

Circuit Court for Montgomery County
Case No. 445654

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3477

September Term, 2018

JOSEPH STEINBERG

v.

PAMELA MAYER

Meredith,
Nazarian,
Wells,

JJ.

Opinion by Nazarian, J.

Filed: May 6, 2020

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

Pamela Mayer and Joseph Steinberg are estranged siblings who are fighting over the assets of their aunt. In her will, the aunt, Bernice Weck, bequeaths the proceeds of the sale of her Philadelphia co-op apartment to Mr. Steinberg. After experiencing a bad fall in her Philadelphia apartment, Ms. Weck decided to move to Maryland and live with Ms. Mayer, and Ms. Weck's estate lawyer prepared a financial power of attorney appointing Ms. Mayer as her agent.

This dispute arises primarily from a decision Ms. Mayer made in that capacity: she sold Ms. Weck's unoccupied Philadelphia co-op instead of maintaining the property until Ms. Weck's death. Mr. Steinberg challenges this decision because under Ms. Weck's will, he would have received the apartment as a specific bequest, whereas the proceeds of the sale merge into what someday will be her residuary estate in which he participates to a lesser degree. But Ms. Weck, age 94, is still alive, so any talk of distributing her assets according to her will is premature.

Mr. Steinberg brought suit in the Circuit Court for Montgomery County under Maryland Code (1974, 2017 Repl. Vol.), § 17-103 of the Estates and Trusts Article ("ET"). He asked to review Ms. Mayer's conduct, alleged that she breached her duties to Ms. Weck by selling the co-op, and asked the court to remove her as Ms. Weck's agent. The complaint also included common law claims alleging undue influence, fraud, and misrepresentation. The court granted Ms. Mayer's motion for summary judgment and Mr. Steinberg appeals, arguing that disputes of material fact require a trial. We disagree and affirm the judgment.

I. BACKGROUND

A. Factual Background

According to Ms. Mayer, she and Mr. Steinberg drifted apart when he moved to California. The two have had minimal contact over the years beyond the occasional holiday card or birthday wish. Ms. Weck has no children and is very close to her niece and nephews.

In May 2017, Ms. Weck fell at home and was unable to get up until the next day, when nurses hired by Ms. Mayer visited. Ms. Mayer testified in her deposition that after she fell, Ms. Weck’s doctors told her that she was suffering from dementia and could “no longer live alone,” even with some home care. Ms. Mayer and her other brothers, Charles Steinberg and William Hogan, discussed different living arrangements with Ms. Weck. Ultimately, she decided to move in with Ms. Mayer, and they continue to live together in Maryland to this day.

When Ms. Weck decided to move, her family packed up her Philadelphia apartment and found her will, dated May 17, 2005. The will provides that on her death, Ms. Weck bequeaths “[t]he net proceeds of [her] apartment” to Mr. Steinberg. She bequeaths other items to Ms. Mayer, Charles Steinberg, and William Hogan. She indicates that “[a]ll the rest, residue and remainder of [her] property whether real or personal” will be divided between her nephews and Ms. Mayer’s two daughters, A.M. and R.M.:

- One quarter to Joseph Steinberg;
- One quarter to Charles Steinberg;
- One quarter to William Hogan;
- One eighth to A.M.; and
- One eighth to R.M.

Ms. Weck has her own estate attorney who in 2017 drafted a health care power of attorney, a financial power of attorney, and an advanced directive appointing Ms. Mayer as Ms. Weck’s attorney-in-fact. According to Ms. Mayer, the role meant that she “would do [her] best to protect [Ms. Weck] both financially and for her health care.”

After Ms. Weck moved to Maryland, Ms. Mayer met with her brothers to discuss whether they should sell Ms. Weck’s apartment in Philadelphia. Ms. Mayer favored selling because Ms. Weck “was not going to move back to Philadelphia and it was costing her money every month” and the co-op’s rules prohibited Ms. Weck from renting the space to anyone else. Ms. Mayer talked to Joseph Steinberg about selling the co-op four times between June 2017 and March 2018. Although Mr. Steinberg offered to cover the monthly fees for the co-op, Ms. Mayer didn’t consider his offer seriously because, in her view, Mr. Steinberg “had done nothing but take money from Ms. Weck” In March 2018, the family decided, with Mr. Steinberg opposed, to sell the interest. Handling the sale herself, Ms. Mayer accepted \$254,000 as the final price for the co-op provided the buyer would cover \$20,000 in fees. Ms. Weck signed the contract of sale. She has not been declared incompetent.

B. Procedural Posture

On April 11, 2018, before the sale was finalized, Mr. Steinberg filed a Petition to Review Agent’s Conduct and Complaint¹ that alleged, among other things, that Ms. Mayer

¹ The Petition to Review Agent’s Conduct and Complaint included the following counts, listed *verbatim*:

Count I – Review Agents Conduct

breached her fiduciary duty to Ms. Weck and unduly influenced Ms. Weck by removing her from her home and taking control of her assets. He filed a Motion for Temporary Restraining Order to stop Ms. Mayer from selling the co-op. Ms. Mayer moved to dismiss the action, arguing that she hadn't breached her duties to Ms. Weck and that she wasn't liable to Mr. Steinberg.

Mr. Steinberg filed his Motion for Temporary Restraining Order incorrectly, so the motion wasn't heard for two months. During that time, the sale was finalized, and that transaction rendered the motion moot. On June 11, 2018, the day before the motions hearing, Mr. Steinberg filed an Amended Petition to Review Agent's Conduct and Complaint that deleted two counts from the original complaint and added five new ones:

- Count I – request to review agent's conduct and remove agent;
- Count II – claim for breach of fiduciary duty between Ms. Mayer and Ms. Weck;
- Count III – claim that Ms. Mayer unduly influenced Ms. Weck into selling the co-op;
- Count IV – [omitted from amended complaint, formerly preliminary and permanent injunctive relief]
- Count V – claim for fraud
- Count VI – [omitted from amended complaint]
- Count VII – claim for misrepresentation
- Count VIII – request for constructive trust
- Count VIII [sic] – request for an accounting

On June 12, 2018, the motions court ruled that Mr. Steinberg's filing error on the temporary restraining order and the recent amended complaint mooted the pending

Count II – Breach of Fiduciary Duty
Count III – Undue Influence
Count IV – Preliminary and Permanent Injunctive Relief

motions:

[I]n order to get a TRO, [the motion] needs to go actually to the duty judge and there is a mechanism by which you can have the file worked up and presented to the duty judge to look at a TRO within the same day that it's file[d], so waiting until [the motions hearing] oftentimes, as what happened here is that the emergency or concern that you have is mooted out because of actions that have occurred subsequent to the motion.

[O]nce there is an amended complaint that supersedes the original complaint, the motion to dismiss the original complaint becomes moot

Ms. Mayer filed a motion to dismiss the amended petition on June 26, 2018 that Mr. Steinberg opposed. The parties returned for another motions hearing on August 16, 2018. The motions court noted that Mr. Steinberg's amended complaint didn't include much factual support:

[MR. STEINBERG'S COUNSEL]: [P]laintiff, in his complaint, in addition to the allegations that Ms. Weck may not have had legally required capacity to execute a power of attorney, naming [Ms. Mayer] as her agent, alleges [Ms. Mayer] violated multiple sections of Section [17-103(b) of the Estates and Trusts Article], including the duty to act loyally. [Ms. Mayer] knowingly and hastily sold Ms. Weck's co-op, an asset that was appreciating in value, at a price significantly [] below the co-op's fair market value.

[THE COURT]: Where is the evidence of that in your complaint?

[MR. STEINBERG'S COUNSEL]: Your Honor, I'll turn to our—

[THE COURT]: I have the complaint right here—

[MR. STEINBERG'S COUNSEL]: But—

[THE COURT]: —you're saying all these things, that [Ms. Weck] has dementia, she doesn't have the mental capacity to make a change, the condo was sold hastily, the condo was sold

at significantly below fair market value. . . . [Y]ou're just saying that.

The motions court remarked that the amended complaint didn't specify how Ms. Weck's unproven dementia diagnosis affected her mental capacity. The court went on to question why, if Mr. Steinberg believed Ms. Mayer was abusing Ms. Weck emotionally and financially, he had not sought relief through the criminal system or the guardianship statute. Mr. Steinberg replied that "both of those had been considered," but the pending action was his "first step." After considering arguments and reviewing an accounting of Ms. Mayer's spending on Ms. Weck's behalf, the court dismissed the petition:

In, as counsel knows, a motion to dismiss, the Court must consider the facts and likeness favorable to the non-moving party, or [Mr. Steinberg], and view the facts alleged in the pleadings as true. And, I have done that. And, I just cannot find that based on this complaint, that the allegations are of fraud, of misrepresentation. **I've tried desperately to find some facts.** My questions of you, [Mr. Steinberg's counsel], left me even more confused and with a bigger question mark over my head as to how, what evidence is there of any wrongdoing in your complaint? And, I cannot find it. I just simply cannot find it.

Moreover, your answers to my questions left me even more puzzled and having more doubt. I just, I cannot find that you're entitled to relief based on what you've alleged in this complaint. You've alleged fraud. **I simply cannot find that [] based on what's in this complaint, and based on the argument you've presented to me, that there's some type of breach of duty and there's some type of injury to your client.**

And, I realize that Mr. Steinberg feels as if he's been wronged. But . . . **the relief he seeks is just simply not proper** in this Court's opinion. And, accordingly, I will grant the defendant's motion to dismiss for the reasons I've stated.

And, I also say this, I did read the documents that were submitted, the accounting, and the receipts, and I have also considered what I found in those documents which is, they were receipts from Amazon.com for a variety of items that this Court finds would be consistent with the case of a 93-year-old woman.

There's nothing in the documents, the accounting that was submitted to this Court, that suggests that there is any fraud, any undue influence, any misrepresentation So, I just want the record to be clear, I did see those documents and I considered them.

(emphasis added). After the case was dismissed, Mr. Steinberg filed for reconsideration arguing, among other things, that because the trial court considered information outside the complaints, *i.e.* Ms. Weck's accounting information, the motion to dismiss converted to a motion for summary judgment and he should have been given the opportunity to present evidence in opposition of judgment. The court granted the motion and vacated the prior order dismissing the case to give Mr. Steinberg "the reasonable opportunity to present, in a form suitable for consideration on summary judgment, additional pertinent material." October 3, 2018 Order (*quoting Worsham v. Ehrlich*, 181 Md. App. 711, 722–23 (2008)).

On November 21, 2018, Ms. Mayer submitted a supplemental motion to dismiss and for summary judgment that Mr. Steinberg opposed. Two months after the court granted reconsideration to give Mr. Steinberg the opportunity to present additional information, the court held a final motions hearing. Mr. Steinberg argued in part that Ms. Weck was not competent to create the power of attorney because she was diagnosed with dementia in 2016. He did not present any witnesses at the hearing or evidentiary support for this claim. At the end of Mr. Steinberg's argument, the court tried to find "where in the

amended complaint it is alleged that Ms. Weck has suffered from debilitating dementia since at least 2016.” Ms. Mayer contended that it was not in the amended complaint, which led the court to have the following exchange with Mr. Steinberg’s counsel:

[MR. STEINBERG’S COUNSEL]: It looks, in June of 2018, so that’s the year, the amended complaint to replace the investigative agent was filed. Term five at paragraph 38, and June of 2018 is important. It says, “[Ms. Mayer] conducted a sale with an invalid power of attorney as Ms. Weck **lacked capacity to appoint** [Ms. Mayer] as her agent.” Now we did not—

[THE COURT]: I saw that, but—

[MR. STEINBERG’S COUNSEL]: Let’s –

[THE COURT]: —I saw that—

[MR. STEINBERG’S COUNSEL]: Right. And—

[THE COURT]: —**with no supporting facts, nothing in the predicate facts** to tell me anything, anything like the story you’ve just told.

[MR. STEINBERG’S COUNSEL]: And that’s because within days or weeks after that, depositions were taken and Ms. Mayer herself is the one who volunteered the information that Ms. Weck was, suffered from dementia. So—

[THE COURT]: Okay.

[MR. STEINBERG’S COUNSEL]: —[] we pled and, you know, look, I get back and Bill² blew up in my face about it’s a notice state,³ [] that was the information we had at the time. Mr. Steinberg knew enough because of inter-family discussions, discussions with his somewhat estranged, but still communicative brothers, that she was in bad health, needed all

² It’s unclear from the record to whom Mr. Steinberg’s counsel is referring.

³ “Fair notice” means the “requirement that a pleading adequately apprise the opposing party of a claim. A pleading must be drafted so that an opposing attorney of reasonable competence would be able to ascertain the nature and basic issues of the controversy and the evidence probably relevant to those issues.” Black’s Law Dictionary 1277 (11th ed. 2019).

sorts of attendance, really couldn't do for herself and derived from that, as appears correctly, that she lacked capacity to execute that power of attorney under which Ms. Mayer is now running things.

[THE COURT]: I just find it interesting, it seems to me that the underpinning of almost the entire case that [Mr. Steinberg] is putting forward is that this woman is being taken advantage of because she doesn't know what she's doing. **And there are three words in this whole amended complaint with no supporting factual allegations**, just the conclusory statement in the fraud count, that she lacked capacity and there's nothing to support that in here, no facts.

(emphasis added). After taking the case under advisement, the court issued a written order dismissing the case “for failure to state a claim upon which relief can be granted.” But as referenced above, the court noted during the hearing that the amended complaint included “no supporting factual allegations.”⁴ Mr. Steinberg appeals. We supply additional facts as needed below.

II. DISCUSSION

Mr. Steinberg raises three questions⁵ on appeal that we consolidate into one: was

⁴ Ordinarily, we review “only the grounds upon which the trial court relied in granting summary judgment.” *Washington Mut. Bank v. Homan*, 186 Md. App. 372, 388 (2009) (quoting *Property & Casualty Ins. Guar. Corp. v. Yanni*, 397 Md. 474, 480–81 (2007)). Although in its order, the court didn't state that summary judgment was granted because Mr. Steinberg had failed to provide factual support for his allegations, it referenced the lack of factual foundation during the hearing. We infer from that statement that the court found that Mr. Steinberg had failed to present legally sufficient evidence to raise a genuine dispute of material fact on any issue. See *Carter v. Aramark Sports & Ent. Servs., Inc.*, 153 Md. App. 210, 248 n.9 (2003).

⁵ Mr. Steinberg raised three Questions Presented:

1. Whether the Circuit Court improperly granted summary judgment in favor of Appellee when there was a genuine

the court legally correct when it granted summary judgment in favor of Ms. Mayer?⁶

Rule 2-501(f) states that summary judgment may be granted where “there is no genuine dispute as to any material fact and . . . the party . . . is entitled to judgment as a

dispute of fact as to whether Appellee complied with her fiduciary duties by selling Ms. Weck’s Apartment for less than fair market value.

2. Whether the Circuit Court improperly granted summary judgment in favor of Appellee when there was a genuine dispute of fact as to whether Appellee complied with her duty to preserve Ms. Weck’s estate plan prior to selling Ms. Weck’s Apartment.

3. Whether the Circuit Court improperly granted summary judgment in favor of Appellee when there was a genuine dispute of fact as to whether Ms. Weck had the capacity to give Appellee her power of attorney, and if so, whether Ms. Weck exerted undue influence on Ms. Weck and/or performed her responsibilities to Ms. Weck unfairly and unreasonably.

Ms. Mayer rephrased and consolidated those Questions Presented as:

1. Whether the Circuit Court properly granted summary judgment in favor of Appellee as there was no genuine dispute of material fact and Appellant failed to state a claim upon which relief may be granted.

⁶ We note that although Mr. Steinberg didn’t raise it in a specific question presented, he argues as well that he should have been granted leave to amend the Amended Petition and Complaint. ANT.13. But there was no motion before the court to alter or amend the Amended Petition or Complaint; instead, counsel for Mr. Steinberg asked the court orally to “exercise [its] discretion and allow [him] to re-amend” so counsel could provide “chapter and verse.” T12/13/18 32. The standard of review is whether the court abused its discretion. *Walls v. Bank of Glen Burnie*, 135 Md. App. 229, 236 (2000). “The real question is whether justice has not been done, and our review of the exercise of a court’s discretion will be guided by that concept.” *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700–01 (1999). On this record, we see no abuse of discretion in the court’s decision not to grant an on-the-fly oral motion for leave to re-amend his Amended Petition and Complaint, especially after the court vacated its earlier dismissal and allowed summary judgment briefing and presentations.

matter of law.” In ruling on a summary judgment motion, the trial court “determines issues of law and makes rulings as a matter of law.” *PaineWebber Inc. v. East*, 363 Md. 408, 413 (2001). The standard of review, then, is “whether the trial [c]ourt was legally correct.” *Id.* (quoting *Okwa v. Harper*, 360 Md. 161, 178 (2000)).

To avoid summary judgment, the opposing party must prove the existence of a disputed fact: “when the moving party has set forth sufficient grounds for summary judgment, the opposing party must show *with some precision* that there is a genuine dispute as to a material fact.” *King v. Bankerd*, 303 Md. 98, 112 (1985) (emphasis added). The trial court does not make any findings of fact in granting a motion for summary judgment, and a “material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Id.* at 111. “In reviewing a summary judgment, an appellate court has the same information from the record and decides the same issues of law as the trial court.” *PaineWebber Inc.*, 363 Md. at 413 (quoting *Heat & Power Corp.*, 320 Md. 584, 591–92 (1990)). We view the facts “in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 289 (2018) (quoting *Windesheim v. Larocca*, 443 Md. 312, 326 (2015)).

A. The Circuit Court Did Not Err In Dismissing Or Granting Summary Judgment On Mr. Steinberg’s Claims.

Mr. Steinberg’s appellate arguments center around the following allegations that he contends could not have been resolved by summary judgment:

- Ms. Mayer breached her duty of care by selling the co-op below market

- value;
- Ms. Mayer had a conflict of interest;
 - Ms. Mayer failed to preserve Ms. Weck’s estate plan;
 - Ms. Weck lacked capacity to appoint Ms. Mayer as attorney-in-fact; and
 - Ms. Mayer exerted undue influence over Ms. Weck.

Although Mr. Steinberg raises these trial court arguments before this Court, he fails to point to a single disputed fact regarding any of them.⁷ He argues that Ms. Mayer undervalued the property, that she didn’t hire a real estate agent, that she should have postponed the sale, and that she “offers conjecture, surmise and spin devoid of factual underpinnings.” But during the December 13, 2018 hearing, Mr. Steinberg failed to raise any disputes of material fact, even though the court granted reconsideration in part to give him an opportunity to present evidence that might. Instead, Mr. Steinberg’s counsel focused on argument alone. He called the power of attorney “fraudulent,” stated that Ms. Weck was “not competent because she had dementia,” and alleged that “Ms. Mayer is in the happy benefit of . . . playing with house money.” But these conclusory statements were all he offered: Mr. Steinberg didn’t present any admissible evidence from which a trier of fact could have reached those conclusions. He didn’t have expert witnesses examine Ms. Weck or opine on her mental capacity or explain how Ms. Mayer breached her duty of care. He didn’t present evidence that Ms. Mayer committed fraud or unduly influenced Ms. Weck. He didn’t establish that Ms. Weck had dementia through a qualified medical expert.

⁷ Mr. Steinberg argues that he “should be given an opportunity to take discovery” on remand. But he had the opportunity to conduct discovery—he took depositions and propounded interrogatories and requests for production of documents, and he was explicitly given the opportunity to provide additional material to the court when his motion for reconsideration was granted.

Instead, Mr. Steinberg argued that Ms. Mayer, a layperson not qualified to offer opinions on mental capacity, had admitted Ms. Weck had dementia. *See Robinson v. State*, 348 Md. 104 (1997); Md. Rule 5-701 (“If the witness is not testifying as an expert, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are . . . rationally based on the perception of the witness . . .”). So in the absence of disputed material facts, we are left to determine whether judgment in favor of Ms. Mayer was proper.

1. The Circuit Court Did Not Err In Granting Summary Judgment On The Statutory Claims (Counts I – Review Agent’s Conduct, Count II – Breach of Fiduciary Duty, Count VIII – Constructive Trust, and Count VIII [*sic*] – Accounting)

In Count I, Mr. Steinberg asked the court to review Ms. Mayer’s conduct and remove her as an agent under ET § 17-103. Relatedly, in Count II, Mr. Steinberg alleged that Ms. Mayer breached her fiduciary duty to Ms. Weck. ET § 17-103(a)(6) states that “[a] person named as a beneficiary to receive any property, benefit, or contractual right on the principal’s death” “may petition a court to . . . review the agent’s conduct, and grant appropriate relief.”

Ms. Mayer’s duties as Ms. Weck’s agent stem from the power of attorney executed in 2017. “[A] power of attorney is a written document by which one party, as principal, appoints another as agent (attorney in fact) and confers upon the latter the authority to perform certain specified acts or kinds of acts on behalf of the principal.” *King*, 303 Md. at 105. The instrument defines and bounds the agent’s authority, and serves as the contract of agency that creates a principal-agent relationship. *Id.* Ms. Mayer, as Ms. Weck’s agent,

sold Ms. Weck’s co-op under a power granted specifically in the power of attorney:

The authority of my agent shall include the authority to act as stated below with regard to each of the following subjects:

Real property – With respect to this subject, I authorize my agent to: demand, buy, sell, convey, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject, an interest in real property or a right incident to real property

ET § 17-113 outlines the duties of an agent, which include duties to:

- “Act in accordance with the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal’s best interest;”
- “Act with care, competence, and diligence for the best interest of the principal;”
- “Act only within the scope of authority granted in the power of attorney;”
- “Act loyally;”
- “Act so as to not create a conflict of interest that impairs the agent’s ability to act impartially”; and
- “Attempt to preserve the principal’s estate plan.”

Here, Mr. Steinberg did not put forward any evidence that Ms. Mayer breached her duties. Her actions as an agent were reasonable. Ms. Weck sustained a fall serious enough to require constant care, and she chose to move in with Ms. Mayer. There is no serious dispute that Ms. Weck was never going to move back into the Philadelphia apartment, nor that she was making and would be required to make monthly payments to her detriment. And because the building would not allow them to rent or lease the space to anyone else, the apartment would remain unoccupied. Ms. Mayer made the decision to sell the apartment in consultation with her brothers, and, other than Mr. Steinberg, they agreed. She handled

the sale herself, posting the listing online and therefore bypassing the cost of a real estate agent. The property sold for \$254,000 and Ms. Weck signed the sale documents personally.

Mr. Steinberg argues that the sale of the co-op inured to his detriment, but Ms. Mayer does not owe Mr. Steinberg any duties. Absent evidence she breached her duties *to Ms. Weck* to preserve her estate plan, ET § 17-113(c) and (d) offer Ms. Mayer specific protections from Mr. Steinberg’s claims:

(c) *Liability in general* — **An agent that acts as provided in this section is not liable to any beneficiary** of the principal’s estate plan for failure to preserve the plan.

(d) *Agent not liable solely because of benefit* — An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from an act taken by the agent or has an individual or conflicting interest in relation to the property or affairs of the principal.

(emphasis added). Accordingly, Ms. Mayer did not have a duty to Mr. Steinberg vis-à-vis the co-op and Counts I and II were dismissed properly.

In Count VIII, Mr. Steinberg requested a constructive trust, and in a second count also labelled Count VIII, he requested an accounting. *First*, a “constructive trust is an equitable remedy, not a cause of action in itself.” *Chassels v. Krepps*, 235 Md. App. 1, 15 (2017). As there is no standalone cause of action for “constructive trust,” the court dismissed the count properly.

Finally, in the second count labelled Count VIII, Mr. Steinberg requested an accounting. Generally, a suit in equity for an accounting may be maintained when remedies at law are insufficient. *P.V. Props., Inc. v. Rock Creek Vill. Assocs.*, 77 Md. App. 77, 89

(1988). “An accounting may be had where one party is under an obligation to pay money to another based upon facts and records which are known and kept exclusively by the party to whom the obligation is owed, or where there is a confidential or fiduciary relation between the parties, and a duty rests upon the defendant to render an account.” *Id.* To bring an action in accounting, the plaintiff must demonstrate that:

1. The defendant was under a legal duty to account for money or property of another;
2. The defendant was compelled to render such account; and
3. The defendant has failed to render such account.

Id. Here, Ms. Mayer has a fiduciary relationship with Ms. Weck, but no such relationship arose between Ms. Mayer and Mr. Steinberg. Nonetheless, Ms. Mayer produced an accounting during discovery that the court reviewed. The court correctly dismissed Mr. Steinberg’s claim for an accounting.

2. The Circuit Court Did Not Err In Granting Summary Judgment On The Common Law Claims (Count III – Undue Influence, Count V – Fraud, and Count VII – Misrepresentation).

First, in Count III, Mr. Steinberg alleged that Ms. Mayer unduly influenced Ms. Weck. “Undue influence” has been recognized as a defense to avoid a will. *Anderson v. Meadowcroft*, 339 Md. 218, 228 (1995) (“[U]ndue influence which will avoid a will must be unlawful on account of the manner and motive of its exertion, and must be exerted to such a degree so as to amount to force or coercion, so that free agency of the testator is destroyed.”). The elements of undue influence in the context of a will are:

1. The benefactor and beneficiary are involved in a relationship of confidence and trust;

2. The will contains substantial benefit to the beneficiary;
3. The beneficiary caused or assisted in effecting execution of will;
4. There was an opportunity to exert influence;
5. The will contains an unnatural disposition;
6. The bequests constitute a change from a former will; and
7. The testator was highly susceptible to the undue influence.

Zook v. Pesce, 438 Md. 232, 248 (2014) (citing *Moore v. Smith*, 321 Md. 347 (1990)). But Mr. Steinberg doesn't allege that Ms. Mayer unduly influenced Ms. Weck into executing her will, or even the power of attorney. He states that Ms. Mayer "removed" Ms. Weck from her Pennsylvania residence to her own home in Maryland, that Ms. Mayer "isolated Ms. Weck[]" from the outside world, and that she disposed of Ms. Weck's assets during her lifetime to his detriment as a beneficiary of her will. E.27-28. Because this count did not allege the elements of undue influence, Count III was dismissed properly.

Next, in Count V, Mr. Steinberg alleged fraud and claimed that Ms. Mayer defrauded Ms. Weck by selling the property below market value to *his* detriment. He alleged as well that the power of attorney was invalid because Ms. Weck lacked capacity to execute it. In order to prevail on a claim for fraud, a plaintiff must prove:

1. that the defendant made a false representation to the plaintiff;
2. that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth;
3. that the misrepresentation was made for the purpose of defrauding the plaintiff;
4. that the plaintiff relied on the misrepresentation and had the right to rely on it; and

5. that the plaintiff suffered compensable injury resulting from the misrepresentation.

Sass v. Andrew, 152 Md. App. 406, 429 (2003). Here, none of the elements were pled—most notably, Mr. Steinberg alleged no false statements by Ms. Mayer to him. To the extent Mr. Steinberg was attempting to raise a fraud claim on Ms. Weck’s behalf, he lacks standing to do so. The court dismissed Count V properly.

Finally, in Count VII, Mr. Steinberg alleged misrepresentation, claiming that Ms. Mayer “used an invalid power of attorney to implement the sale” of the co-op, that she “failed to disclosure [*sic*] to buyer that [she] was acting under an invalid power of attorney,” that she knew or should have known the power of attorney was invalid, and that she sold the property “in a hasty manner at below fair market value.” Negligent misrepresentation “requires conduct which falls below the standard of care the maker of the statement owes to the person to whom it is made.” *Gross v. Sussex Inc.*, 332 Md. 247, 260 (1993). However, “there can be no negligence where there is no duty that is due” *Id.* (quoting *Village of Cross Keys v. U.S. Gypsum*, 315 Md. 741, 751–52 (1989)). Duty is “an obligation to which the law will give effect and recognition to conform to a particular standard of conduct toward another.” *Id.* at 261 (quoting *Jacques v. First Nat’l Bank*, 307 Md. 527, 532–33 (1986)).

Here, Mr. Steinberg grounded his misrepresentation claim in the allegation that Ms. Mayer “knew or should have known” that the power of attorney was invalid, and therefore that she misrepresented her capacity to sell the co-op interest to the buyer. This fails for several reasons, not least because (a) Mr. Steinberg lacks standing to raise a negligent

misrepresentation claim on behalf of the buyer of the co-op interest and (b) Mr. Steinberg doesn't allege any misrepresentations that Ms. Mayer made to the buyer or, for that matter, to him. Count VII was dismissed properly as well.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**