAMM the $1,200 in permit fees on May 17, 2022.

CAMM started its work on the underpinning project about two weeks later, on May 31. Mr. Valle marked the basement walls in alternating three-foot sections, and CAMM began to dig. On May 31, CAMM dug two holes along the "party wall" (the wall between the Home and the adjoining home) partially and did not pour any concrete. CAMM's workers encountered some water while digging but kept working on the first two underpinning segments. The next day, they continued to work on those first two segments and started digging a third, also along the party wall. When one of CAMM's workers dug down deeper in one of the first two holes, though, some of the soil collapsed and his leg became stuck almost to his knee briefly in wet, slippery soil. Two other workers had to pull him out. The workers contacted Mr. Valle, who instructed them to finish with the three

holes they had started digging already, put the rebar and concrete forms into those holes and pour concrete, then stop work on the project. CAMM did not notify the Engineer that it was getting ready to pour concrete, and the Engineer was not present to supervise. CAMM didn't return to the job site to continue working after June 1.

On June 3, 2022, CAMM emailed the Homeowners and told them that its workers had "encountered some unforeseen conditions" on the job site. The contractor asked to meet with the Homeowners and the Engineer to discuss those conditions and assured the Homeowners that the Home was "stable and structurally sound." At a meeting with the Homeowners and the Engineer on June 4, Mr. Valle expressed his belief, based on the soil conditions his workers had encountered, that the underpinning project could not be completed safely. The Engineer opined that CAMM could complete the work safely and suggested measures for dealing with the water in the soil moving forward. The Homeowners offered to hire a different engineer to work on the project if doing so would change Mr. Valle's mind about CAMM's inability to finish the project. Mr. Valle declined the offer[1] and told the Homeowners that CAMM would not be doing any more work on the project. He did, though, provide the Homeowners with the names of other contractors that he thought might be willing to finish the job.

[1] The parties dispute whether Mr. Valle declined the offer after telling the Homeowners that a different engineer would tell him "the same things [the Engineer had] already said" about the feasibility of completing the project. In a deposition taken by CAMM's counsel, Ms. Hebert said that Mr. Valle did tell them something to that effect. In a deposition taken by counsel for the Homeowners, though, Mr. Valle claimed that he never made any such statement.

After CAMM abandoned the project, the Homeowners reached out to Stronghold—the contractor they had hired both to remove their HVAC system and complete other demolition work before CAMM could start with the underpinning, and to finish the basement after CAMM completed the underpinning—and informed Stronghold of the setback. Stronghold then contacted Mario Papp, who had worked on an underpinning project at a house across the street from the Home, on the Homeowners' behalf. Mr. Papp agreed to work on the Homeowners' basement and the Homeowners contracted with Stronghold to finish the underpinning project on June 8. A representative of Stronghold reached out to Mr. Valle and informed him of the arrangement.

On June 10, CAMM emailed the Homeowners and asked when it could stop by the Home to pick up tools it had left there so that the tools would be "out of the way of [the Homeowners'] new contractor." In the same email, CAMM stated that it needed to "look out for the safety of [its] crew" and the safety of the Homeowners and that while it "never decline[d] moving forward with any contract big or small . . . in this case, it was more than warranted." CAMM concluded that it would "rather cut [its] losses . . . and do the right thing." CAMM never returned to the Home to pick up the tools or clean up the work site.

As a necessary part of the underpinning process, CAMM had cut the drainage pipes to the Homeowners' sump pump and removed portions of the basement's concrete slab where it dug its underpinning segments and where it dug a test pit in the northwest corner

along the western wall to examine the soil conditions before starting construction.[2] CAMM didn't reconnect the drainage pipes or restore the parts of the slab that it had demolished before departing from the work site, and water began to accumulate in the pits that remained in the Home's basement. Because Mr. Papp could not begin work on the underpinning until July 5, and because Stronghold had told them to keep the basement as dry as possible until that date, the Homeowners spent a significant part of each day during the intervening month pumping water out of the pits in their basement. They didn't notice any structural changes in the Home, such as cracks forming in the walls or doors and

[2] The parties agree that CAMM dug a test pit but disagree about when. In a deposition taken by CAMM's counsel, Reverend Hamilton stated that CAMM dug the pit in December 2021, before it bid on the project. Mr. Valle stated in his deposition that CAMM dug the pit on June 1, 2022, after it had started work on the project.

In addition, the Homeowners assert that CAMM dug two holes along the western wall of the basement: the test pit and an underpinning pit. They rely on two photographs of the Home's basement, an affidavit prepared by Stronghold's marketing director, and a page from the transcript of Mr. Valle's deposition. But the affidavit mentions only one pit dug by CAMM along the western wall, and the cited page from Mr. Valle's deposition refers only to the test pit. It is unclear looking at the first photograph, taken by the Homeowners on June 8, 2022, on which wall the pictured pit is located. And the second photograph is an attachment to the affidavit of Stronghold's marketing director, who describes it as a photograph of "[t]he pit" that CAMM dug along the western wall of the Home's basement "in addition to the three underpinning segments that CAMM dug along the party wall." Further, the Homeowners retained two expert consultants to evaluate the causes of the damage to the Home, and each prepared a report, discussed below. One consultant stated that to his knowledge, "CAMM left the project after constructing only three (3) underpinning segments along the [party wall]." The other expressed the understanding that "CAMM left four (4) pits open where water continued to collect": one that was "exploratory" and three that "correlated to the underpinning locations" along the party wall. The second consultant stated in his deposition that to his knowledge Stronghold performed all work on the western wall and that he had no intention to argue that CAMM was responsible for the issues observed with that wall.

windows not closing properly, between June 1 and July 5, 2022.

Stronghold began its work on July 5 as planned and spent the first two days on site clearing the construction debris CAMM left behind. Before picking up the underpinning project where CAMM left off, Stronghold, Mr. Papp, and the Engineer met several times to discuss the project and methods for controlling subsurface groundwater. The Engineer and Mr. Papp developed a water mitigation plan that would require Stronghold to remove the basement slabs (there ended up being two, one on top of the other) entirely, dig a trench down the center of the basement floor to divert excess water, and use multiple pumps to remove water from the work site. Stronghold implemented this water mitigation plan.

On July 29, 2022, while Stronghold was still working on the underpinning project, the owner of the house next door notified the Homeowners that she had noticed cracks in her basement floor and that some of the doors and windows in her home weren't closing properly. On August 7, the Homeowners began noticing cracks in the drywall throughout the Home. The Engineer called a Baltimore City inspector, who visited the Home on September 2 and placed an "emergency condemnation" sign on the property. The inspector asked the Engineer to submit plans to provide additional shoring for the party wall between the Home and the house next door and instructed the Engineer and Stronghold "to shore up the wall immediately." The Engineer prepared the plans, and Stronghold and the Homeowners completed the shoring work on September 5. On September 13, the inspector told the Homeowners that they could remove the "emergency condemnation" sign from the Home. Because of the damage to the Home, the Homeowners vacated the property in

fall 2022 and have not returned.

In October 2022, the Homeowners retained EBA Engineering, Inc. ("EBA") to conduct a geotechnical evaluation of the Home and to help determine the likely causes of the damage to the building. After visiting the Home four times (twice in September and twice in October) to observe the structure and conduct various tests on the soil and the underpinning segments constructed by CAMM and Stronghold, EBA prepared a report on its findings. EBA's report described the soil underlying the Home as "highly mucky and unstable." It noted the presence of standing water on the surface of the soil that was not flowing consistently toward the sump pump. The report indicated that EBA drilled holes in six underpinning segments along the party wall (all three of the segments completed by CAMM and three segments completed by Stronghold) to evaluate the thickness of the concrete, to compare that thickness to the twelve-inch thickness specified in the project plans to support the full width of the wall, and to check for the presence of voids (or empty spaces formed by the absence of concrete or soil). Of the three segments completed by CAMM, the first was sixteen inches thick with no voids, the second was fifteen inches thick with no void, and the third was eight inches thick with a sixteen-inch void. As for the Stronghold segments, one was sixteen inches thick with no voids, one was fifteen inches thick with a three-inch void, and one was eight-and-a-half inches thick with a sixteen-and-half-inch void. EBA tested the compressive strength of the underpinning segments also and, without differentiating between CAMM's and Stronghold's segments, found that the strength ranged from 2,500 psi to 2,800 psi. Lastly, EBA conducted a test to determine

whether the contractors had installed steel dowels in their underpinning segments as the project plans required. It detected steel dowels in only one of CAMM's segments and did not detect steel dowels in any of the three Stronghold segments that it tested.

Relying on these test results, EBA offered an opinion about the causes of the damage to the Home. It attributed the damage to structural movement and distress due to settlement and horizontal movements of the building foundations, and it concluded that the party wall "[was] not fully supported by the underpinning segments." EBA opined further that the presence of voids in both contractors' segments was consistent with CAMM's statements that the soil was unstable during construction and that the soft, mucky soil "[was] not suitable for support of building foundations and indicate[d that] ground settlement [was] contributing to foundation settlement and building distress." Based on its review of the project plans, EBA did not find that "any measures were expected to control groundwater" or that "any study was conducted during the design phase to evaluate the presence of groundwater or its effect on the design." According to EBA, it was "possible that groundwater was allowed to accumulate in each underpinning pit during construction and caused deterioration of the [soil] in each underpinning pit." Further, EBA determined that the widths of the underpinning segments, which were each supposed to be three feet wide based on the Engineer's drawings, "ranged from 2.1 to 5 feet." It opined that the presence of wider segments caused the contractors to construct only eleven segments along the party wall as opposed to the fourteen specified in the drawings and could have contributed "to greater loosening [of] material at the sides of the excavation[s] and . . . reduced support

under the [Home's] brick walls."

Finally, EBA noted that the underpinning segments along the western wall "were bulging" and that the western wall "was buckling in apparent response to the horizontal movement of the underpinning segments," likely due in part to lateral pressure from traffic passing by on the street outside and "hydrostatic pressure" from the groundwater. It stated that "[t]he [western] building wall . . . may be sliding horizontally due to inadequate embedding of the underpinning segments, inadequate passive resistance" due to the soft soil, "the concrete slab not being placed to provide resistance to bracing," the voids in the underpinning segments, and low friction between the concrete. EBA concluded that "[t]he condition of the underpinning segments and associated [western] building wall . . . [was] unsafe and may result in collapse of the structure."

The Homeowners retained Anthony Morabito of Morabito Consultants, Inc., to prepare a forensic structural examination of the Home, which he did in November 2022. In his report, Mr. Morabito evaluated the project design first. Among other findings, he opined that the Engineer hadn't been on site during construction to supervise or inspect the work of either CAMM or Stronghold properly; that it wasn't clear to him that the Engineer, when designing the project plans, had accounted for the fact that removing the basement slabs and soil along the walls would cause the walls to have less lateral resistance; that he didn't believe the Engineer had accounted adequately for an existing crack in the western wall, and that if the Engineer had done so, "the wall should not have bowed"; that "significant water" was present in the basement; that the Engineer did not require testing of the soil's

bearing capacity before construction on the project began; and that Mr. Morabito "[did] not understand why [the Engineer] permitted the contractor[s] to install underpinning concrete on soft soil."

Then Mr. Morabito evaluated the construction performed by both CAMM and Stronghold. He opined, among other findings, that the voids EBA discovered "could have occurred due to the quality of the concrete or the lack of proper vibration of the concrete"; that once the contractors discovered that the soil was soft and was "sloughing" into the underpinning pits during construction, they should have notified the Engineer and "ceased construction until [the] matter was resolved"; that the concrete strength was below 4,000 psi and may not have been mixed or placed properly; and that "the adjoining sections of the underpinning [did] not align properly."

On December 5, 2023, the Homeowners filed a complaint with the Circuit Court for Baltimore City. They amended the complaint on March 29, 2024. In their First Amended Complaint (the "Complaint"), the Homeowners asserted claims for breach of contract and negligence against CAMM and Stronghold, breach of contract and malpractice against the Engineer, and negligence against Stronghold's owner. As to CAMM, they alleged *first* that the contractor had "breached the [C]ontract by walking off the job and by failing to perform construction in a workmanlike manner and in accordance with the engineering drawings." They alleged *second* that CAMM had breached its duty of care and was negligent in multiple respects, "including (1) improperly underpinning the walls by leaving voids in the concrete supports, (2) failing to install supporting dowel bars in all locations specified in

the underpinning drawings, (3) failing to achieve the appropriate concrete strength, and (4) failing to adequately control groundwater." The Homeowners alleged *third* that CAMM breached its duty of care and was negligent when it abandoned the work site without taking "any steps to prevent further water infiltration." "As a direct and proximate result" of CAMM's negligence, the Homeowners alleged, "completion of the job became more difficult than it would have been had CAMM performed its services with reasonable care." *Finally*, the Homeowners alleged that as a direct and proximate result of CAMM's negligence, the Home "sustained substantial damage and structural failure," they needed to relocate from the Home to an apartment at "substantial additional expense[]," and they "ha[d] and [would] incur damages exceeding $780,000."

During discovery in September 2024, the parties conducted several depositions. The Homeowners' counsel deposed Mr. Valle and an expert retained by CAMM, and CAMM's counsel deposed each of the Homeowners, Mr. Morabito, and Jason Kolenda of EBA. Mr. Valle admitted in his deposition that CAMM didn't inform the Engineer before it poured the concrete for its underpinning segments, and his testimony suggested that the Engineer wasn't present to supervise the pour. He admitted that CAMM didn't provide temporary shoring to support the Home's first-floor joists while it constructed its underpinning segments and didn't install steel dowels in all of its segments; that CAMM vibrated the concrete in its segments manually by pushing a piece of rebar into the concrete instead of using an electric vibrator; and that CAMM used 3,500 psi concrete for the job instead of 4,000 psi concrete as specified in the project plans. He confirmed that CAMM cut the

drainage pipes to the sump pump during construction and that after telling the Homeowners that CAMM wouldn't complete the underpinning project, he suggested two contractors who might be willing to finish it. And he stated that a representative of Stronghold called him sometime around June 7 and told him Stronghold would be taking over the job. Finally, he said that CAMM's workers brought a pump to the work site on June 1 to help control the groundwater but couldn't confirm where they placed it or whether they used it.

In his deposition, Mr. Morabito explained that the basement slabs and the soil underneath the slabs were the "main[]" sources of passive pressure to resist active pressures on the Home's walls from, among other sources, vehicles passing by on the street outside.

Both the Homeowners and CAMM moved for summary judgment on November 13, 2024, and both requested hearings on their motions. The Homeowners moved for summary judgment on their breach of contract claim against CAMM, which had admitted that (1) it stopped work on the underpinning job before completing its obligations under the Contract, (2) it deviated from the project plans when constructing its underpinning segments, and (3) it didn't take the proper steps to terminate the Contract before abandoning the project. Based on these undisputed facts, the Homeowners contended that they were entitled to judgment on their breach of contract claim as a matter of law. CAMM responded to the Homeowners' motion, and the Homeowners replied to CAMM's response.

Meanwhile, CAMM moved for summary judgment on both of the Homeowners' claims. CAMM argued *first* that the Contract's limitation of liability clause limited its liability for both claims to an amount not exceeding what the Homeowners had paid

already. *Second*, CAMM asserted that the evidence in the record couldn't establish under either claim that its actions proximately caused the Homeowners' damages. It argued that its actions were not a cause in fact of the damage to the Home but that even if they were, the negligent acts of Stronghold and the Engineer were superseding causes that cut off its liability and that the Homeowners assumed the risk of damage to the Home or were contributorily negligent when they decided to continue with the project after CAMM informed them that it was unsafe to do so. CAMM attached to its motion eleven exhibits, including transcripts of its depositions of the Homeowners, Mr. Morabito, and Mr. Kolenda of EBA; the Engineer's drawings; the Homeowners' answers to interrogatories; texts between the Homeowners and Stronghold; and Mr. Morabito's report.

The Homeowners opposed CAMM's motion. *First*, they argued that the limitation of liability clause didn't limit CAMM's liability for its own negligence because it didn't express the intention to do so "in unequivocal terms" or, in the alternative, because under Maryland law, exculpatory clauses in construction contracts purporting to absolve a party of liability for their own negligence are contrary to public policy. And even if the limitation of liability clause was valid and enforceable, they contended, CAMM's actions before it abandoned the underpinning project amounted to gross negligence, and, by law, the clause couldn't limit CAMM's liability for its own gross negligence. *Second*, the Homeowners argued that genuine disputes of material fact existed as to causation, assumption of risk, and contributory negligence and that those questions should go to a jury.

The Homeowners attached twenty exhibits to their opposition, including the

Engineer's and CAMM's answers to interrogatories, the project plans, the Contract, EBA's report, an email from the Homeowners to CAMM with an invoice for the $1,200 in permit fees and confirmation of payment, CAMM's June 3 email to the Homeowners stating that its workers encountered "unforeseen conditions," a June 10 email from the Homeowners to CAMM with various pictures of the work site attached, the June 10 email from CAMM to the Homeowners asking if CAMM could pick up the tools it left behind, affidavits from Reverend Hamilton and the marketing director of Stronghold, and affidavits from Mr. Morabito and Mr. Kolenda, who each opined that CAMM committed construction errors that contributed to the Home's settlement damage.[3] Mr. Morabito stated in his affidavit, for example, that CAMM excavated all three of its underpinning pits along the party wall in locations inconsistent with the project plans, which caused Stronghold to excavate its segments along the party wall in the wrong locations. He stated also that CAMM constructed one segment that was four feet wide instead of the three feet specified in the project plans, which increased the risk of soil sloughing into the excavation during

[3] CAMM describes Mr. Morabito's and Mr. Kolenda's affidavits as "sham affidavits." It alleges that the Homeowners submitted them to the circuit court "[a]fter discovery was closed and CAMM's motion was pending" to "rewrite" their experts' deposition testimonies. Although CAMM admits that it didn't move to strike the affidavits in the circuit court, it asserts that, under Maryland Rule 2-501(e), this Court should decline to consider them. Rule 2-501(e) allows a party to move to strike an affidavit offered to support or contest a motion for summary judgment "to the extent that it contradicts any prior sworn statement of the person making the affidavit." *Id.* at 2-501(e)(1). With some exceptions, "[i]f the court finds that the affidavit . . . materially contradicts the prior sworn statement, the court shall strike the contradictory part." *Id.* 2-501(e)(2). CAMM doesn't allege what, if any, parts of Mr. Morabito's and Mr. Kolenda's affidavits contradict their earlier sworn deposition testimonies, so we consider the entirety of both affidavits in our analysis as relevant.

construction. Mr. Kolenda opined that CAMM's decision to leave the job site without reconnecting the drainage pipes to the sump pump caused water to accumulate in open pits in the Home's basement, which in turn caused the soil to degrade and reduced the support it provided to the party wall.

The circuit court held a hearing on the parties' motions for summary judgment on January 22, 2025. After hearing the parties' arguments, the court turned *first* to CAMM's motion. The court found the Contract's limitation of liability clause valid and enforceable, explained that it was "unpersuaded" by the Homeowners' public policy argument, and found that the Homeowners were "clearly sophisticated consumers who opted to choose CAMM and engage CAMM and have the [C]ontract reviewed by someone with legal expertise." The court explained that the Homeowners' gross negligence argument failed because "an allegation of gross negligence would need to be pled by the [Homeowners], and it was not." After reviewing the Complaint, the court concluded that the Homeowners had made no allegation of intentional misconduct, willful disregard, or any similar allegation that would support a claim of gross negligence. The court found also that they had alleged ordinary negligence only, not gross negligence. And because the court found the limitation of liability clause valid and enforceable, it concluded that CAMM's liability for the damage to the Home under either a negligence claim or a breach of contract claim could not exceed the $1,200 the Homeowners had paid to cover the permitting fees.

Regarding the negligence claim, the court wasn't persuaded by CAMM's arguments about causation in fact, assumption of risk, or contributory negligence, but it agreed with

CAMM that the acts of the Engineer and Stronghold were superseding intervening causes that extinguished CAMM's liability for the damage to the Home. The court found specifically that the acts of the Engineer and Stronghold "were not set in motion by CAMM." The court entered summary judgment on the negligence claim in CAMM's favor.

Then the court turned to the Homeowners' motion for summary judgement on their contract claim. The court found as undisputed fact "that CAMM breached the [C]ontract by walking off the job without completing performance" and terminating the Contract improperly. The court granted summary judgment on the breach of contract claim in the Homeowners' favor "as to liability only" but reiterated that "any damages recovered [by the Homeowners were] subject to [its] ruling" on the limitation of liability clause. On January 27, the court entered orders granting CAMM's motion for summary judgment on the negligence claim and as to the enforceability of the limitation of liability clause and granting the Homeowners' motion for summary judgment as to liability on the breach of contract claim. The court ordered the parties to proceed with the breach of contract claim "as to damages only, with the contractual limitation of liability ($1,200) to apply."

The court held a hearing on damages on February 11, 2025. On the day of the hearing, the parties entered a written Stipulation of the Parties Regarding Damages. They stipulated that various witnesses, if called at trial, would testify that the cost to design the structural repairs needed for the Home would be $30,000, the cost to construct the repairs would be $428,697, and the cost to repair the Home's interior would be $227,736, for a total of $686,433 in repair costs. They stipulated also that "[t]he increased cost to [the

Homeowners] to complete the contract that was breached by CAMM was $24,832," the difference between the price of the contract with Stronghold ($75,000) and the price of the Contract with CAMM ($50,168). Relying on these stipulations, the court granted summary judgment in the Homeowners' favor on the breach of contract claim as to damages.

On February 27, 2025, the circuit court entered a judgment against CAMM in the amount of $1,200, a default judgment against Stronghold in the amount of $686,433, and a consent judgment against the Engineer in the amount of $686,433. The Homeowners appealed timely from the judgments in CAMM's favor.

II. DISCUSSION

The Homeowners present two questions for review, which we rephrase and reorder:

1. Did the circuit court err in finding that the negligent actions of Stronghold and the Engineer were a superseding cause that extinguished CAMM's liability for the damage to the Home?
2. Did the circuit court err in finding the Contract's limitation of liability clause valid and enforceable as to their negligence claim against CAMM?[4]

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[4] The Homeowners phrased their Questions Presented as follows:

1. Did the Circuit Court err in finding that the limitation of liability clause in the Contract was valid and enforceable for CAMM's own negligence?
2. Did the Circuit Court err in finding that the acts of the other defendants amounted to intervening conduct that "extinguished" CAMM's liability for the damage to the home?

CAMM phrased its Questions Presented in the following manner:

1. Did the Trial Court properly grant CAMM's Motion for Summary Judgment on its contractual damages limit where the Owners read and understood their contract with CAMM and signed it after a judge reviewed it for them?

Continued . . .

First, we hold that the circuit court didn't err in finding no genuine dispute of material fact as to whether the negligent acts and omissions of Stronghold and the Engineer were superseding causes of the damage to the Home or in finding that CAMM was entitled to judgment on the Homeowners' negligence claim as a matter of law. Even if the court had erred in concluding that CAMM's alleged negligence was not proximate cause of the Homeowners' damages, though, we hold *second* that the limitation of liability clause in the Contract was valid and enforceable and that CAMM's liability to the Homeowners for any damages caused by its own negligence would have been limited to the $1,200 the Homeowners paid to cover the permit fees for the underpinning project. The circuit court granted summary judgment in CAMM's favor properly as to both issues.

Maryland Rule 2-501 governs summary judgment. The Rule provides that the court "shall enter judgment in favor of . . . the moving party" on all or part of an action "if the motion and response show that there is no genuine dispute as to any material fact and that

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2. Did the Trial Court correctly enter judgment for CAMM on the Owners' negligence claims where no structural damage occurred after two days of CAMM's work but instead occurred only after subsequent separate work by an unqualified and unsupervised contractor on an unsafe job site?

If we were to reverse the court's ruling on the enforceability of the limitation of liability clause, CAMM asked us to review an additional question on "conditional cross appeal":

3. If questions of fact exist justifying the submission of the Owner's contract claims to the jury, then was the trial court's determination legally correct that no questions of fact were present on the Owner's contract claims against CAMM?

CAMM didn't file a proper cross-appeal. But because we affirm the circuit court's grant of summary judgment as to the validity and enforceability of the limitation of liability clause, we don't reach this question anyway, and we deny the Homeowners' motion to strike Sections III and IV of CAMM's reply brief on the cross-appeal as moot.

the [moving party] is entitled to judgment as a matter of law." Md. Rule 2-501(a)–(b), (f). We review grants of summary judgment independently and for legal correctness, *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14 (2004), construing the facts in the record and any reasonable inferences that can be drawn from the facts in the light most favorable to the non-moving party. *Hartford Ins. Co. v. Manor Inn of Bethesda, Inc.*, 335 Md. 135, 144–45 (1994). "'[W]hile a court must resolve all inferences in favor of the party opposing summary judgment, "those inferences must be reasonable ones."'" *Crickenberger v. Hyundai Motor America*, 404 Md. 37, 45 (2008) (*quoting Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 739 (1993)). On review of a grant of summary judgment, "'[w]e do not endeavor to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried.'" *Guthrie v. Vincenti*, ___ Md. App. ___, No. 2203, Sept. Term 2024 (filed May 6, 2026) (*quoting Gambrill v. Bd. of Educ.*, 481 Md. 274, 297 (2022)), *cert. denied*, 490 Md. 138 (2025). "'If no material facts are in dispute, we determine whether the trial judge's ruling was legally correct. Ordinarily, we may affirm the trial court only on the grounds upon which the trial court relied in granting summary judgment.'" *Rovin v. State*, 488 Md. 144, 173 (2024) (*quoting Gambrill*, 481 Md. at 297).

A. There Is No Genuine Dispute Of Material Fact As To Whether CAMM Proximately Caused The Homeowners' Damages, And CAMM Was Entitled To Judgment As A Matter Of Law.

The Homeowners argue that the circuit court erred when it granted CAMM's motion for summary judgment on their negligence claim after concluding that CAMM's actions weren't a proximate cause of the damage to the Home. "It is a basic principle that

'[n]egligence is not actionable unless it is a proximate cause of the harm alleged.'" *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009) (*quoting Stone v. Chicago Title Ins.*, 330 Md. 329, 337 (1993)). "[T]o be a proximate cause of an injury, 'the negligence must be 1) a cause in fact, and 2) a legally cognizable cause.'" *Manor Inn*, 335 Md. at 156–57 (*quoting Atlantic Mut. Ins. Co. v. Kenney*, 323 Md. 116, 127 (1991)). Put differently, when deciding whether a relationship exists between a defendant's conduct and a plaintiff's harms that is sufficient to impose liability on the defendant, a court *first* must determine who or what was a factual cause of the plaintiff's harms and, as *second* step, determine who should pay for those harms. *Collins*, 409 Md. at 243–44; *see Peterson v. Underwood*, 258 Md. 9, 16 (1970) ("Proximate cause ultimately involves a conclusion that someone will be held legally responsible for the consequences of an act or omission. This determination is subject to considerations of fairness or social policy as well as mere causation.").

"Causation in fact raises the threshold question of 'whether the defendant's conduct actually produced [the] injury'" to the plaintiff. *Sindler v. Litman*, 166 Md. App. 90, 113 (2005) (*quoting Wankel v. A & B Contractors, Inc.*, 127 Md. App. 128, 158 (1999)). Depending on the circumstances of a particular case, a Maryland court determining the cause in fact of a plaintiff's injury will apply one of two tests. The "but for" test applies when the plaintiff's injury "would not have occurred in the absence of the defendant's negligent act." *Id.* In cases like this one, however, where the plaintiff alleges that "two or more independent negligent acts br[ought] about [their] injury," courts assess factual causation by applying the substantial factor test. *Collins*, 409 Md. at 244. Under this test,

a defendant's conduct is a cause in fact of a plaintiff's injury if it is a substantial factor in bringing about the injury. *Yonce v. SmithKline Beecham Lab'ys, Inc.*, 111 Md. App. 124, 138–39 (1996) (listing factors to consider when determining if a defendant's conduct was a substantial factor in producing a plaintiff's injury, including "(a) the number of other factors which contribute[d] in producing the harm and the extent of the effect which they ha[d] in producing it; (b) whether the [defendant's] conduct . . created a force or series of forces which [were] in continuous and active operation up to the time of the harm, or . . . created a situation harmless unless acted upon by other forces for which the [defendant was] not responsible; [and] (c) lapse of time." (*quoting* Restatement (Second) of Torts § 433 (A.L.I. 1965)).

Once factual causation is established, "the proximate cause inquiry turns to whether the defendant's negligent actions constitute a legally cognizable cause of the [plaintiff's] injuries." *Collins*, 409 Md. at 245; *see* Restatement (Second) of Torts § 433 (A.L.I. 1965) ("[An] actor's negligent conduct is a legal cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm, and (b) there is no rule of law relieving [him] from liability because of the manner in which his negligence has resulted in the harm."). To determine if a defendant's actions constitute a legally cognizable cause of a plaintiff's injuries, we consider whether the harm suffered by the plaintiff "falls within a general field of danger that the [defendant] should have anticipated or expected." *Collins*, 409 Md. at 245 (*citing Stone*, 330 Md. at 337). In other words, a court, when answering the question of legal causation, must determine if the plaintiff's harm was "a foreseeable result of the

negligent conduct." *Id.* at 246. "The [defendant's] conduct may be held not to be a legal cause of harm to [the plaintiff] where after the event and looking back from the harm to the [defendant's] negligent conduct, it appears to the court highly extraordinary that it should bring about the harm." *Sindler*, 166 Md. App. at 115 (*quoting* Restatement (Second) of Torts § 435(2) (A.L.I. 1965)); *see Henley v. Prince George's County*, 305 Md. 320, 334 (1986) ("In applying the test of foreseeability . . . it is well to keep in mind that it is simply intended to reflect current societal standards with respect to an acceptable nexus between the negligent act and the ensuing harm, and to avoid the attachment of liability where, in the language of [the Second Restatement], it appears 'highly extraordinary' that the negligent conduct should have brought about the harm." (*quoting* Restatement (Second) of Torts § 435(2) (A.L.I. 1965)).

When multiple negligent acts are deemed causes in fact of a plaintiff's harm, "the foreseeability analysis must involve an inquiry into whether a negligent defendant is relieved from liability by intervening negligent acts or omissions." *Collins*, 409 Md. at 247. In such a case, "the question that is presented is whether the second in point of time superseded the first, *i.e.*, did that act intervene and supersede the original act of negligence, thus terminating its role in the causation chain?" *Manor Inn*, 335 Md. at 157. An intervening act is a superseding cause of a plaintiff's injuries if the act "was not foreseeable at the time of the primary negligence." *Sindler*, 166 Md. App. at 115. By contrast, as the Supreme Court of Maryland explained in *Pennsylvania Steel Co. v. Wilkinson*, 107 Md. 574 (1908), an intervening act of negligence is not a superseding cause that breaks the

causal chain and relieves the defendant of liability if the act was "set in motion by [the] earlier negligence, or naturally induced by such wrongful act, or . . . [was] of a nature, the happening of which was reasonably to have been anticipated." *Id.* at 581 (cleaned up).

To determine if an intervening act of negligence rises to the level of a superseding cause, Maryland courts apply the test provided in Section 442 of the Restatement (Second) of Torts and consider the following six factors:

> (a) the fact that [the intervening force] brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;
>
> (b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;
>
> (c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;
>
> (d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;
>
> (e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;
>
> (f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

Collins, 409 Md. at 248 (*quoting* Restatement (Second) of Torts § 442 (A.L.I. 1965)); *Sindler*, 166 Md. App. at 116–17 (same). Section 447 of the Second Restatement qualifies this test, explaining that a negligent intervening act is not a superseding cause when:

> (a) the [defendant] at the time of his negligent conduct should have realized that a third person might so act, or
>
> (b) a reasonable man knowing the situation existing when the act of the third person was done would not regard it as highly

> extraordinary that the third person had so acted, or
>
> (c) the intervening act is a normal consequence of a situation created by the actor's conduct and the manner in which it is done is not extraordinarily negligent.

Collins, 409 Md. at 249 (*quoting* Restatement (Second) of Torts § 447 (A.L.I. 1965)). "Thus, a superseding cause arises primarily when 'unusual' and 'extraordinary' independent intervening negligent acts occur that could not have been anticipated by the original tortfeasor." *Id.* (*quoting McGowans v. Howard*, 234 Md. 134, 138 (1964)).

Our Supreme Court has addressed on several occasions the question of whether an intervening negligent act by a third party acted as a superseding cause that relieved a defendant of liability for a plaintiff's injuries. On some such occasions, the Court has found that the intervening act wasn't a superseding cause. *See, e.g.*, *Wilkinson*, 107 Md. at 579–82 (steel company that left a rope hanging over the street "so low that a buggy with a horse could not pass under it" was not relieved of liability for plaintiff's injuries, which resulted after the rope startled the plaintiff's horse, by the intervening act of a third party who grabbed the rope and swung it toward the horse because the steel company's negligence set the intervening act in motion); *Atlantic Mut. Ins. Co. v. Kenney*, 323 Md. 116, 119–21, 132 (1991) (manner in which owner and operator of a tractor trailer parked the vehicle, so as to interfere with the ability of drivers leaving a parking lot to observe the approach of drivers passing the lot's exit on a perpendicular road, created a reasonably foreseeable risk that a driver passing by on the street would collide with a driver leaving the parking lot, such that owner and operator was not relieved of liability for plaintiff's injuries by the unextraordinary intervening act of a driver who struck the plaintiff's car). In other cases,

the Court has found that the intervening act was superseding and broke the causal chain. *See, e.g.*, *Bloom v. Good Humor Ice Cream Co. of Baltimore*, 179 Md. 384, 385–86, 388–89 (1941) (defendant driver of ice cream truck who invited a child to cross the street to purchase his ice cream was relieved of liability for harm caused when a car struck the child because the intervening acts of the child, who crossed behind the ice cream truck before starting back across the street, and of the driver of the car, who operated the vehicle negligently and struck the child suddenly, were superseding causes of the harm); *Manor Inn*, 335 Md. at 138–40, 160 (defendant was relieved of liability for injuries to plaintiff after an escaped patient from a State-operated hospital for the mentally ill drove away in a laundry van—which defendant's employee left parked outside negligently with the keys in the ignition—and struck plaintiff's car with the van because while it was "highly predictable" that someone could steal the van, "the manner in which [the thief] drove the van, and its consequences, were highly extraordinary" (cleaned up)).

Here, despite the Homeowners' assertion to the contrary, the material facts are undisputed.[5] Although there is some dispute as to whether CAMM implemented proper

[5] The Homeowners contend that "CAMM's entire defense in this case hinges on [Mr.] Valle's assertion that at the time [CAMM] abandoned the [Home], the conditions in the basement were such that the project could not be completed." Thus, they argue, the condition of their basement at the time CAMM abandoned the underpinning project is a material fact about which there is a genuine dispute. This dispute arises from the Homeowners' allegation that there is a "strong possibility" that CAMM failed to preserve material evidence—*e.g.*, text messages between Mr. Valle and its workers—that "would refute CAMM's safety and feasibility claims." According to the Homeowners, the "issue of potential spoliation of evidence" is relevant because the

Continued . . .

water control measures during the two days it worked on the site, the contractor doesn't dispute that it deviated from the Engineer's plans by using 3,500 psi concrete for its underpinning segments instead of 4,000 psi concrete, failing to install temporary shoring or to insert steel dowels in two of the three underpinning segments it completed along the party wall, digging its segments in the wrong locations, and digging one segment that was four feet wide instead of three feet. In addition, CAMM doesn't dispute that it poured concrete without alerting the Engineer, that it vibrated the concrete by hand instead of mechanically, or that a sixteen-inch void formed at some point in one of the concrete segments that it poured. Nor does CAMM dispute that it disconnected the drainage pipes to the Home's sump pump, that it didn't reconnect the drainage pipes before abandoning the project, or that the disconnected lines caused water to accumulate in the pits it had dug

alleged destroyed evidence may have revealed that CAMM's decision to quit the project wasn't based on safety concerns.

The Homeowners filed a Motion for Sanctions for Spoliation of Evidence against CAMM in the circuit court the day before the hearing on the parties' motions for summary judgment. The circuit court didn't rule on their motion, but the Homeowners don't appear to challenge the court's lack of a response to the motion on appeal. Instead, they ask this Court to consider the alleged spoliation as part of our analysis of the issues of superseding causation and of gross negligence as it pertains to the enforceability of the limitation of liability clause. As our analysis reveals, however, any factual dispute about CAMM's subjective reason for walking away from the underpinning project isn't material to the question of whether the intervening negligence of the Engineer and Stronghold was sufficiently "'unusual'" or "'extraordinary'" to act as a superseding cause of the damage to the Home. *Collins*, 409 Md. at 249 (*quoting McGowans*, 234 Md. at 138). And as we explain in Section II.B.3, below, we don't reach the question of whether a genuine issue of material fact exists as to CAMM's alleged gross negligence because the Homeowners didn't plead gross negligence in their complaint. Consequently, we need not address spoliation in any greater detail.

in the Homeowners' basement for the month between its abandonment of the project and Stronghold's resumption of the work. Neither party disputes that CAMM stopped work on the project on the second day after one of its workers got stuck in the wet, slippery soil in one of the underpinning pits. The parties don't dispute either that Mr. Valle told the Homeowners that he believed the project couldn't be completed safely despite the Engineer's insistence that it could, or that Mr. Valle provided the Homeowners with the names of contractors he thought might be willing to complete the underpinning project. And the parties don't dispute that CAMM left the basement slabs mostly intact, removing them only from the locations of the test pit and underpinning segments that it dug.

As for the conduct of the Engineer and Stronghold after CAMM abandoned the underpinning project, it is undisputed that on or about June 8, 2022, four days after CAMM informed the Homeowners that it wouldn't complete the project, Stronghold contracted with the Homeowners to finish the underpinning and told CAMM about the arrangement. It's undisputed also that Stronghold was aware that water was accumulating in the Home's basement after CAMM's departure and advised the Homeowners to use pumps to remove the water and "keep the basement as dry as possible" until Mr. Papp was available to start work on July 5. Further, it is undisputed that after Stronghold agreed to take over the project, the Engineer and Mr. Papp developed a water mitigation plan that Stronghold then implemented. That plan required Stronghold to remove the entirety of the basement slabs, dig a trench down the center of the basement to divert excess water, and use multiple pumps to remove water from the work site. It is not disputed either that Stronghold removed

several tons of dirt from the Home's basement while working on the underpinning project; that Stronghold completed eight of the eleven underpinning segments along the party wall and most if not all segments along the remaining walls, including the western wall;[6] that Stronghold failed to insert dowels in any of its segments; that Stronghold dug many of its segments in the wrong locations; or that voids formed in many of the concrete segments poured by Stronghold. In addition, neither party has disputed Mr. Morabito's assertions that the Engineer designed the project plans without accounting for all necessary factors or the assertions of both of the Homeowners' experts that the soil underlying the Home was soft, "highly mucky[,] and unstable," nor have they disputed that the Engineer did not supervise Stronghold's work properly. Finally, the parties don't dispute that the first sign of observable structural damage appeared on July 29, 2022, when the owner of the house next door notified the Homeowners that she noticed cracks in her basement floor and that some of the doors and windows in her home weren't closing properly.

Assuming for argument's sake that CAMM's actions were negligent, and assuming that CAMM's negligence was a cause in fact of the settlement damage sustained ultimately by the Home, the narrow question for our review on appeal is whether CAMM's negligence was a legal cause of the damage or whether the intervening acts of the Engineer and Stronghold were superseding causes that relieved CAMM of any liability. Because there is

[6] As we explain in footnote 2, *supra*, the Homeowners contend that CAMM dug an underpinning pit along the western wall of the basement in addition to the test pit. Although we aren't convinced that the evidence in the record supports their assertion even when we construe the facts in the light most favorable to them, *Manor Inn*, 335 Md. at 144, it wouldn't change our analysis even if we did credit it.

no dispute of material fact, we must decide whether, based on the answer to this narrow question, CAMM was entitled to summary judgment on the Homeowners' negligence claim as a matter of law. *See Rovin*, 488 Md. at 173 (*quoting Gambrill.*, 481 Md. at 297).

The circuit court granted summary judgment in CAMM's favor based on its findings that "the acts of [the Engineer] and Stronghold were not set in motion by CAMM" and that "any liability of CAMM [was] extinguished by the superseding conduct of the other [d]efendants." The Homeowners argue that under the case law discussed above, the actions of Stronghold and the Engineer didn't supersede CAMM's liability because CAMM should have realized at the time it abandoned the project that another contractor might step in and complete the project negligently, because the intervening conduct of Stronghold in taking over the project was a normal consequence of CAMM's decision to leave the work site without restoring the basement to its former state (*i.e.*, by reconnecting the drainage pipes to the sump pump and restoring the parts of the slab that it demolished), and because "nothing about Stronghold and the Engineer finishing the work [was] unusual or extraordinary." They assert that CAMM either knew or should have suspected that they were planning to bring in a second contractor to complete the work because Mr. Valle, after telling them that CAMM would not complete the project, gave them a list of contractors who might be willing to finish it, and they point out that in CAMM's June 10 email, CAMM asked them if it could come and pick up the tools its workers left at the Home to get them "out of the way of [their] new contractor." Finally, the Homeowners contend that the Engineer's negligent development of the project plans and failure to

supervise CAMM and Stronghold adequately couldn't have superseded CAMM's liability because his negligent acts "preceded or were concurrent with CAMM's negligent acts."

CAMM counters that the negligent intervening acts and omissions of the Engineer and Stronghold were sufficiently unusual and extraordinary to break the causal chain and cut off its liability for the damage to the Home. It asserts that the intervening negligence of the Engineer and Stronghold wasn't set in motion by, and wasn't a natural and foreseeable consequence of, its assumed negligence because the Homeowners didn't hire Stronghold to correct work that CAMM performed negligently or to address known structural issues caused by CAMM's work. Rather, they hired Stronghold to finish the underpinning project after CAMM declined due to safety concerns. According to CAMM, Stronghold would have needed to undo that restoration to finish the project even if it had reconnected the drainage pipes to the sump pump and restored the slab above the test pit and underpinning pits that it excavated. CAMM contends also that Stronghold and the Engineer proceeded with construction based on a "new plan" the Engineer developed after it abandoned the project to mitigate the water issues that it identified during its time on the job. This plan required Stronghold, among other steps, to demolish the basement slabs fully and all at once so it could dig a trench down the center of the basement to divert excess water. Only after Stronghold removed the entirety of the slabs and tons of dirt—the two main sources of structural support for the Home—and completed eight of the eleven segments along the party wall and the segments along the three remaining walls, CAMM asserts, did the first signs of structural damage appear. For slightly different reasons, we agree with CAMM.

The Homeowners are correct that CAMM should have foreseen—and in fact knew—when it abandoned the underpinning project that they would bring in a second contractor to complete it. On June 4, 2022, after Mr. Valle met with the Engineer and the Homeowners and told them that CAMM would not complete the project because he was concerned for the safety of his workers, he gave the Homeowners the names of contractors he thought might be willing to finish the job. More importantly, around the time Stronghold contracted with the Homeowners to finish the project—less than a week after the June 4 meeting—a representative of Stronghold reached out to Mr. Valle and informed him that Stronghold was taking over. CAMM revealed its awareness of the Homeowners' intent to bring in a second contractor in its June 10, 2022 email to them asking if it could come pick up its tools to get them "out of the way of [their] new contractor." But the critical inquiry here reaches beyond CAMM's awareness that Stronghold was taking over the project. The decisive question is whether CAMM should have foreseen at the time of its own (assumed) negligent acts and omissions that the Engineer and Stronghold, by their own acts and omissions, would complete the project as negligently as they did. *See Sindler*, 166 Md. App. at 115. In other words, was the intervening negligence of the other defendants "set in motion" by CAMM's negligence "naturally induced" by CAMM's negligence or "of a nature, the happening of which was reasonably to have been anticipated" due to CAMM's negligence? *Wilkinson*, 107 Md. at 581. Applying the test laid out in sections 442 and 447 of the Restatement (Second) of Torts, we hold that it wasn't.

First, the negligence of the Engineer and Stronghold "operat[ed] independently of

any situation created by [CAMM's] negligence" and was "not a normal result" of CAMM's negligence. Restatement (Second) of Torts § 442(c) (A.L.I. 1965). The Homeowners hired Stronghold to complete the underpinning project after CAMM walked off the job—to pick up where CAMM left off. As CAMM asserts correctly, the Homeowners didn't hire Stronghold to fix CAMM's mistakes or any damage they knew it caused during its two days on the job. The Homeowners contend that CAMM should have known when it left the Home without reconnecting the drainage pipes or restoring the slabs over the pits it dug that another contractor would need to step in and clean up its mess, but their characterization of the situation is exactly backwards. The record reveals that CAMM knew when it abandoned the job that the Homeowners intended to hire a second contractor and knew within four days of the parties' June 4 meeting that Stronghold was stepping in to take on the project. Put differently, CAMM's knowledge that the Homeowners would hire a second contractor—who would need to demolish the slabs and disconnect the drainage pipes again anyway—developed concurrently with its decision to leave the work site in the condition that it did, and the Homeowners' decision to hire Stronghold to finish the project wasn't based on the condition of the work site when CAMM abandoned it. True, CAMM should have foreseen that water would accumulate in the pits it left behind until the new contractor took over and implemented water control measures. But neither Stronghold's decision to allow water to accumulate in the basement for a month with nothing but the Homeowners and a pump to control it, nor the soil degradation caused by that month of water accumulation, were natural, foreseeable consequences of CAMM's omission.

Second, the operation of intervening force here was "due to a third person's act or to [their] failure to act." Restatement (Second) of Torts § 442(d) (A.L.I. 1965). After CAMM abandoned the underpinning project, the Engineer insisted that it was safe to continue, and the Homeowners hired Stronghold. Stronghold, which on or around June 8, 2022 became contractually responsible for the project, knew water was accumulating from the disconnected drainage pipes into the pits CAMM left in the basement and knew Mr. Papp wouldn't be able to start work on the project until July 5. But instead of reconnecting the lines temporarily, Stronghold instructed the Homeowners to obtain a pump to remove the water from the pits manually, which they did every day for about a month. In addition, although the Engineer and Stronghold didn't develop an entirely "new plan" for the project after CAMM's departure, as the Homeowners concede, the Engineer and Mr. Papp did adjust the existing plans to deal with the groundwater accumulating in the basement. This adjustment required Stronghold to remove the basement slabs—which CAMM had left largely intact—entirely and all at once to dig a trench down the center of the floor.

It may be true that certain negligent acts by CAMM (*e.g.*, CAMM's construction of its three underpinning segments along the party wall in the wrong locations) contributed to certain negligent acts by Stronghold (*e.g.*, Stronghold's construction of its underpinning segments along the party wall in the wrong locations). But the structural damage to the Home only became apparent after Stronghold removed the slabs and multiple tons of dirt (the two main sources of structural support for the Home's foundation) and completed the vast majority of the underpinning segments (several of which contained voids and at least

three of which didn't contain the required steel dowels) under inadequate supervision from the Engineer, according to a set of plans that failed to account for all necessary factors, and in "mucky," unstable soil that had been degrading for a month before Stronghold started work on the project. So although the structural damage caused by Stronghold and the Engineer isn't "different in kind" from the harm to which the Homeowners allege CAMM's negligence contributed, *id.* § 442(a), the lion's share of the culpability for the damage to the Home rests on the shoulders of Stronghold and the Engineer, *id.* § 442(f), and the consequences of their combined negligence were "extraordinary rather than normal in view of the circumstances existing" at the time of CAMM's alleged negligent acts. *Id.* § 442(b).

In summary, it wasn't reasonably foreseeable to CAMM at the time it committed its alleged negligent acts and walked off the job site that the Engineer and Stronghold would act as negligently as they did, *id.* § 447(a), a reasonable person with awareness of the situation at the time CAMM abandoned the project would regard the actions and omissions of the other defendants as "highly extraordinary," *id.* § 447(b), and the "extraordinarily negligent" intervening acts and omissions of the Engineer and Stronghold were not "normal consequence[s]" of a situation created by CAMM's conduct. *Id.* § 447(c). This case is not one, like *Wilkinson*, 107 Md. at 579–82, or *Kenney*, 323 Md. at 119–21, where one actor's negligent conduct set in motion a second actor's negligent conduct or created a foreseeable risk that a second negligent actor would cause harm to the plaintiff. Rather, this is a case, like *Bloom*, 179 Md. at 385–86, 388–89, or *Manor Inn*, 335 Md. at 138–40, 160, where the unforeseeable, extraordinary, intervening negligence of a second actor

ultimately relieve an initial negligent actor of liability for the plaintiff's harms. Because Stronghold and the Engineer committed "'unusual'" and "'extraordinary'" intervening negligent acts and omissions that CAMM could not have anticipated, those acts and omissions were superseding causes that extinguished CAMM's tort liability for the structural damage to the Home. *Collins*, 409 Md. at 249 (*quoting McGowans*, 234 Md. at 138). Based on the undisputed facts before the circuit court, CAMM was entitled to judgment on the Homeowners' negligence claim as a matter of law.

B. The Limitation Of Liability Clause In The Contract Is Valid And Enforceable As To CAMM's Own Negligence.

The Homeowners' remaining arguments pertain to the validity and enforceability of the Contract's limitation of liability clause. A limitation of liability clause is a contractual cap on the amount a court can order one party to pay another if it finds the first party liable to the second for some proven injury. *See Schrier v. Beltway Alarm Co.*, 73 Md. App. 281, 292 (1987) ("[U]nder a limitation of liability clause: (1) damages, not merely breach of contract, must be proved; and (2) liability varies according to the extent of the injury up to the stated maximum." (internal quotation marks omitted)). "In the absence of legislation to the contrary, [limitation of liability] clauses are generally valid, and the public policy of freedom of contract is best served by enforcing the provisions of the clause." *Wolf v. Ford*, 335 Md. 525, 531 (1994)).[7] There are, however, some exceptions to this rule. A clause that

[7] The Supreme Court's opinion in *Wolf* involved the enforceability of an exculpatory clause, rather than a limitation of liability clause. 335 Md. at 527. Nevertheless, this

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does not "clearly, unequivocally, specifically, and unmistakably" express a party's intent to limit its liability for its own negligence "is insufficient for that purpose." *Adloo v. H.T. Brown Real Estate, Inc.*, 344 Md. 254, 267 (1996). In addition, a Maryland court will not enforce a limitation of liability clause that is contrary to public policy or that purports to limit a party's liability for its own gross negligence. *Wolf*, 335 Md. at 531–32.

In this case, the Homeowners argue that the Contract's limitation of liability clause is invalid and unenforceable (1) because it does not "clearly and unequivocally express" CAMM's intent to limit its liability for its own negligence, (2) because it is contrary to public policy and Maryland law, and (3) because they pleaded sufficient facts in the Complaint to establish that CAMM acted with gross negligence. We address each argument in turn and hold that the Contract's limitation of liability clause is valid and enforceable.

1. CAMM clearly and unequivocally expressed an intent to limit its liability for its own negligence.

"Our primary concern when interpreting a contract is to effectuate the parties' intentions." *Seigneur v. Nat'l Fitness Inst., Inc.*, 132 Md. App. 271, 278 (2000). Under the objective law of contract interpretation, Maryland courts enforce all unambiguous contract provisions. *Id.*; *Adloo*, 344 Md. at 266 (*citing General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)). When giving effect to unambiguous language in a contract, we

Court has assessed the enforceability of exculpatory clauses and limitation of liability clauses under the same legal standards. *See, e.g.*, *Schrier*, 73 Md. App. at 287, 296 (applying "public interest" test adopted in *Winterstein v. Wilcom*, 16 Md. App. 130, 137 (1972), a case involving an exculpatory clause, to assess the enforceability of a limitation of liability clause); *Baker v. Roy H. Haas Assocs., Inc.*, 97 Md. App. 371, 379–81 (1993) (same).

ask "what a reasonable person in the position of the parties would have thought [the language] meant" at the time the parties formed the contract. *Adloo*, 344 Md. at 266 (*citing Daniels*, 303 Md. at 261). If a contract clause is "unclear and ambiguous," though, "either the intention of the parties must be established . . . or the issue resolved by strictly construing the clause against its author." *Id.* at 267. These rules of interpretation apply to all contract provisions, including those purporting to limit a party's liability or to exculpate them from liability for their own negligence. *See id.* at 266–68 (applying objective law of interpretation to determine if a contract clause effectively absolved a party from liability for its own negligence); *Seigneur*, 132 Md. App. at 278, 280–81 (same).

The Homeowners argue *first* that the Contract does not limit CAMM's liability for its own negligence because CAMM did not "clearly and unequivocally express" its intent to do so in the Contract's limitation of liability clause. They rely on this Court's opinion in *Seigneur*, where we interpreted a contract clause purporting to "forever release and discharge [the defendant] from all claims, demands, injuries, damages, actions, or courses of action, *and from all acts of active or passive negligence on the part of [the defendant]* . . . ." 132 Md. App. at 276 (emphasis added). We held in *Seigneur* that the clause at issue was unambiguous and "expresse[d] a clear intention by the parties to release [the defendant] from liability for all acts of negligence." *Id.* at 280–81.

Here, the Contract's limitation of liability clause provides that CAMM's "maximum liability . . . *arising from an[y] cause whatsoever, whether based in contract, tort (including negligence)*, strict liability or any other theory of law, shall not exceed the

aggregate amount paid to [CAMM] [t]hereunder" (emphasis added). The Homeowners attempt to distinguish the Contract's limitation of liability clause from the clause we found to be unambiguous and enforceable in *Seigneur* by pointing out that in the Contract, "[t]he word 'negligence' is parenthetical and does not 'specifically or explicitly' reference CAMM's negligence." They contend that the Contract's language "does not clearly indicate that [they] were agreeing to limit CAMM's liability for its own negligence in unambiguous and unequivocal terms" and assert that we must construe the clause's "ambiguity" against CAMM, the Contract's author.

But as the Supreme Court pointed out in *Adloo*, and as this Court echoed in *Seigneur*, a contract "need not contain or use the word 'negligence' or any other 'magic words'" at all to exculpate a party from liability or limit a party's lability for their own negligence. *Adloo*, 344 Md. at 266 (*quoting Hardage Enters., Inc. v. Fidesys Corp.*, 570 So. 2d 436, 437 (Fla. App. 1990) (further citations omitted)); *Seigneur*, 132 Md. App. 280 (*quoting Adloo*, 344 Md. at 266). Rather, a clause is sufficient to limit a party's liability for their own negligence "'as long as [its] language . . . clearly and specifically indicates the intent" to limit that party's liability for injury "caused by [the party's] negligence." *Adloo*, 344 Md. at 266 (*quoting Barnes v. New Hampshire Karting Ass'n*, 509 A.2d 151, 154 (1986)); *Seigneur*, 132 Md. App. at 280 (*quoting Adloo*, 344 Md. at 266). In other words, the Contract didn't need to contain language purporting to limit CAMM's liability for any acts of negligence *on the part of CAMM* specifically to limit its liability for its own negligence effectively. A reasonable person in the parties' position at the time they formed

the Contract—there weren't any other parties—would have understood the clause to limit CAMM's liability under any cause of action, including for its own negligence, to the amount the Homeowners had paid CAMM under the Contract already. *See Adloo*, 344 Md. at 266 (*citing Daniels*, 303 Md. at 261). The Contract limits CAMM's liability for its own negligence unambiguously and is sufficient and enforceable for that purpose.

2. The limitation of liability clause is not contrary to Maryland law or to public policy.

The Homeowners argue *next* that even if unambiguous, the limitation of liability clause is invalid and unenforceable because it is contrary to Maryland law. They direct the Court's attention to Maryland Code (1974, 2020 Repl. Vol., 2025 Cum. Supp.), § 5-401 of the Courts & Judicial Proceedings Article ("CJ"), which prohibits parties to a construction contract from including a clause that purports to indemnify a promisee for a personal injury or property damage caused by the promisee's sole negligence:

> A covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relating to . . . the construction, alteration, repair, or maintenance of a building, structure, appurtenance or appliance, including moving, demolition, and excavating connected with those services or that work, purporting to indemnify the promisee against liability for damages arising out of bodily injury to any person or damage to property caused by or resulting from the sole negligence of the promisee or indemnitee . . . is against public policy and is void and unenforceable.

CJ § 5-401(a)(1). The Homeowners assert that because the Contract in this case related to "the construction [and] alteration . . . of a building . . . including moving, demolition, and excavating connected with those services or that work," and because CAMM sought in the

Contract to limit its liability "for damages arising out of . . . damage to property," the limitation of liability clause is void and unenforceable under CJ § 5-401(a)(1). CAMM counters that CJ § 5-401(a)(1) only applies to indemnity clauses and does not prohibit limitation of liability clauses like the one on the Contract. CAMM is right.

An indemnity clause reflects an agreement by the parties to a contract that if one of them is held liable to a third person for some injury, the other party must reimburse them for their loss even if the court held the first party liable properly. *Strong v. Prince George's County*, 77 Md. App. 177, 181–82 (1988) (*citing Poe v. Philadelphia Cas. Co.*, 118 Md. 347, 356–67 (1912)). In the context of this case, for example, an indemnity clause might have required CAMM to reimburse the Homeowners if a court found them liable for the damage to the home on the other side of the party wall or the Homeowners to reimburse CAMM if a court found them liable for that damage. An indemnity clause differs from a limitation of liability clause, which doesn't absolve a party from liability completely or shift one party's liability for their own actions onto the other. Instead, as we explain above, a limitation of liability clause caps the damages that a court can order one party to a contract to pay if it finds them liable to the other. *See Schrier*, 73 Md. App. at 292.

The Maryland legislature, when it enacted CJ § 5-401(a)(1), expressed the intent to prohibit the inclusion of indemnity clauses—clauses that shift one party's liability for personal injury or property damage caused by their sole negligence to the other—in contracts for the construction, alteration, maintenance, or repair of buildings. The statute does not prohibit expressly, or even mention, clauses that cap the damages the court can

order one party to the contract to pay the other if it finds the first liable to the second. The Homeowners assert correctly that this Court has assessed the enforceability of different types of contract clauses purporting to limit or extinguish parties' liability for their own negligence under the same legal standards. *See, e.g.*, *Schrier*, 73 Md. App. at 296; *Baker v. Roy H. Haas Assocs., Inc.*, 97 Md. App. 371, 379–81 (1993). But those standards only apply in the *absence* of legislation prohibiting the inclusion of certain types of clauses in certain types of contracts. *See Wolf*, 335 Md. at 531–32 (describing circumstances under which, even in the absence of prohibitory legislation, courts will find exculpatory clauses void and unenforceable for public policy reasons). CJ § 5-401(a)(1) prohibits the inclusion of certain indemnity clauses in construction contracts expressly. If the legislature intended to prohibit clauses in construction contracts that limit contractors' liability for their own negligence, it would have stated that intent expressly also.[8] We hold that CJ § 5-401(a)(1) does not render the limitation of liability clause in the Contract void and unenforceable.

And the limitation of liability clause isn't contrary to public policy otherwise. An exculpatory or limitation of liability clause is void as against public policy if it is included in a contract involving a transaction "affecting the public interest." *Wolf*, 335 Md. at 531–

[8] In fact, in CJ § 5-401.2, the Maryland legislature prohibited the parties to contracts "relating to the use of [] recreational facilit[ies]" expressly from including in those contracts clauses indemnifying recreational facilities against liability for their own negligence *and* clauses limiting the liability of recreational facilities for their own negligence. CJ § 5-401.2(c). If the legislature wanted to ban damage caps for construction-related contracts, it knew how to do so, but it hasn't yet.

32 (*citing Winterstein v. Wilcom*, 16 Md. App. 130, 136 (1972)).[9] Examples of contracts affecting the public interest include contracts with public utilities and common carriers. *Schrier*, 73 Md. App. at 298. Generally, though, "the concept of the 'public interest' is amorphous" and "difficult to apply." *Wolf*, 335 Md. at 532. "The ultimate determination of what constitutes the public interest must be made considering the totality of the circumstances of any given case against the backdrop of current societal expectations." *Id.* at 535. "[W]e will not invalidate a private contract on grounds of public policy unless the clause at issue is patently offensive." *Id.* at 536–37 (exculpatory clause in investment contract was not void and unenforceable as a matter of public policy because those "who choose freely to invest their money in the stock market understand that there is some risk involved" and because the harm suffered by the plaintiff due to the "poor performance of the securities chosen" by the investor was "precisely the sort of harm that [was] within the contemplation of the parties at the time they entered the agreement"); *see Boucher v. Riner*, 68 Md. App. 539, 550 (1986) (exculpatory agreement between plaintiff and parachuting company was not void and unenforceable because company was "not performing a service of great importance or a matter of practical necessity for any member of the public"; sport parachuting was not subject to public regulation; the company did not have unequal bargaining power over the plaintiff; the plaintiff was not under the company's control; and

[9] An exculpatory clause or limitation of liability clause is also void and unenforceable as against public policy if it is "the product of grossly unequal bargaining power." *Wolf*, 335 Md. at 531–32 (*citing Winterstein*, 16 Md. App. at 135–36). The Homeowners haven't raised an "unequal bargaining power" argument in their brief or at argument.

the plaintiff "was under no obligation to make the jump"); *Schrier*, 73 Md. App. at 297–98 (limitation of liability clause in contract to install and maintain an alarm system was not void and unenforceable because the service performed was important but not essential; the alarm company did not have unequal bargaining power over the plaintiff; the plaintiff was not under the company's control; and the contract was not one of adhesion because the plaintiff had alternatives and time to study the contract terms before signing it).[10]

Under the totality of the circumstances, we hold that the limitation of liability clause in the Contract is not "patently offensive." *Wolf*, 335 Md. at 537. Although construction contracts have been subject to public regulation, *see, e.g.*, CJ § 5-401(a)(1), and although contractors who build, repair, maintain, and renovate homes perform an important service, the underpinning project that the Homeowners contracted with CAMM to complete in this case was elective, not essential. The Homeowners sought out a contractor to underpin the Home to increase the amount of space in their basement, which they then planned to finish and renovate. This also was not a contract of adhesion. The Homeowners spoke with several other potential contractors before they decided to hire CAMM and they took the time to review the Contract thoroughly before they signed it. The Homeowners were under

[10] In *Boucher*, 68 Md. App. at 550–51, and *Schrier*, 73 Md. App. at 296, we applied a six-factor test created by the Supreme Court of California in *Tunkl v. Regents of the University of California*, 383 P.2d 441 (1963), and adopted by this Court in *Winterstein*, 16 Md. App. at 137, to determine whether the clauses at issue were contrary to public policy. In *Wolf*, the Supreme Court of Maryland declined to adopt the six-factor *Tunkl* test in favor of a less rigid "totality of the circumstances" test. 335 Md. at 535. The Court stated, though, that its decision declining to adopt the test didn't mean that Maryland courts couldn't consider the *Tunkl* factors moving forward when assessing the totality of the circumstances bearing on the enforceability of contract clauses. *Id.*

no obligation to hire CAMM to underpin the Home and were not under CAMM's control. And as the circuit court found, the Homeowners—one of whom has a doctoral degree—are "sophisticated consumers who opted to choose CAMM and engage CAMM" after having a family member with legal expertise review the Contract. Consequently, CAMM did not have any unequal bargaining power over the Homeowners. Finally, an individual who hires a contractor to construct a new foundation under their home's existing one understands that there might be some level of risk involved, and the possibility of settlement damage was "precisely the sort of harm that [was] within the contemplation of the parties at the time they entered the [Contract]." *Wolf*, 335 Md. at 537. The limitation of liability clause in the Contract is not void and unenforceable as a matter of public policy.

3. *Because the Homeowners failed to plead gross negligence, the prohibition on contracts exculpating a party or limiting their liability for their own gross negligence can't apply in this case.*

Third and finally, the Homeowners contend that the limitation of liability clause is unenforceable as to CAMM's actions in this case because CAMM was grossly negligent. CAMM counters that the Homeowners failed to plead gross negligence in their Complaint and that accordingly, the prohibition on contracts that limit parties' liability for their own gross negligence does not apply. CAMM is correct.[11]

[11] CAMM relies primarily on our opinion in *Baker*, where we noted that the plaintiff-appellant failed to allege gross negligence in their complaint and thus "should be precluded from arguing it on appeal." 97 Md. App. at 378 (*citing* Md. Rule 8-131(a)). As the Homeowners point out correctly, though, the rule we relied on in *Baker* to support that statement, Maryland Rule 8-131, provides that "[o]rdinarily, an appellate

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Maryland courts will not enforce clauses in contracts that purport to exculpate a party or limit their liability for gross negligence. *Wolf*, 335 Md. at 531 (*citing Winterstein*, 16 Md. App. at 136); *Baker*, 97 Md. App. at 378 (*citing Boucher*, 68 Md. App. at 544). "'[G]ross negligence' has been described as an amorphous concept, resistant to precise definition." *Rodriguez v. State*, 218 Md. App. 573, 598 (2014) (quotation marks in original). Maryland courts have equated gross negligence "with 'willful and wanton misconduct,' [or] a 'wanton or reckless disregard for human life or for the rights of others.'" *Id.* (*quoting Foor v. Juvenile Servs. Admin.*, 78 Md. App. 151, 170 (1989)); *Stracke v. Estate of Butler*, 465 Md. 407, 421 (2019) ("Gross negligence is not just big negligence. For these purposes, gross negligence must be sufficient to establish that the defendant had a wanton or reckless disregard for human life. Only conduct that is of extraordinary or outrageous character will be sufficient to imply this state of mind." (cleaned up)). The Supreme Court of Maryland also has defined gross negligence as "an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another" that "implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them." *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 635 (1985) (*quoting Romanesk v. Rose*, 248 Md. 420, 423

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court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." *Id.* at 8-131(a). Here, the Homeowners did raise the issue of gross negligence in the trial court at the summary judgment stage, and the court decided that it was improper for them to do so because they hadn't raised the issue in their Complaint. The question before us is whether the trial court's decision was correct. We agree with CAMM, then, but for different reasons.

(1968)). "'Stated conversely, a wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflects injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.'" *Id.*

In ruling that the Homeowners couldn't rely on allegations of gross negligence to challenge the enforceability of the limitation of liability clause at the summary judgment stage because they failed to plead gross negligence in their complaint, the circuit court applied the pleading standard articulated by this Court in *Tavakoli-Nouri v. State*, 139 Md. App. 716 (2001), and applied by this Court to a claim of gross negligence in *Rodriguez v. State*, 218 Md. App. 573 (2014). Under that standard, a pleading is sufficient if "'the facts therein set forth present, on their face, a legally sufficient cause of action.'" *Tavakoli-Nouri*, 139 Md. App. at 730 (*quoting Shah v. HealthPlus*, 116 Md. App. 327, 332 (1997)). The plaintiff need not use the "legal name" of any particular claim; "just the facts" necessary to establish the elements of a claim will suffice:

> [I]t is not essential for the plaintiff to identify the particular "legal name" typically given to the claim he has pled. The critical inquiry is not whether the complaint specifically identifies a recognized theory of recovery, but whether it alleges specific facts that, if true, would justify recovery under any established theory. Essentially, a complaint is sufficient to state a cause of action even if it relates "just the facts" necessary to establish its elements.

Id. In *Tavakoli-Nouri*, we noted that this pleading standard "is consistent with the 'notice' purpose of the modern complaint" as reflected in Maryland Rule 2-303, which provides that "'[a] pleading shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief . . . .'" *Id.* at 731 (quoting Md. Rule 2-303(b)).

In *Rodriguez*, we applied this standard to review the State's argument that the plaintiff had failed to plead gross negligence against correctional officers in their complaint and thus could not surmount the barrier of governmental immunity under the Maryland Tort Claims Act. 218 Md. App. at 597–98, 600. The plaintiff's complaint did not use the words "gross negligence," "willfully," "wantonly," "intentionally," or any other such words used typically in Maryland courts to describe acts of gross negligence. *Id.* at 601–04. The complaint did, however, contain several allegations that the officers had acted with "deliberate indifference" as to the plaintiff's safety. *Id.* We found that the allegations of "deliberate indifference" described acts that were "'so utterly indifferent to the rights of [the plaintiff] that [the officers] acte[d] as if such rights did not exist' or acts 'with a thoughtless disregard of the consequences without the exertion of any effort to avoid them.'" *Id.* at 604 (*quoting Romanesk*, 248 Md. at 423). The allegations, we held, were sufficient to put the State on notice that the officers "were being charged with more than mere negligence" and were thus sufficient to state a claim of gross negligence. *Id.*

The Homeowners argue that the circuit court applied the incorrect pleading standard. They assert that the circuit court applied a "more stringent" or "heightened" pleading standard applicable to claims against state employees, where plaintiffs' claims of gross negligence "must be found on the face of the complaint" to overcome the barrier of governmental immunity. That standard, they contend, shouldn't apply in this case to their claims against CAMM, a private company. Instead, the Homeowners argue, the circuit court should have considered the entirety of the evidence presented at the summary

judgment stage and sent the issue of gross negligence to the jury if it found that the Homeowners had presented "legally sufficient evidence of that [CAMM] was grossly negligent." *See Liscombe*, 303 Md. at 363. We disagree.

First, the pleading standard that the circuit court applied was not a "heightened" or "more stringent" standard. It was the general, Rule 2-303(b) pleading standard that governs all claims filed with the circuit court. True, the cases that the circuit court relied on both involved claims against government employees and issues of governmental immunity. *See Tavakoli-Nouri*, 139 Md. App. at 722–23; *Rodriguez*, 218 Md. App. at 579–80. But the pleading standard articulated by this Court in *Tavakoli-Nouri* and applied in *Rodriguez* wasn't tailored just to the issues presented in those cases. As we noted in *Tavakoli-Nouri*, the standard applied was a mere rewording of Rule 2-303's requirement that "'[a] pleading shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief.'" 139 Md. App. at 730 (*quoting* Md. Rule 2-303(b)). In fact, *Shah*, the case upon which this Court relied in *Tavakoli-Nouri* for the proposition that a pleading is sufficient if "'the facts therein set forth present, on their face, a legally sufficient cause of action,'" *Tavakoli-Nouri*, 139 Md. App. at 730 (*quoting Shah*, 116 Md. App. at 332), involved a dispute between private parties.

Liscombe doesn't help the Homeowners either. The Homeowners are correct that the Court in that case examined the entire factual record before the trial court to determine if the moving party had presented "legally sufficient evidence that the [nonmoving party] was grossly negligent." 303 Md. at 633–37. In *Liscombe*, however, the plaintiff filed suit

against the defendants in the circuit court for "injuries *allegedly caused by the gross negligence of the defendants*." *Id.* at 620–21 (emphasis added). There was no question that the plaintiff raised gross negligence in their complaint, and the defendants didn't challenge the sufficiency of the pleadings.

In summary, the circuit court applied the correct pleading standard in this case and found correctly that if the Homeowners failed to allege gross negligence in their Complaint, they should be precluded from raising the issue of gross negligence to counter CAMM's motion for summary judgment on the enforceability of the limitation of liability clause. Absent an allegation of gross negligence in the Complaint, CAMM would not have been on notice that the Homeowners might raise that issue in response to its motion for summary judgment. The court's selection of pleading standard was "consistent with the 'notice' purpose of the modern complaint." *Tavakoli-Nouri*, 116 Md. App. at 731.[12]

Second, under that proper pleading standard, the Homeowners failed to allege facts sufficient to support a claim for gross negligence. The Complaint contains the following allegations against CAMM:

> 46. . . . CAMM breached its duty of care and was negligent

[12] The Homeowners assert that after they filed their Complaint, "subsequent discovery efforts and investigation by the Homeowners revealed more facts that a trier of fact could find amounted to gross negligence." For example, the Homeowners state, they obtained information during discovery that caused them to believe CAMM had failed to preserve material evidence related to its motivations for abandoning the underpinning project. *See* footnote 5 above. But if the Homeowners wanted the trial court to consider the issue of gross negligence, the proper course of action for them to take after obtaining this information would have been to amend their Complaint with allegations of gross negligence against CAMM, *see* Md. Rule 2-341, rather than raising the issue for the first time in response to CAMM's summary judgment motion.

> in several respects, including (1) improperly underpinning the walls by leaving voids in the concrete supports, (2) failing to install supporting dowel bars in all locations specified in the underpinning drawings, (3) failing to achieve the appropriate concrete strength, and (4) failing to adequately control groundwater.
>
> 47. Defendant CAMM also breached its duty of care and was negligent by abandoning the project and by failing to take any steps to prevent further water infiltration.
>
> * * *
>
> 49. As a direct and proximate result of CAMM's negligence, the [Home] sustained substantial damage and structural failure. . . .

Unlike in *Rodriguez*, where the plaintiff alleged that the officers had acted with "deliberate indifference," the Homeowners' Complaint does not describe any acts by CAMM that were "'so utterly indifferent" to their rights "that [CAMM] acte[d] as if such rights did not exist' or acts 'with a thoughtless disregard of the consequences without the exertion of any effort to avoid them.'" 218 Md. App. at 604 (*quoting Romanesk*, 248 Md. at 423). Sure, the Homeowners did not need to use the term "gross negligence" specifically or any "magic words" like "willfully" or "wantonly." *See Tavakoli-Nouri*, 139 Md App. at 730; *Rodriguez*, 218 Md. App. at 601–04. They did, however, need to allege facts that would put CAMM on notice that it "[was] being charged with more than mere negligence," *Rodriguez*, 218 Md. App. at 604, or with some level of intent or total disregard for the Homeowners' safety. Because they failed to do so,[13] they failed to plead gross negligence.

[13] The Homeowners point out that in the Complaint's Statement of Facts, they allege that "CAMM's concern for its workers' safety was a sham" because Stronghold was

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And because they have pleaded only ordinary negligence against CAMM, the limitation of liability clause is valid and enforceable as to CAMM's alleged negligent acts.

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

able to complete the project without any safety issues. Relying on our opinion in *Catterton v. Coale*, 84 Md. App. 337 (1990), they assert that this "allegation of a fabrication . . . is sufficient to show . . . gross negligence." *Id.* at 343–44. In *Catterton*, the plaintiff alleged that the defendant conducted a child abuse investigation against him negligently and had fabricated a report concerning the plaintiff's polygraph examination. *Id.* at 343. We found that the allegation of fabrication was sufficient to state a claim of gross negligence against the defendant and overcome governmental immunity. *Id.* at 343–44. The allegation of fabrication indicated that the defendant had conducted their investigation with reckless disregard for the plaintiff's rights. Here, however, the allegation that CAMM's safety concerns were a "sham" does not indicate that it failed to follow the project plans or take steps to prevent water from infiltrating the basement after its departure with a reckless or thoughtless disregard for the Homeowners' safety. At most, the allegation of sham safety concerns indicates that CAMM may have had an unspecified, ulterior motive for abandoning the project. The allegation is insufficient to shift the scales in the Homeowners' favor.