UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2698

September Term, 2012

SHAFIQ UMAR, et al.

v.

KHURRAM SHAHZAD

Krauser, C.J.,
Graeff,
Berger,

JJ.

Opinion by Krauser, C.J.

Filed: February 5, 2015

This appeal involves the sale of a gas station, the "Stevens Forest Exxon," by its co-owners, Khurram Shahzad, appellee, and Shafiq Umar, appellant, to Abdul Azad, appellant. As is evident from the designation of appellate parties, this was not a typical commercial lawsuit between parties on the opposite sides of a contract, that is, between sellers and buyer, or vice versa. Rather, this was an action for, among other things, fraud, breach of fiduciary duty, and civil conspiracy brought by one seller, appellee Shahzad, in the Circuit Court for Prince George's County, against his co-owner, appellant Umar, and the purchaser of the station, appellant Azad.

At the conclusion of a bench trial of this matter, the Prince George's County circuit court found that Umar and Azad had indeed conspired to defraud appellee. It therefore entered judgments against Umar and Azad, amounting to $100,000 in compensatory damages and $25,000 in punitive damages. From those judgments, Umar and Azad noted this appeal, raising three issues, which are reducible to two:

> I. Whether the circuit court erred in holding that Umar and Azad had engaged in a civil conspiracy to defraud appellee and to breach any fiduciary owed to appellee when it also found that Umar was not liable for fraud or breach of fiduciary duty.
>
> II. Whether the circuit court erred in holding appellants liable for civil conspiracy when Azad was legally incapable of breaching a fiduciary duty.

Finding no error, we affirm.

Background

When Fill Up, Inc., a close corporation, was formed, in 2004, Umar's son, Imad, was its sole "director." On September 22, 2005, Fill Up, Inc. and Umar's son purchased from Stanley Peter Stanger the Stevens Forest Exxon for $375,000 and the inventory of that station at cost. To pay for the station, Umar and his wife executed a "promissory note," which was collateralized by a second deed of trust on their home in the amount of $400,000. Two years later, when Umar's son died, Umar took over Fill Up, Inc. and became its sole "director" and stockholder.

Within a year of assuming ownership and control over Fill Up, Inc., Umar sought to sell the Exxon station in part to pay off the promissory note he had executed for the purchase of the station from Stanger. After learning of appellee's interest in purchasing a gas station, Umar arranged to meet with appellee to discuss whether appellee would be interested in purchasing his station. At that time, Umar informed appellee that he wanted $371,000 for the station. When appellee replied that he could not afford to pay that amount for the station, the two agreed that appellee would purchase, in effect, a forty-nine percent interest in the station for $100,000.

To complete the sale, Umar and appellee executed, on February 1, 2008, a "Stock Purchase Agreement," providing for the sale of forty-nine percent of the stock of Fill Up, Inc., which, as noted, did business as "Stevens Forest Exxon," to appellee for $100,000, while Umar retained fifty-one percent of the corporation's stock. The Stock Purchase

Agreement further stated that appellee would "be responsible for the operation and management of the business" following the stock sale and that appellee had agreed to "ensure" that monthly payments continued to be made on Umar's outstanding promissory note, the balance of which was, at that time, $374,349.20. Interest on the promissory note would be, declared the note, "treated as a regular and necessary expense of the business."

Although there was no dispute at trial as to the foregoing facts, the parties' testimony diverged with respect to what occurred sometime after appellee's stock purchase. According to appellee, about two-and-a-half years after he had purchased a forty-nine percent interest in Umar's gas station, Umar informed appellee, who, at that time, did not know that Umar was seeking to sell the gas station, that Umar knew someone who was interested in buying the station. Appellee further stated that Umar had assured him that the sale would enable him to satisfy his own obligation as to the Stanger promissory note and that appellee would "get [his] initial investment" of "$100,000" back. Several days later, Umar was a little more specific, appellee said, as to whom the interested purchaser was and as to what he was willing to pay for the station at that time. Umar, according to appellee, informed him that the potential purchaser was his friend, Azad, and that Azad wanted to buy the station for $300,000 plus the cost of the station's inventory. Umar then reassured him, appellee claimed, that, as a result of the sale, the Stanger promissory note would be paid off; that appellee would receive his $100,000 back; that they would "still have some money left"; and

that "whatever [was] left over," he would receive "some of that, too." Finding that arrangement "acceptable," appellee agreed to proceed with the sale.

Sometime later, appellee had lunch with Umar, at which time he was introduced to Azad, whom Umar, appellee learned, had known for the past 30 years. Azad, it was agreed, would come by and spend time at the station"talking to [the] cashier, talking to [the] mechanic, looking into the reports." Umar then directed appellee to give Azad "access to everything, make sure that he has transparency to each and everything."

Appellee testified that, a few days later, Umar called him and said that they should "clos[e] this deal." To that end, appellee and his brother then met with Umar and Azad, together with Azad's accountant and other associates of Azad's,[1] to discuss the sale.

At that meeting, Azad and Umar were the first to read the contract—a document entitled "Bill of Sale" and dated October 16, 2010—and then it was given to appellee. The Bill of Sale provided that Azad would pay $300,000, plus the value of the station's "saleable inventory," to acquire both Umar's fifty-one percent share and appellee's forty-nine percent share in Fill Up, Inc., the corporate owner[2] of "Stevens Forest Exxon." It further provided

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[1]Azad brought along with him his son and an individual who was managing one of Azad's other gas stations.

[2] The record, to put it mildly, is inconsistent and therefore confusing as to Fill Up, Inc.'s relationship to the Steven Forest Exxon. In the sales contract in which the gas station was initially purchased from Stanley Peter Stanger, the "Buyer" is referred to as both Umar's son and "a corporation to be formed hereinafter." Although that contract, which was dated September 22, 2005, and referred to a corporate owner to be formed in the future, Fill Up, Inc.'s articles of incorporation were executed before that date, on May 7, 2004. Moreover,
(continued...)

that Azad was to pay $250,000 "at the time of transfer" and $50,000 upon receiving a loan from a federally insured lending institution but that, if that financing could not be obtained, Umar and appellee would loan him the $50,000. Finally, it stated that "the cost based value of saleable inventory" was to be financed by the sellers for "a period of three months from the date of closing."

After reading the agreement and discussing it with his brother, appellee "pulled out" Umar from the meeting to express concern that he did not understand how he was going to receive the $100,000 that Umar had purportedly promised him. Umar, according to appellee, then assured him that he "[didn't] have to worry about this monies because," as he put it, "on the day of closing, I will give you $100,000 check, and it will be out fine."

Before the meeting ended, Azad said that to complete the sale he would have "to go back to Pakistan to get more money." Therefore, explained appellee, there would be a delay in the closing of the sale.

The meeting concluded with appellee agreeing to the terms of the contract. He then took the Bill of Sale home and signed it. The following day, the contract was delivered to Umar, who took it with him when he met with Azad's accountant. Appellee said it was his

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the stock purchase agreement, in which appellee purchased a forty-nine percent interest in Fill Up., Inc., refers to the "seller" as Umar, "the owner of 100% of the subscribed and paid shares of the common stock of Fill Up, Inc.," an entity "doing business as 'Stevens Forest Exxon.'" Umar, in that stock purchase agreement, contracted to sell "49% of his share of stock" of that entity to appellee. Appellee, in his complaint, however, refers to Fill Up, Inc. as "the lessee and operator" of the Stevens Forest Exxon.

understanding that the actual closing of the sale would occur "a month" or a "month and a half later" because Azad "did not have the money at that point in time and needed to travel to Pakistan to get additional funds."

Although appellee had left the meeting pleased with the deal, his mood soon changed. In the days that followed, he "repeatedly" asked Umar for a signed copy to no avail, and Umar soon "stopped taking [his] calls." And, when he also attempted to contact Azad and Azad's accountant, they, too would not take his calls. Appellee, refusing to give up, then tried calling Umar from "a different number." That worked, as Umar promptly answered the call. At that time, Umar was with Azad, who then suggested to appellee that he "come to the gas station" to get a signed copy of the Bill of Sale. Appellee said that he then "drove all the way from Arlington to Columbia[,] Maryland in rush hour in the evening to get the copy of the contract." But Umar, appellee testified: "didn't show up. I called him. He didn't pick up my phone. I stayed there for a while, and then I left. Until the day of closing, I never had the copy of the contract. Then, sometime later, Umar called appellee and told him that it was time to close the sale. During that call, Umar again assured him, appellee claimed, that he was "going to get [his] $100,000 check on the day of closing." They then agreed to meet, on December 13, 2010, at the gas station to close the sale.

Several men attended the closing: appellee, his brother, and his cousin; Umar; Azad, Azad's son, and Azad's accountant. After the balance of payables and receivables, along with the value of the inventory, were calculated, appellee approached Umar and asked about

the $100,000 he had purportedly been promised by Umar. Umar, according to appellee, denied promising him "anything" but suggested they go to the accountant's office and that there they would "do plus, minus" and "whatever [we] have left over there," appellee would "get a piece of it." "Shocked" and "upset," he left. He never returned to the gas station. Appellee testified that he ultimately learned that Azad had paid Umar some amount for the sale, but he did not know how much was given to Umar and never discussed the monetary transaction with Azad.

After Azad took the stand, he confirmed that he initially met with his friend Umar because he was looking to purchase a business to provide. When, at that meeting, Umar suggested that he could purchase the Stevens Forest Exxon from him, Azad reviewed the station's income and expenses to make an informed decision. Azad testified that he and Umar then agreed to a purchase price of $300,000 for the gas station. When he and Umar thereafter met with appellee, Azad asked appellee whether he knew Umar was looking to sell the gas station. Appellee answered, claimed Azad, that he, appellee, and Umar "have mutual understanding" and that "[w]hatever [Umar] say, I am willing to accept, and I'm selling the gas station."

Azad admitted that he paid less than the amount required by the Bill of Sale. He said that he paid only $200,000 when Umar signed the contract in front of Azad's accountant—a meeting that did not include appellee—and then advised Umar he would "try to come up with" the rest of the money when he took over the place, and that, at closing, he would pay

"the $50,000 if I can come up [with the funds]." When Umar agreed to that arrangement, Azad gave Umar a check, dated October 12, 2010, for $200,000, which, interestingly enough, was "made payable" only to Umar. He testified, however, that he could not recall whether it was Umar or his accountant who had told him to make Umar the sole payee.

Azad then confirmed that he subsequently traveled to Pakistan to obtain funds to complete the purchase and that, when he returned, he paid only $40,000 and paid that amount only to Umar, even though the Bill of Sale required $250,000 at the time of closing and another $50,000 once he secured a loan. Umar nonetheless accepted the $40,000 and told Azad that he could take the inventory and "pay slow" some of the station's debts. Azad, while conceding that he had that conversation with Umar and not appellee, he avowed that appellee had assured him that, at some point before the contract was signed, Umar had his authority to act on their joint behalf, stating: "anything [Umar] is doing, we have mutual understanding. He have right to do it. And [Umar] said write the check in my name. I did it." It was undisputed at trial, however, that neither Umar, appellee's former business associate, nor Azad, the purchaser, informed appellee that Azad had paid $200,000 to Umar or that Azad and Umar had agreed to a change in the amount of the purchase price and their modification of the terms of the agreement.

Azad testified that when, on December 13, 2010, the closing occurred, appellee and appellee's brother; Umar; Azad's accountant, his nephew, and his son were present. He said that "happily, they hand over the key to take over, and good luck with -- they wish me good

luck." Azad stated that the deal was: "I pay $240,000 cash amount and I say I'll pay $60,000 to Mr. Peter Stanger [for the promissory note], and then I'll pay the sum inventory. You people owe the money. Those monies I'll pay to those people."

At the time of the sale, Fill Up, Inc. had a franchise agreement with Southside Oil, LLC, which, as Shahzad explained, was an "operational part of Exxon" that provided gasoline to the Stevens Forest Exxon. That agreement governed the relationship between Fill Up, Inc. and Southside. It specifically required Fill Up, Inc. to obtain approval from Southside before its stock was sold to a new owner, and Southside had a "right of first refusal."[3]

Notwithstanding that provision, Southside only learned, in October 2011, approximately a year after the Bill of Sale purported to transfer ownership to Azad, that the ownership of Fill Up, Inc. had changed hands from Umar and appellee to Azad. A meeting between Umar and representatives of Southside ensued, during which, Umar represented—or, perhaps, "misrepresented" would be more appropriate—that he had not sold the station to Azad and assured Southside that whoever said that Fill Up, Inc. had been sold was "lying." Azad then admitted that he told the Southside representative at that meeting that he only was "thinking" of buying the gas station and that the purchase had not yet taken

[3] Although a copy of the franchise agreement between Fill Up, Inc. and Southside Oil, LLC is not in the record, testimony and exhibits indicate that the agreement contained prior-approval and right-of-first-refusal provisions.

place—even though he had paid $240,000 to Umar, signed the Bill of Sale, and believed that he was now the station's owner.

Following that meeting, it is undisputed, however, that Umar sent an e-mail to Southside in which he reaffirmed that no sale had taken place. In that e-mail, he misleadingly wrote: "I assure you that I am a dealer and still own this station and Mr. Azad will be the manager." In July of 2012, over a year-and-a-half after the sale of the station to Azad had taken place, Azad submitted a "Dealer Application" to Southside in which he represented, not that he was the owner of the gas station, but that, consistent with Umar's e-mail, he was its manager and listed as an asset, in the application, a $350,000 "investment" in the gas station.

Several months later, on September 15, 2012, Umar and Azad, executed two documents which collectively rescinded the Bill of Sale as well as the transfer of ownership of the station to Azad for a reduced price. The first of those documents, entitled "Mutual Rescission of Contract of Sale," was, as noted, between Umar and Azad, and recited that Umar and Azad had previously entered into a contract of sale, providing that Azad had purchased "fifty-one percent" of Fill Up., Inc. from Umar and had agreed to pay "$300,000 in consideration" for those shares. The rescission contract further stated that the parties to that agreement- that is, Umar and Azad- acknowledged that "Azad ha[d] not tendered the full purchase price" to Umar, and, therefore, the sale was rescinded, which, in effect, returned them both to, as the rescission contract put it, "the same position" they were in before the sale

to Azad. But, left out of that document was any mention of appellee or the remaining forty-nine percent interest in the Exxon station that appellee had owned and had purportedly sold to Azad pursuant to the Bill of Sale.

The second of the two documents, was entitled "Stock Purchase Agreement." It purported to transfer Umar's fifty-one percent ownership in Fill Up, Inc. to Azad for $200,000 which, according to that agreement, Azad had previously paid to Umar.

Azad testified that it was his and Umar's idea to rescind the sales contract, that Umar had presented the document to him, but he did not read it before signing it. When asked what he thought he was accomplishing with the rescission, he answered, "I don't have any idea" except that he knew that he was now the station's "dealer," a term upon which he did not elaborate. Despite initially professing ignorance as to the purpose of the rescission contract, when later asked at trial whether their combined purpose of the rescission contract and the subsequent stock purchase was to offer appellee his shares of Fill Up. Inc. back to him, Azad said it was. He went on to state that he had no idea whether appellee had accepted the offer and that he had never contacted appellee about the rescission contract or the stock purchase agreement he had signed with Umar. Azad believed that he now owned 100 percent of the station because Umar had sold him fifty-one percent of that company in the rescission agreement, and it was his belief that appellee had sold him forty-nine percent of his interest in Fill Up, Inc. in the initial contract.

Finally, in November of 2012, Fill Up, Inc. and S.A. Fuels, Inc. (the entity formed by Azad to run the gas station after he had purchased it), together with Southside entered into a "Termination and Release Agreement" in which Southside agreed to terminate its franchise agreement with Fill Up, Inc. and consented to the sale of the franchise to S.A. Fuels, Inc. The agreement further provided that the $50,000 deposit that Fill Up, Inc. had given to Southside would be transferred, on Southside's books, from Fill Up, Inc.'s account to the account of S.A. Fuels, Inc. The agreement was signed by Umar, on behalf of Fill Up, Inc.

When Umar took the stand, appellee's counsel read into the record part of Umar's deposition testimony. At his deposition, Umar had stated that he did not "remember the date, the time and when or where" he first spoke to Azad about purchasing the gas station from him. He also said that he could not recall any of the conversations he had with Azad or appellee before the contract was signed. Although he did remember that Azad paid him something toward the $350,000 purchase price, he could not recollect the amount that was paid or where or when it was made or in which account it was deposited.

Although Umar did admit that appellee had asked him for his share of the sale, Umar said that he responded that they would first have to "clear all the bills" at a meeting with the accountant. Umar insisted, however, that, contrary to appellee's assertions, he had never told appellee that he would get his initial investment back and maintained he had never agreed to permit Azad to purchase the station for less than the amount specified in their original contract.

Two-and-a-half months after appellee and Umar sold the gas station to Azad, and well before Umar and Azad signed the rescission agreement, appellee filed, in the Prince George's County circuit court, a multi-count complaint[4] against Umar and Azad. That complaint alleged, among other things, that Umar had committed fraud against appellee, that he had breached a contract with appellee by failing to pay him $100,000 at the time of the sale to Azad, and that he had breached a fiduciary duty he owed to appellee. Umar's subsequent assurances to Southside, that he, and not Azad, was the owner of the station, led appellee to amend his complaint in which he alleged, among other things,[5] that Umar and Azad had conspired against him.

Circuit Court's Ruling

When the bench trial concluded, the circuit court announced its decision. The court began by noting that it found both Umar's and Azad's testimony to be "lacking in credibility." It then addressed appellee's claim of fraud. As to that count, the court found that the evidence was inadequate to show that Umar induced Shahzad to enter into a contract with Umar by promising appellee to pay him $100,000.

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[4]Appellee's complaint alleged six counts: Count I alleged fraud by Umar; Count II alleged breach of contract by Umar; Count III alleged that Umar had breached a fiduciary duty he owed to Shahzad; Count IV sought a judgment declaring "the rights and obligations of the parties under" the "Bill of Sale"; Count V requested that the circuit court impose a constructive trust on the proceeds from the sale of the stock of Fill Up, Inc.; and Count VI sought a preliminary injunction, prohibiting Azad "from making any additional payments or disbursements directly to either Fill Up, Inc. or [Umar]."

[5]Appellee also added to his complaint an accounting of the income and expenses of Fill Up, Inc. from the time Azad took control of the station to the present.

The court then made a similar ruling as to appellee's claim that Umar had breached their contract. It stressed that the only evidence supporting that claim was appellee's testimony and that testimony failed to persuasively show that there was an oral agreement that Umar would pay $100,000 following the sale of the gas station to Azad.

Next, the circuit court found against appellee on his claim that Umar had breached a fiduciary duty owed to appellee. The court stated that an allegation of breach of fiduciary duty "cannot stand alone as a separate cause of action." And "for that reason," the court said, it was "going to find in favor of [Umar] as to that claim.

The circuit court then turned to appellee's claim that Umar and Azad engaged in a civil conspiracy against appellee. It found that the two men had "conspired with each other to deny [appellee] his ownership interest in Fill Up, Inc. and/or to convert his ownership in Fill Up, Inc. and to defraud him out of his investment and his rights in Fill Up, Inc." The court avowed that there were "numerous documents" signed by Umar and Azad as well as "side deals" between the two men, which indicated that there was an agreement between them to fraudulently deprive appellee of his interest in Fill Up, Inc. or to render valueless any interest in that entity that he may have had.

In addition to concluding that Umar and Azad had conspired to leave appellee "bereft of any interest" he had in Fill Up, Inc., the circuit court found that, in transferring the assets of Fill Up, Inc. to Azad solely for his own benefit, Umar had breached a fiduciary duty he owed to appellee as a shareholder in Fill Up, Inc. The court stated that the transfer of the

station's assets to Azad "appears to have been undertaken to the financial detriment of the [appellee], to the financial benefit of both [Umar and Azad], and it was done illegally breaching fiduciary duties and with fraud."

After finding that Umar and Azad had engaged in an unlawful civil conspiracy, the circuit court awarded appellee $100,000 for the damages that appellee suffered as a result of being deprived his interest in Fill Up, Inc. Then, based on its finding that Umar and Azad had fraudulently deprived appellee of any ownership interest, the circuit court awarded appellee punitive damages in the amount of $25,000 and dismissed, as moot, appellee's remaining claims for a declaratory judgment, a constructive trust, an injunction, and an accounting. The court then dismissed all of the cross-claims filed by the appellants, Azad's counter-claim, and Umar's counter-claim.[6]

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[6]Umar filed a counter-claim against appellee, alleging "Breach of Contract/Breach of Fiduciary Duty," "Defamation/Injurious Falsehood/Disparagement of Title," and "Fraud." He further claimed that, when appellee had purchased his forty-nine percent share of Fill Up, Inc., he had agreed to be personally responsible for making the monthly payments on the promissory note to Stanger; that the sale of Fill Up, Inc. to Azad was "subject to final approval" by Southside; that, by filing his court action, appellee had made it impossible for the sale to Azad to be completed; and that, since that time, appellee had failed to make the payments on the promissory note to Stanger as he was required to do.

Not to be left out, Azad also filed counter-claims against appellee for breach of contract, negligent misrepresentation, and "Fraud/Intentional Misrepresentation." He filed cross-claims against Umar for breach of contract and negligent misrepresentation. Azad further demanded a judgment against both appellee and Umar "for indemnification and/or contribution for any and all preclosing liabilities of Fill Up, Inc. prior to the date of signing of the October 2010 Agreement, plus interest, costs, and attorneys' fees."

In the circuit court's ruling at trial, it observed that Umar and Azad had "mutually waived" their cross-claims against each other and that Azad had abandoned his counter-claims against appellee. With respect to Umar's counter-claim against appellee,

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Discussion

I.

Umar and Azad contend that the circuit court erred in finding for appellee on his civil conspiracy count, after ruling against appellee on his count for fraud by Umar and Azad and on his count for breach of fiduciary duty by Umar. Noting that a finding of a civil conspiracy must be based on the commission of an underlying tort, they reason that, because the court found that there was no persuasive evidence of either fraudulent activity by Umar and Azad or a breach of a fiduciary duty by Umar, it could not conclude that Umar and Azad had engaged in a civil conspiracy to commit either of these "torts."[7] Thus, the court's finding, in their view, constituted an "irreconcilably conflicted" verdict.

Appellee responds that, although the circuit court ruled against him on the counts for fraud and breach of fiduciary duty, the circuit court did not err in ruling in his favor on the civil conspiracy count as the tortious conduct underlying was not the same tortious conduct alleged by those two counts. He points out that the court did find that Umar and Azad had

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[6](...continued)
which asserted that appellee had agreed to be personally responsible for making the monthly payments on the Stanger promissory note, the court found that it "was clearly understood by the parties" that payments on the promissory note, a debt owed to the previous owner, were to be made from "the business proceeds" and that appellee was no longer responsible for making those payments once he sold his shares of Fill Up, Inc. to Azad.

[7]It is not clear as to whether Maryland recognizes breach of fiduciary duty as a separate and independent tort. *See Shenker v. Laureate Educ, Inc.*, 411 Md. 317, 351 n.16 (2009) ("[W]e assume, without deciding that it is so solely for the purposes of this appeal, that breach of fiduciary duties is a cognizable tort in Maryland.").

defrauded him of his interest in the gas station by modifying the terms of the sales agreement without informing him of that modification; by representing to Southside that no sale to Azad had taken place; by entering into the agreements that purportedly rescinded the sale of the gas station to Azad and then by selling only Umar's shares to Azad at a reduced price; and, finally, by executing the "Termination and Release Agreement" with Southside in which Fill Up, Inc.'s franchise was terminated and its $50,000 deposit with Southside was transferred to S.A. Fuels, Inc.'s account. It was that fraudulent conduct, asserts appellee, upon which the court's finding of a conspiracy was based and that conduct was not alleged by the fraud count.

We begin our analysis of these conflicting positions by noting that a civil conspiracy is "a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an unlawful act not in itself illegal, with the further requirement that the act or means employed must result in damages to the plaintiff." *Shenker v. Laureate Education, Inc.*, 411 Md. 317, 351–52 (2009). The Court of Appeals has declared, however, that "'conspiracy' is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff." *Alleco Inc. v. The Harry & Jeanette Weinberg Found., Inc.*, 340 Md. 176, 189 (1995). "It is not . . . for simply conspiring to do the unlawful act that the action lies," said the Court. *Id.* at 190. Rather, "[i]t is for doing the act itself, and the resulting actual damage to the plaintiff, that afford the ground of the action." *Id.* (quoting *Kimball v. Harman and*

Burch, 34 Md. 407, 409–11 (1871)). Moreover, "[t]he party wronged may look beyond the actual participants in committing the injury," explained the Court of Appeals, "and join with them as defendants all who conspired to accomplish it; and the fact of the conspiracy may aggravate the wrong; but the simple act of conspiracy does not furnish a substantive ground of action." *Id.* For that reason, civil conspiracy has been described as a "parasite tort" that "cannot stand alone." *Kramer v. Mayor and City Council of Balt.*, 124 Md. App. 616, 642 (1999).

We further observe that, because the instant case was tried without a jury, our review of the circuit court's decision is governed by Maryland Rule 8-131(c), which states: "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the circuit court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the circuit court to judge the credibility of the witnesses." Indeed, "[i]f there is any competent material evidence to support the factual findings of the trial court, those findings," the Court has stated, "cannot be held to be clearly erroneous." *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005) (citing *Solomon v. Solomon*, 383 Md. 176, 202 (2004)).

The circuit court concluded that two forms of tortious conduct independently provided the basis for a finding of a civil conspiracy against appellee. The first was fraud, and to establish that tort, 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;
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> (3) that the misrepresentation was made for the purpose of defrauding the plaintiff;
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> (4) that the plaintiff relied on the misrepresentation and had the right to rely on it; and
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> (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.

Sass v. Andrew, 152 Md. App. 406, 429 (2003).

There was more than enough competent material evidence presented to support a finding of fraud. That evidence showed that Umar and Azad had modified the terms of the sales agreement without informing appellee; had misrepresented to Southside that no sale to Azad had taken place; had entered into the agreements in which they had purportedly rescinded the sale of the gas station to Azad, but then sold only Umar's shares to Azad at a reduced price; and had executed the "Termination and Release Agreement" with Southside in which Fill Up, Inc.'s franchise was terminated and its $50,000 deposit with Southside was transferred to S.A. Fuels, Inc.'s account.

The evidence further showed that Umar and Azad made a false representation to appellee by seemingly agreeing to the terms of the sale of the gas station to Azad as provided in the "Bill of Sale," then, using what the court described as "side deals," changed the terms of the sale without telling appellee and proceeded with the closing of that sale by representing that it was pursuant to the terms of the "Bill of Sale."

Based on the foregoing evidence, the circuit court found that the agreement between Umar and Azad was knowingly made to "accomplish an unlawful act and to use unlawful and fraudulent means to accomplish that act," which resulted in appellee losing his ownership interest in the gas station at issue. The circuit court therefore found that Umar and Azad conspired to defraud appellee out of his interest in Fill Up, Inc., and that finding, which was supported by competent material evidence, was not clearly erroneous.

Nonetheless, Umar and Azad insist that the judgment against them cannot stand because, in their view, the court's award of damages based on appellee's allegation of a civil conspiracy to defraud appellee is inconsistent with the court's verdict against appellee for his separate claim of fraud.

Although inconsistent verdicts in a nonjury trial are subject to reversal by a reviewing court, in the event the "trial judge on the record explains an apparent inconsistency in the verdicts, and where the explanation shows that the trial court's action was 'proper' and there is no 'unfairness,' the verdicts will be sustained." *Southcoast Builders of Md., Inc. v. Potter Heating & Electric, Inc.*, 94 Md. App. 160, 167–68 (1992) (quoting *Shell v. State*, 307 Md. 46, 56 (1986), *abrogated on other grounds by Price v. State*, 405 Md. 10 (2008)) (some internal quotation marks omitted). And that was just the case here.

The circuit court below explained that it was finding in favor of Umar as to appellee's fraud count because, although appellee claimed that Umar had promised to pay him $100,000 upon the sale of Fill Up, Inc. to Azad, there was no other evidence to support appellee's

claim. The court therefore found that there was "insufficient evidence"[8] to prove that Umar had made that representation to appellee.

But the court below found additional fraudulent conduct that supported the conspiracy, fraudulent conduct beyond that alleged in the fraud count. As previously explained, the findings made by the circuit court—namely, that Umar and Azad had modified the terms of the sales agreement without informing appellee; had represented to Southside that no sale to Azad had taken place; had entered into the agreements purporting to rescind the sale of the gas station to Azad and then sold only Umar's shares to Azad at a reduced price; and had executed the "Termination and Release Agreement" with Southside in which Fill Up, Inc.'s franchise was terminated and its $50,000 deposit with Southside was transferred to S.A. Fuels, Inc.'s account—support its finding that such a conspiracy had occurred and that appellee had suffered financial losses as a result of it. At no point in those findings as to the conspiracy claim, or anywhere else in its opinion, did the circuit court suggest that as to the conspiracy count it had found that Umar had promised $100,000 to appellee, nor was it necessary for the court to so find, as other fraudulent conduct by Umar and Azad supported the court's conclusion that they had engaged in a civil conspiracy to defraud appellee.

[8]The court used the term "insufficient evidence" when it clearly meant only that there was not sufficient evidence to persuade it that the alleged fraud had been committed.

Finally, Umar and Azad take issue with the way in which appellee's complaint is written. They assert that the circuit court erred in both finding against appellee as to his count for fraud and in finding in favor of him for civil conspiracy because, in their view, when there is an alleged civil conspiracy, proper pleading requires that it be pleaded as part of the tortious cause of action underlying the conspiracy, not as a separate cause of action, as occurred in appellee's amended complaint, and because the allegations contained in those counts overlap.

"Under our liberal rules of pleading, a plaintiff need only state such facts in his or her complaint as are necessary to show an entitlement to relief." *B & P Enter. v. Overland Equip. Co.*, 133 Md. App. 583, 621 (2000) (quoting *Johns Hopkins Hosp. v. Pepper*, 346 Md. 679, 698 (1997)). "Accordingly, a plaintiff must state the issue between the parties with reasonable accuracy so that, *inter alia*, the defendant may be put on notice of the nature of the complaint that he or she is required to answer and defend." *Id.*

Appellee's amended complaint describes the circumstances of the contract between him and Umar, that is, the "Bill of Sale." It states that Umar received a payment for less than the amount called for in the "Bill of Sale"; that, after the sale's closing, Umar and Azad represented to Southside that no sale had taken place; and that Umar and Azad agreed to operate the gas station together, thereby denying appellee his interest in the gas station. Given that "[a]ll pleadings . . . be so construed as to do substantial justice," Md. Rule 2-303(e), appellee's complaint, despite some overlap between the complaint's fraud count

and the separate count of civil conspiracy, did provide sufficient and accurate notice to Umar and Azad that they would have to defend against a claim that they had conspired to defraud him and that that claim was founded upon the actions that Umar and Azad had taken in changing the terms of the sales agreement and then denying that the sale had ever taken place.

Moreover, "[i]t is well established . . . that a defendant may waive any objection to a defect in pleading by failing to object to it." *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 715 (2007). And Umar and Azad have done precisely that, as they never objected below to appellee's complaint nor did they file a motion to dismiss or otherwise express any concern as to how the civil conspiracy count was pleaded and that the counts seemed to some extent to overlap. Nor do Umar and Azad cite any place in the record where they raised objection or otherwise alerted the circuit court to those issues. Had they objected, appellee could have amended, or sought leave from the circuit court to amend, his complaint so as to remedy what appellants now claim are fatal defects, defects which, we note, did not "affect the substantial rights" of Umar or Azad, and therefore "shall be disregarded." Md. Rule 2-341(c) ("Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.").

II.

Umar and Azad contend that a breach of fiduciary duty cannot serve as the requisite tort that must underlie the circuit court's finding of a civil conspiracy because, in order for

breach of fiduciary duty to form the basis for a civil conspiracy, each co-conspirator must owe a fiduciary duty to the plaintiff. Specifically, Umar and Azad maintain that the court's finding was erroneous because Azad never owed a fiduciary duty to appellee, and, therefore, no conspiracy to breach that duty could have occurred. However, as we just concluded that the circuit court did not err in finding that Umar and Azad engaged in a civil conspiracy to defraud appellee, we need not reach this issue and shall not to do so.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.