

Appeal from Intermediate Court of Appeals No. 22-ICA-201

RONALD J. HOPKINS, II, RACHEL L. ABRAMS HOPKINS, SARAH A.
ABRAMS, AND LANGHORNE ABRAMS,
Petitioners, Respondents Below

v.

MARY C. SUTPHIN,
Respondent, Petitioner Below

**PETITIONER'S BRIEF
ON APPEAL OF INTERMEDIATE COURT OF APPEALS
DECISION IN NO. 22-ICA-201**

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I. ASSIGNMENTS OF ERROR

In its March 25, 2024, Memorandum Decision in No. 22-ICA-201, the Intermediate Court of Appeals (“ICA”) committed the following errors:

1. **The ICA erroneously reversed the circuit court’s dismissal of the civil conspiracy claim against Ronald J. Hopkins, II, reinstating conspiracy of as the sole claim against him, when he owes no legal duty to Mary C. Sutphin;**
2. **The ICA erroneously reinstated dismissed duplicative claims, asserted against Rachel L. Abrams Hopkins and Sarah A. Abrams, on the basis that alternative pleading is permitted, when the reinstated claims are not true alternative claims.**

II. STATEMENT OF CASE

After inheriting one-fifth of the stock of Lewis Chevrolet Company, Mary C. Sutphin (“Ms. Sutphin”), who lives in coastal North Carolina and never had any role with the Beckley car dealership, sued her family members who have run the dealership for decades. Ms. Sutphin alleged that mismanagement of the corporation has deprived her of the benefits of her stock ownership, even though she unquestionably still owns the inherited stock. Ms. Sutphin alleges that her family members breached fiduciary duties owed to the corporation and harmed the corporation, but she does not seek to recover damages for the

corporation, as in a derivative suit. Instead, Ms. Sutphin seeks personal damages that would be paid to her directly.¹

In her pursuit of personal damages, Ms. Sutphin originally joined six defendants (five family members and the corporation, itself) and asserted 16 counts in her Second Amended Complaint. The defendants moved to dismiss nearly all counts asserted against them. Pertinent to this appeal, Ronald J. “Chad” Hopkins, II (“Chad”), the dealership’s general manager, moved to dismiss all counts against him, because an employee of a corporation owes no duty to a shareholder of the corporation that could support any legal claim against him. Rachel L. Abrams Hopkins (“Rachel”) and Sarah A. Abrams (“Sarah”), directors and officers of the corporation, moved to dismiss duplicative common law counts against them as individuals, because they

¹ Although not pertinent to this appeal, it bears noting that Ms. Sutphin’s pursuit of personal damages is misguided:

It is a well-established general rule that a stockholder of a corporation has no personal right of action against directors or officers who have defrauded or mismanaged it and thus affected the value of his stock. The wrong is against the corporation and the cause of action belongs to it. Any judgment obtained by reason of such wrongs is an asset of the corporation which inures first to the benefit of creditors and secondly to stockholders.

Watson v. Button, 235 F.2d 235, 236 (9th Cir. 1956) (cleaned up), *cited with approval* by *Masinter v. WEBCO Co.*, 164 W. Va. 241, 255, 262 S.E.2d 433, 442 (1980).

could be found liable, if at all, only in their roles as directors and officers, not individually.

The circuit court granted, *inter alia*, these requested dismissals, dismissing Chad from the case completely and dismissing the duplicative common law claims against Rachel and Sarah. Ms. Sutphin appealed most aspects of the circuit court's Dismissals Order² to the ICA, even though that order neither disposed of all claims against all parties nor contained a Rule 54 certification of finality. The ICA did not set a hearing on Ms. Sutphin's appeal and issued a memorandum decision that partially reversed the circuit court's dismissals. The ICA reinstated only the civil conspiracy count against Chad and reinstated most of the common law claims against Rachel and Sarah.

Because reinstating those claims was in error, Chad, Rachel, and Sarah now appeal the ICA's decision. A full explanation of the procedural history and pertinent facts follows.

A. Ms. Sutphin's stock ownership and initial lawsuit.

1. Ms. Sutphin originally sued her brother-in-law, A. David Abrams, Jr. ("David Abrams"), in 2017 for alleged violations of his duties as trustee of

² The full title of the Dismissals Order is "Order on Motions to Dismiss by Lewis Chevrolet Company, Langhorne Abrams, and Ronald J. Hopkins, II, and Rachel L. Abrams Hopkins' and Sarah A. Abrams' Motion to Partially Dismiss Plaintiff's Second Amended Complaint and Motion for Protective Order to Stay Discovery Pending Resolution of Motions to Dismiss by Defendants Lewis Chevrolet Company, Langhorne Abrams, and Ronald J. Hopkins, II."

the Nancy Pat. H. Lewis Heirs Trust, initiating Civil Action No. 17-C-591 in the Circuit Court of Raleigh County, West Virginia. (*See* 2d Am. Compl. ¶¶ 15–17, A.R. 0163–0164).

2. The Nancy Pat. H. Lewis Heirs Trust was created by the will of Nancy Pat. H. Lewis, Ms. Sutphin’s deceased mother, and held 242 shares of Lewis Chevrolet Company (“Lewis Chevrolet” or the “Dealership”). (*See id.* ¶¶ 25, 36–39, A.R. 0165, 0170).

3. The 242 shares held by the trust were approximately three-fifths of the outstanding stock of Lewis Chevrolet. Ms. Sutphin is a one-third beneficiary of her mother’s estate and the trust. (*See id.* ¶¶ 26, 51, A.R. 0165–0166, 0172). Accordingly, following the February 2021 distribution of the trust’s 242 shares to the beneficiaries, Ms. Sutphin “owns 20.47% of the stock in the Dealership,” or approximately one-fifth of the outstanding stock. (*Id.*, Intro., A.R. 0160–0161).

B. Ms. Sutphin’s Second Amended Complaint.

4. On February 3, 2022, Ms. Sutphin filed her Second Amended Complaint in Civil Action No. 17-C-591. (*See* 2d Am. Compl., Notice of Filing, A.R. 0156). The Second Amended Complaint expanded Ms. Sutphin’s roster of defendants and claims. (*See generally id.*, A.R. 0156–0249).

5. In addition to David Abrams, Ms. Sutphin joined Rachel and Sarah, Ms. Sutphin’s nieces and directors, officers, and management

employees of the Dealership; Chad, Ms. Sutphin’s nephew-in-law, husband of Rachel, and the Dealership’s general manager; and Langhorne Abrams, Ms. Sutphin’s sister, wife of David Abrams, mother of Rachel and Sarah, and mother-in-law of Chad. (*See id.* ¶¶ 26, 28, A.R. 0165–0166).³

6. Ms. Sutphin asserted that she “has not received any benefit whatsoever from her [stock] ownership.” (*Id.*, Intro., A.R. 0160–0161). She said she was “forced to bring [her Second Amended Complaint] to compel Defendants’ compliance with basic legal duties, address Defendants’ knowing intentional, and malicious actions, and recover the legacy her mother, Nancy Pat Lewis-Smith, intended for her family.” (*Id.*). Ms. Sutphin made these allegations, even though she still owns her shares.

7. Ms. Sutphin primarily claimed that Lewis Chevrolet’s directors and officers (including Rachel and Sarah) breached their fiduciary duties to the corporation, although Ms. Sutphin seeks damages only for herself and not on behalf of the corporation. (*See id.* ¶¶ 167–195, Prayer for Relief, A.R. 0193–0199, 0215–0216). Ms. Sutphin claimed that “[a]s a direct, proximate, and

³ Ms. Sutphin also named Lewis Chevrolet, itself, as a defendant, but the circuit court dismissed it in the Dismissals Order and redesignated it as a so-called “notice defendant.” (*See* Raleigh Cty. Cir. Ct. Order 0476, A.R. 0476). Ms. Sutphin created the designation of notice defendant to describe a person or entity whose interest may be affected by her lawsuit but from whom Ms. Sutphin sought no relief. Ms. Sutphin also named other shareholders as notice defendants: the Estate of Nancy R. Smith, the Nancy R. Smith Revocable Trust, Kate Hatfield, and Ann Donegan (Haley). (*See* 2d Am. Compl. ¶¶ 8–11, A.R. 0162–0163).

foreseeable result of the Directors' and Officers' breaches of their fiduciary duties [to the corporation], **Ms. Sutphin** has suffered damages.” (*Id.* ¶ 195, A.R. 0199 (emphasis added)).

8. Ms. Sutphin asserted claims against Rachel and Sarah (and David Abrams) as directors and officers of the corporation, the “official-capacity claims”: Violations of West Virginia Business Corporations Act (Count V) and Breach of Fiduciary Duties as Directors and Officers (Count VI). (*See id.* ¶¶ 167–195, A.R. 0193–0199). Ms. Sutphin also asserted common law claims against Rachel and Sarah in their individual capacities, the “individual-capacity claims”: Conversion (Count VII), Negligence (Count VIII), Tortious Interference with Inheritance (Count X), Fraud/Constructive Fraud (Count XI), Unjust Enrichment (Count XIII), and Constructive Trust (Count XIV). (*See id.* ¶¶ 196–211, 231–244, 250–255, A.R. 199–202, 205–207, 209).

9. Although Ms. Sutphin sued Rachel and Sarah in both their official and individual capacities, both sets of claims are based on their alleged failure to uphold their duties to the corporation as its directors and officers. For example, for the official-capacity claims (*i.e.*, claims for violations of the West Virginia Business Corporation Act and breaches of fiduciary duties), Ms. Sutphin alleges that “[t]he Directors and Officers continued to operate the Dealership for their own benefit, and to the detriment of the stockholders.” (*Id.* ¶ 181, A.R. 0196; *accord id.* ¶ 194, A.R. 0199 (alleging “the Directors and

Officers breached their fiduciary duties by continuing to operate the Dealership for their own benefit” (cleaned up)). For the individual-capacity claims (*i.e.*, conversion, negligence, unjust enrichment/constructive trust), she again alleges Rachel and Sarah, as directors and officers, “continu[ed] to operate the Dealership to their own benefit.” *Id.* ¶ 204, A.R. 0201 (conversion); *accord id.* ¶¶ 210, 252, A.R. 0202, 0209 (same for negligence and unjust enrichment).

10. Ms. Sutphin claimed that Chad, the Dealership’s general manager, is among her family members who have “remained employed in key management positions” for the last decade, “despite the Dealership’s negative and/or consistently declining income.” (*Id.* ¶¶ 28(e), 104, A.R. 0167, 0181; *see also id.* ¶ 105, A.R. 0182 (alleging Chad also received benefits including a demo automobile); *id.* ¶ 227, A.R. 0204 (same).

11. Ms. Sutphin asserted six counts against Chad: claims for Tortious Interference with Inheritance (Count X); Civil Conspiracy (Count XII); Unjust Enrichment (Count XIII); and the remedies of Constructive Trust (Count XIV), Punitive Damages (Count XV), or Attorney Fees and Litigation Costs (Count XVI).⁴ (*Id.* ¶¶ 231–235, 245–279, A.R. 0205, 0208–0215).

⁴ Ms. Sutphin also joined Langhorne Abrams, her sister and an equal shareholder, and alleged the same six counts against her that Ms. Sutphin alleged

C. The pertinent Motions to Dismiss.

12. Chad, Rachel, and Sarah, as well as other defendants, moved to dismiss all or some of the claims against them. The overall basis for the defendants' motions to dismiss was that for the claims that were the subjects of the motions, none of them owed Ms. Sutphin a legal duty that would support the claims.

13. Ms. Sutphin claimed that Lewis Chevrolet's directors and officers have made decisions for the corporation that breach their fiduciary duties to the corporation. (*See generally* Hopkins's Mot. Dismiss, A.R. 0250–0262). Chad, however, never was a director or officer of the Dealership and thus owed no fiduciary duties to the corporation or derivatively to Ms. Sutphin as a minority shareholder. (*See id.* at 8, A.R. 0260).

14. While Rachel and Sarah are directors and officers of the corporation, they did not move to dismiss the claims asserted against them in those official capacities.⁵ Rather, Rachel and Sarah moved to dismiss Ms. Sutphin's duplicative common law claims that are based on their owing

against Chad Hopkins. (*See* 2d Am. Compl. ¶¶ 231–235, 245–279, A.R. 0205, 0208–0215).

⁵ Ms. Sutphin's claims against Rachel Hopkins and Sarah Abrams for violations of the West Virginia Business Corporations Act and related common law regarding fiduciary duties of directors and officers, Counts V and VI were not the subject of the motion for partial dismissal by Rachel Hopkins and Sarah Abrams. (*See* 2d Am. Compl. ¶¶ 167–189, A.R. 0193–0199).

individual duties to Ms. Sutphin, which they do not. (*See generally* Hopkins & Abrams’s Mot. Dismiss, A.R. 0263–0277). Rachel Hopkins and Sarah Abrams owe duties to the corporation and derivatively to shareholders only in their capacities as directors and officers. (*See id.* 8–9, A.R. 0274–0275).

D. Pertinent aspects of the circuit court’s Dismissals Order.

15. With its Dismissals Order, the circuit court dismissed all claims against Chad because Ms. Sutphin failed to plead that Chad, a dealership employee, could be liable to a minority shareholder. (*See* Raleigh Cty. Cir. Ct. Order, A.R. 0469–0472).

16. As to the claims against Chad, the circuit court also explained that the Second Amended Complaint failed to put Chad on notice of the conspiracy claim against him, noting that “alleging that Mr. Hopkins continued to be employed by the Dealership while the Dealership did not pay dividends is insufficient to state a claim of wrongful conduct by Mr. Hopkins.” (*Id.*, A.R. 0470 (cleaned up)). It further added that “the fact that Mr. Hopkins is married to one Defendant and is the son-in-law of other Defendants is not a sufficient basis to keep him in this lawsuit in the absence of specific allegations asserting his specific involvement in alleged wrongful actions that other Defendants may have taken.” (*Id.*, A.R. 0471 (cleaned up)).

17. The circuit court also dismissed the individual-liability conversion, negligence, unjust enrichment, and constructive trust claims

against Rachel Hopkins and Sarah Abrams, since those claims duplicated the official-capacity claims and neither of them owed individual duties to a minority shareholder.⁶ (*Id.*, A.R. 0472–0475).

18. As to the claims against Rachel and Sarah, the circuit court observed that both of them “should be dismissed in their individual capacities, because there are no allegations in those courts against them specifically that would survive or could be addressed through discovery that would hold them individual liable outside of their capacities as directors and officers of the corporation.” (*Id.*, A.R. 0474). The circuit court also dismissed the tortious inference with inheritance claim because the only transaction about which Ms. Sutphin complained should have been addressed before the County Commission. (*Id.*, A.R. 0474–0475).

E. Ms. Sutphin’s appeal to the ICA and the ICA’s decision.

19. Ms. Sutphin appealed the dismissals of all claims against Chad and the dismissals of the common law claims against Rachel and Sarah, as well as the dismissal of all claims but civil conspiracy against Langhorne Abrams. (*See generally* Notice of App., A.R. 0009–0049).⁷

⁶ The circuit court did not dismiss the fraud/constructive fraud count, reserving its rulings pending further consideration. (*See* Raleigh Cty. Cir. Ct. Order, A.R. 0477).

⁷ The circuit court order dismissed all claims against Lewis Chevrolet and Chad and left intact some claims against the remaining defendants. (*See* Raleigh Cty. Cir. Ct. Order, A.R. 0476–0477). The order was, therefore, interlocutory, and because the circuit court did not direct entry of a final judgment and determine “there is no

20. Ms. Sutphin argued to the ICA that the circuit court improperly dismissed her tortious interference with inheritance, civil conspiracy, unjust enrichment, constructive trust, punitive damages, and attorney fees and litigation cost claims against Chad. (*See* Pet'r' Br. ICA 27–30, A.R. 0082–0085).

21. Ms. Sutphin also argued to the ICA that the circuit court improperly dismissed her conversion, negligence, tortious interference with inheritance, unjust enrichment, and constructive trust claims against Rachel and Sarah. (*See id.* at 30–32, A.R. 0085–0087).

22. In their joint brief, Chad, Rachel, and Sarah explained that the circuit court properly applied the standard for dismissal and that no additional discovery could salvage the properly dismissed claims. (*See* Resp'ts' Br. ICA 19–20, A.R. 0116–0117).

23. In her reply, Ms. Sutphin insisted that her Second Amended Complaint contained factual allegations sufficient to state claims against Chad, Rachel, and Sarah, accusing the circuit court of allowing “an abuse of the civil justice system.” (*See* Pet'r's Reply Br. ICA 18, A.R. 0152).

just reason for delay,” the ICA should not have entertained Ms. Sutphin’s appeal. W. Va. R. Civ. P. 54(b). Accordingly, this Court could vacate the ICA decision on the basis that the ICA lacked jurisdiction to render the decision.

24. In a memorandum decision, the ICA affirmed in part and denied in part the appealed portions of the Dismissals Order.⁸ (*See generally* ICA Mem. Dec. 1–7, A.R. 0001–0007).

25. The ICA brought Chad back into the case, determining that the civil conspiracy claim against him could proceed because he may have conspired with other defendants. (*Id.* at 5, A.R. 0005). The ICA, however, left dismissed all other counts against Chad Hopkins. (*Id.*). The ICA determined that the civil conspiracy claim should be revived against Chad, because Ms. Sutphin alleged that “Ronald conspired with the other Respondents” and he had a “close [*i.e.*, familial] relationship with other alleged tortfeasors and [a] position in management of Lewis Chevrolet.” (*Id.*).

26. The ICA also revived the individual-capacity claims against Rachel and Sarah as permissible alternative claims. (*Id.* at 5–6, A.R. 0005–0006).⁹ The ICA left intact the dismissal of the tortious interference with inheritance claim, but it concluded that the circuit court improperly dismissed

⁸ The ICA reversed aspects of the circuit court order with a memorandum decision and without a hearing. Yet, the ICA did not explain how this case fell within the “limited circumstances” justifying reversal by a memorandum decision. W. Va. R. App. P. 21(d).

⁹ The ICA also affirmed the circuit court’s dismissal of most claims against Langhorne Abrams, although it reversed the circuit court’s dismissals as being with prejudice. (ICA Mem. Dec. 4–7, A.R. 0004–0007). None of those aspects of the ICA’s decision has been appealed.

the individual-capacity claims (*i.e.*, conversion, negligence, unjust enrichment, and constructive trust). (*Id.* at 5, A.R. 0005). Although the ICA agreed that the individual-capacity claims were “***duplicative*** of the claims ... for violations of the West Virginia Business Corporation Act and breaches of their fiduciary duties,” the ICA nevertheless decided that the claims could process as “***alternative*** legal theories.” (*Id.* (emphasis added)).

27. Chad Hopkins, Rachel Hopkins, and Sarah Abrams requested rehearing, but the ICA summarily denied that request. Order, *Sutphin v. Hopkins*, No. 22-ICA-201 (W. Va. Ct. App. May 9, 2024)). The ICA then issued its mandate on May 16, 2024. (ICA Mandate, A.R. 0008).

F. This appeal of two aspects of the ICA’s decision.

28. Chad Hopkins, Rachel Hopkins, and Sarah Abrams timely noticed this appeal to this Court on May 31, 2024.

29. Chad appeals the ICA’s reversal of the circuit court order dismissing the civil conspiracy claim against him.

30. Chad asks that this Court reverse the ICA’s decision because a civil conspiracy claim cannot stand alone as the only claim against a defendant, and Ms. Sutphin has no other substantive claim against him, nor does he owe any duty to Ms. Sutphin that would support a separate substantive claim. His familial relationship to other defendants and his employment at the family

business do not permit the inference that Chad joined a conspiracy against Ms. Sutphin or even owed any duty to her.

31. Rachel and Sarah appeal the ICA's reinstatement of the conversion, negligence, unjust enrichment, and constructive trust claims as permissible alternative pleading when those claims assert the same, not alternative, theories of recovery. It is not possible for Ms. Sutphin to fail to prove her official-capacity claims against Rachel Hopkins and Sarah Abrams but also prevail on any of the reinstated individual-capacity claims. Ms. Sutphin alleges the same alleged mismanagement of Lewis Chevrolet in support of both sets of claims.

32. Rachel and Sarah ask that this Court reverse the ICA's decision because they owe no individual duties to Ms. Sutphin regarding the management of Lewis Chevrolet. Ms. Sutphin, as a minority shareholder can hold them liable for alleged mismanagement of the corporation, if at all, only in their roles of directors and officers and thus only through the official-capacity claims.

III. SUMMARY OF ARGUMENT

The circuit court narrowed this case by dismissing, among other things, all counts against Chad, including a conclusory civil conspiracy claim. The circuit court also dismissed duplicative individual-capacity claims against Rachel and Sarah. The ICA, however, summarily revived the civil conspiracy

claim against Chad and the individual-capacity claims against Rachel and Sarah. Moreover, the ICA did so in a memorandum decision, despite not articulating any limited circumstances justifying a reversal through a memorandum decision. This Court should reverse the ICA's improvident reinstatement of these claims and, like the circuit court, narrow this case.

First, this appeal involves the dismissal of a conclusory civil conspiracy claim against Chad. The ICA's reinstatement of only that claim is reversible error, because civil conspiracy is not a stand-alone claim. A defendant must be alleged to have conspired to violate some duty that he owes to the plaintiff, but no other tort claim remains asserted against Chad. Nor could Ms. Sutphin assert a tort claim against him. Ms. Sutphin's Second Amended Complaint alleges that Chad conspired against her, but the allegations don't support the claim or even an inference allowing the claim to proceed. At most, the Second Amended Complaint alleges that Chad is related to other defendants and that he works at the family business at the center of this case. Even reading too much into the allegations, the Second Amended Complaint merely alleges that Chad was acting in his capacity as an employee and conspired with his principals, which undermines the claim because an employee cannot conspire with his employer.

Second, this appeal also involves the dismissal of duplicative individual-capacity claims against Rachel and Sarah. The ICA reinstated four of those

common law claims as permissible alternative pleading. All Ms. Sutphin’s claims against Rachel and Sarah are based on allegations that they used their director and officer roles in the family business to their own benefit, violating fiduciary duties imposed by statute and common law on directors and officers. The individual-capacity claims thus were properly dismissed as duplicative and the ICA’s reinstatement of them as permissible alternative pleading is in error. “Duplicative” and “alternative” are not synonyms. Duplicative or redundant claims—unlike alternative or hypothetical claims, either of which may be sufficient—are not permissible.

In conclusion, the circuit court properly dismissed claims that the ICA reinstated with conclusory and incorrect reasoning. A civil conspiracy claim cannot stand alone as the only claim against Chad, who owes no duty to Ms. Sutphin regarding the management of Lewis Chevrolet. Rachel and Sarah still are defending claims stated against them as directors and officers of the corporation. Identical claims based on the same allegations of mismanagement in those official roles are impermissibly duplicative, not permissibly alternative. This Court should return the insufficient claims to the dustbin.

IV. STATEMENT REGARDING ORAL ARGUMENT & DECISION

Because this case involves assignments of error in the application of settled law, oral argument, if the Court wishes to hear argument, would be appropriate under Rule 19. *See* W. Va. R. App. P. 19(a).

V. ARGUMENT

After the circuit court dismissed all claims against Chad, including an insufficient conspiracy claim, and dismissed duplicative individual-capacity claims against Rachel and Sarah, the ICA revived those claims. In doing so, the ICA erred. Upon review, this Court should determine that, as it previously held, a civil conspiracy cannot stand as the only claim against a defendant. Moreover, the Second Amended Complaint's allegations do not even permit the inference of a conspiracy. This Court also should determine that duplicative common law claims based on the same allegations of wrongdoing by directors and officers are not permissible alternative claims. Simply put, this Court should confirm the circuit court's decision to dismiss the claims against Chad, Rachel, and Sarah that the ICA reinstated in error. Because this appeal concerns the propriety of dismissal under Rule 12(b)(6), this Court's review is *de novo*.

1. **Civil conspiracy cannot stand as the only claim against Chad; moreover, the Second Amended Complaint fails to sufficiently allege that he conspired with his family members to destroy their family business.**

By reviving the civil conspiracy claim against Chad—and only the civil conspiracy claim—the ICA incorrectly permitted a stand-alone conspiracy claim. The Second Amended Complaint charges Chad with conspiring with his family members to ruin the family dealership. The circuit court dismissed that broad boilerplate claim for failing to state a claim. The ICA nevertheless

exhumed the claim because the Second Amended Complaint “specifically alleges [Chad] conspired” with others and that, combined with his “close relationship with other alleged tortfeasors” and his managerial role at Lewis Chevrolet, was enough to state a civil conspiracy claim. (ICA Mem. Dec. 5, A.R. 0005) As a result—and despite recognizing that a civil conspiracy is not a stand-alone claim—the ICA revived the stand-alone civil conspiracy claim against Chad. (*See id.* at 5 n.6, A.R. 0005 (citing syl. pt. 9, *Dunn v. Rockwell*, 689 S.E.2d 255 (W. Va. 2009))). Here, however, Ms. Sutphin did not allege a conspiracy claim against Chad for the following, independently dispositive reasons.

First, no separate tort remains asserted against Chad about which he could possibly have conspired. Without the anchor of a tort, supported by a legal duty owed by Chad to Ms. Sutphin, the civil conspiracy claim against him cannot stand. As this Court held in syllabus point 9 of *Dunn*—and the ICA noted but did not heed—a conspiracy claim must be moored to a tort:

A civil conspiracy is not a per se, stand-alone cause of action; it is instead a legal doctrine under which liability for a tort may be imposed on people who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s).

Syl. pt. 9, *Dunn v. Rockwell*, 225 W. Va. 43, 689 S.E.2d 255 (2009). (*See also* ICA Mem. Dec. 5 n.6, A.R. 0005).

The conspiracy claim against Chad was facially anchored to the tortious interference and unjust enrichment claims asserted against him. But without those separate tort claims, the dismissal of which the ICA affirmed, the conspiracy claim is unmoored. Ms. Sutphin also cannot rely on her claims against others to drag Chad back into this case. As other courts have recognized, a conspiracy claim “allows tort recovery only against a party who already owes the duty.” *Weinbaum v. Goldfarb, Whitman & Cohen*, 54 Cal. Rptr. 2d 462, 466 (Cal. App. June 27, 1996) (cleaned up). Ms. Sutphin’s claims against other defendants are based on duties that they allegedly owe to her, not on any duty that Chad owes to her. Since Chad is neither trustee, executor, director, nor officer, he cannot be “bootstrapped into tort liability by the pejorative plea of conspiracy.” *Weinbaum*, 54 Cal. Rptr. 2d at 466 (cleaned up). Because Ms. Sutphin has no tort that remains asserted against Chad, her civil conspiracy claim would impermissibly stand alone against him and, therefore, should not have been reinstated.

Second, the Second Amended Complaint does not specifically allege Chad conspired with anyone, and it is unreasonable to infer from the conclusory allegations that Chad was part of any unlawful conspiracy. The Second Amended Complaint tries to tie Chad to a conspiracy to ruin the family business and to devalue Ms. Sutphin’s shares in the dealership. But the Second Amended Complaint’s allegations are too thin to accomplish that task. It does

not include any facts tying Chad to a conspiracy, nor do any facts alleged permit an inference that Chad was a co-conspirator. Rather, the facts merely establish that Chad is related to other defendants and works at the family dealership. Neither of those circumstances creates any duty running from Chad to Ms. Sutphin.

Even under the notice pleading standard, a complaint must include more than conclusory, unsupported allegations to survive dismissal. *Givens v. Gamble*, 2013 WL 1859170, at *2 (W. Va. May 3, 2013) (mem.). A court may only draw reasonable inferences in the pleading party's favor and thus "need not accept as true unwarranted inferences, unreasonable conclusions or arguments." *Nemet Chevrolet Ltd. v. Consumeraffairs.com Inc.*, 591 F.3d 250, 253 (4th Cir. 2009).

In the civil conspiracy context, then, a complaint must give a court enough to infer that "two or more persons by concerted action to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means." Syl. pt. 8, *Dunn*, 225 W. Va. 43, 689 S.E.2d 255. Importantly, "conspiracy is an intentional act, not a negligent one." *Mallamo v. Town of Rivesville*, 197 W. Va. 616, 624–25, 477 S.E.2d 525, 533–34 (1996) (citing *Dixon v. American Industrial Leasing Co.*, 162 W. Va. 832, 834, 253 S.E.2d 150, 152 (1979)).

Here, even under liberal pleading standards, the Second Amended Complaint fails to state a conspiracy claim against Chad. The five-paragraph civil conspiracy count is entirely conclusory. (*See* 2d Am. Compl. ¶¶ 245–249, A.R. 0208–0209). Four of those paragraphs are dedicated to incorporation by reference, legal citations, and a request for judgment. (*See id.* ¶¶ 245–247, 249, A.R. 0208–0209). The remaining paragraph purports to plead the claim, but it does not such thing. Rather, it concludes that Chad was part of a civil conspiracy without any additional information:

248. Upon information and belief, Defendant David Abrams, Defendant Rachel Hopkins, Defendant Sarah Abrams, Defendant Chad Hopkins, and Defendant Langhorne Abrams consciously conspired together to commit the fraudulent, tortious, and wrongful acts or omissions described above and, thus, engaged in a civil conspiracy to damage Ms. Sutphin.

(*Id.* ¶ 248, A.R. 0208).¹⁰ Put plainly, the Second Amended Complaint does not include any facts establishing that Chad intentionally conspired against Ms. Sutphin.

¹⁰ Aside from this paragraph, Chad’s name appears another twenty-eight times in the Second Amended Complaint, but none of those allege facts or give rise to inferences connecting Chad to some conspiracy. Fourteen are pro forma references (e.g., including his name as a claim’s target or in a request for judgment). (*See* 2d Am. Compl. ¶ 6, A.R. 0162 (including as party); *id.* at 47, 50–54, A.R. 0205, 0208–0212 (listing as target of claims); *id.* ¶ 249, A.R. 0208–0209 (pro forma request for judgment); *id.* at 57–58, A.R. 0215–0216 (pro forma ad damnum clause)). Another six mentions merely note that Chad is related to another party or employed by the dealership. (*See id.* ¶ 26(e), A.R. 0166 (noting marriage to Rachel Hopkins); *id.* ¶ 28(e), A.R. 0267 (noting relationship to David Abrams and employment); *id.* ¶ 104, A.R. 0181 (noting continued employment); *id.* ¶ 105, A.R. 0182 (noting employment benefits); *id.* ¶ 177, A.R. 0196 (noting marriage to Rachel Hopkins and employment); *id.* ¶ 277, A.R.

Moreover, the Second Amended Complaint does not include any facts even permitting the inference that Chad intentionally conspired against Ms. Sutphin. The Second Amended Complaint alleges few facts relating to Chad—Chad is married to Rachel and thus David Abrams’s son-in-law and Chad is the dealership’s general manager and thus receives a salary and benefits. (*See* Compl. ¶¶ 26(e), 28(e), 104–105, 177, 277, A.R. 0166–0167, 0181–0182, 0196, 0214). When asked to explain the justification for alleging a conspiracy claim against Chad, Ms. Sutphin reiterated the same innocuous facts noted in the Second Amended Complaint: “Your Honor, what we know at the present time is his role as general manager of the dealership, his association with his wife and his father-in-law and his sister-in-law, and the poor performance of the company.” (Mots. Hrg. Tr. 69–70, A.R. 0404–0405).

These facts are true for any family member who works in the family business and, accordingly, cannot reasonably support an inference that Chad conspired against Ms. Sutphin, as the circuit court noted. (*See* Mots. Hrg. Tr. 76, A.R. 0411 (“And the fact that he’s married to one Defendant, son-in-law of the others is not a sufficient basis to retain him in this suit without specific

0214 (noting continued employment)). Another eight are conclusory allegations connected to claims the circuit court dismissed as to Chad. (*See Id.* ¶¶ 251–252, 255, A.R. 0209 (unjust enrichment); *id.* ¶ 260, A.R. 0211 (constructive trust); *id.* ¶ 265–266, A.R. 0212 (punitive damages); *id.* ¶ 277, A.R. 0214 (attorney fees and litigation costs)).

allegations that would involve actions that he may have taken.”)). These facts do not provide any basis for Ms. Sutphin to assert that Chad owed any duty to her as a minority shareholder. “His role as an employee of the corporation as general manager does not rise to the standards based upon the information that’s been alleged to equate him with being an officer or director of the corporation.” (Mots. Hrg. Tr. 75, A.R. 0410 (distinguishing the one case that plaintiff relied on)).

Third, setting all other infirmities aside, the Second Amended Complaint fails to state a conspiracy claim because Chad could not conspire with his employers or principals. “Agents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage.” *Cook v. Heck’s Inc.*, 176 W. Va. 368, 375, 342 S.E.2d 453, 460 (1986) (cleaned up); *see also, e.g.*, 15A C.J.S. *Conspiracy* § 10, Westlaw (updated Mar. 2024) (“Because acts of agent are considered in law to be acts of principal, a conspiracy cannot exist between a principal and an agent.” (cleaned up)). The Second Amended Complaint and the ICA emphasized Chad’s role as general manager and an employee of the dealership. That emphasis clarifies that the allegations concern acts Chad took as an employee, making it impossible to hold him liable for conspiring with his principals, the directors and officers of the corporation.

In sum, Chad cannot be held to defend only a claim of civil conspiracy, and the Second Amended Complaint fails to allege that Chad was part of an unlawful conspiracy in any event. As a result, the circuit court properly dismissed the conspiracy claim against Chad, and the ICA improperly revived that claim. Accordingly, this Court should reverse the ICA and leave all claims against Chad dismissed.

2. The Second Amended Complaint improperly recasts and thus duplicates official-capacity claims against Rachel and Sarah as individual-capacity claims, which also are insufficiently pleaded.

This Court should also reaffirm the circuit court’s dismissal of the Second Amended Complaint’s individual-capacity claims (*i.e.*, conversion, negligence, unjust enrichment, and constructive trust claims). Those claims are subject to dismissal for two reasons. First, they are merely duplicative of the official-capacity claims (*i.e.*, claims for violations of the West Virginia Business Corporation Act and breaches of fiduciary duties). Second, considering the claims on their own, they are insufficiently pleaded and thus are subject to dismissal. The ICA’s reinstatement of those claims was in error.¹¹

¹¹ Again, it is unclear how the ICA had jurisdiction to reinstate some dismissed claims against Rachel and Sarah when other claims remain pending against them. *See supra* n.7. Particularly with respect to Rachel and Sarah, the circuit court’s decision was not final, and it did not include an “express determination that there is no just reason for delay” or an “express direction for the entry of judgment.” W. Va. R. Civ. P. 54(b). The order clearly “adjudicate[d] fewer than all the claims ... of fewer than all the parties” and so was “subject to revision at any time before the entry of

- a. The individual-capacity claims are merely duplicative of the official-capacity claims, warranting their dismissal.**

While Rule 8(e) permits a party to plead alternative or hypothetical claims, it does not also allow duplicative claims. Accordingly, consistent with its authority to strike redundant matters, a court may dismiss duplicative claims. *See* W. Va. R. Civ. P. 12(f); *see also Hall v. Fiat Chrysler Am. US LLC*, 2022 WL 17885693, at *3 (C.D. Cal. Oct. 24, 2022) (“The Court has the authority to dismiss claims that are entirely duplicative.”); *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1, 81 (D.D.C. 2010) (“As a matter of judicial economy, courts should dismiss claims that are duplicative of other claims.”).

Courts agree that claims are duplicative when they “stem from identical allegations,” “are decided under identical legal standards,” and when “identical relief is available.” *Wultz*, 755 F. Supp. 2d at 81; *accord, e.g., McGee v. Dist. of Columbia*, 646 F. Supp. 2d 115, 122 (D.D.C. 2009) (“Because the contract claims are based on the same facts, legal duties and injuries that underlie the plaintiff’s Title VII claims, the plaintiff’s contract claims duplicate his Title VII claims and would be subject to dismissal.”); *Kurtz v. Toepper*, 2012 WL 33012,

judgment adjudicating all the claims and the rights and liabilities of all the parties.”
Id.

at *1 (N.D. Ill. Jan. 6, 2012) (“Claims are duplicative if they are based upon the same operative facts and allege the same injury.”).

Here, the individual-capacity claims simply duplicate the official-capacity claims, warranting dismissal of the individual-capacity claims. On one hand, the Second Amended Complaint alleges official-capacity claims against Rachel and Sarah for alleged violations of the West Virginia Business Corporation Act and breaches of fiduciary duties. (*See* 2nd Am. Compl. ¶¶ 167–195, A.R. 0193–0199). And on the other, it alleges individual-capacity claim for conversion, negligence, unjust enrichment, and constructive trust. (*Id.* ¶¶ 196–211, 250–261, A.R. 0200–0202, 0209–0211). Both the official-capacity and individual-capacity claims arise from the same factual allegations: Ms. Sutphin is a shareholder *and* Rachel and Sarah ran the dealership as its directors and officers in a way that devalued Ms. Sutphin’s stock. For example, the common law breach of fiduciary duties claim—an official-capacity claim—alleges Rachel and Sarah engaged “in self-dealing transactions to the detriment of shareholders” and “continu[ed] to operate the Dealership for their own benefit.” (*Id.* ¶¶ 193–194, A.R. 0199). And then the individual-capacity claims assert the same thing, claiming Rachel and Sarah operated “the Dealership to their own benefit.” (*Id.* ¶ 204, A.R. 0201 (conversion); *accord id.* ¶¶ 210, 252, A.R. 0202, 0209 (same for negligence and unjust enrichment). As for damages, while Ms. Sutphin does not detail the damages demanded, she

seeks only damages based on alleged harms to the value of her stock. The claims thus allege the same injury and seek the same relief and are, as even the ICA acknowledged, duplicative. *See* ICA Mem. Dec. 5, A.R. 0005 (agreeing with “circuit court’s reasoning that these claims are duplicative”).

“Duplicative” and “alternative” are not synonyms. Rather, they are closer to antonyms. “Duplicate” or “duplicative” as an adjective means “consisting of or existing in two corresponding or identical parts or examples.” *Duplicate*, Merriam-Webster Dictionary, <https://bit.ly/3MI0CrS> (last visited Sept. 12, 2024). Conversely, “alternative” means “offering or expressing a choice.” *Alternative*, Merriam-Webster Dictionary, <https://bit.ly/4d4GI5b> (last visited Sept. 12, 2024). While Rule 8(e)(2) permits pleading alternative claims, the individual-capacity claims are not alternative to the official-capacity claims. Ms. Sutphin cannot fail to prove her official-capacity claims and also prove her individual-capacity claims that are based on alleged actions as directors and officers. The individual-capacity claims cannot be independently sufficient if the official-capacity claims fail. *See* W. Va. R. Civ. P. 8(e)(2) (permitting alternative claims if either one would be independently sufficient).

In sum, the Second Amended Complaint alleges individual-capacity claims that are merely duplicative of the official-capacity claims. The Second Amended Complaint effectively alleges many claims under different names, which neither makes the claims alternative nor insulates them from dismissal.

As a result, this Court should reaffirm the circuit court's dismissal of the duplicative conversion, negligence, unjust enrichment, and constructive trust claims. None of those duplicative claims are truly alternative.

b. The individual-capacity claims are insufficiently pleaded in any event.

A party may plead alternative claims, but in doing so, they must still sufficiently allege each claim. *See* W. Va. R. Civ. P. 8(e)(2). Put another way, an alternative claim remains subject to dismissal “where it is clear beyond doubt that there is no relief that could be granted under any set of facts that could be proved consistent with the allegations in the complaint.” *W. Va. Bd. Educ. v. Croaff*, 2017 WL 2172009, at *3 (W. Va. May 17, 2017) (mem.) (applying W. Va. R. Civ. P. 12(b)(6)). For example, in *Croaff*, the plaintiff attempted to plead an alternative deliberate intent claim just in case the plaintiff was a “de facto employee.” *Id.* at *7 n.3. While the complaint could allege a deliberate intent claim as an alternative, it alleged only a “sketchy and conclusive” deliberate intent claim because it did not include any factual allegations permitting the inference that the plaintiff was a “de facto employee.” *Id.* The alternative deliberate intent claim thus failed to “set forth a viable cause of action” and “also [had to] be dismissed.” *Id.*

Ms. Sutphin's individual-capacity claims fare no better than the *Croaff* deliberate intent claim. The Second Amended Complaint predicates its claims against Rachel and Sarah on what they allegedly did as officers or directors of

the Dealership. (*See, e.g.*, 2nd Am. Compl. ¶¶ 208–209, A.R. 0202 (negligence duties based on positions “as director and officer of the dealership” (cleaned up)); *id.* ¶¶ 204, 252, A.R. 0201, 0209 (conversion and unjust enrichment claims based on continuing “to operate the dealership to their own benefit” (cleaned up))). Ms. Sutphin does not allege—nor could she allege—that Rachel and Sarah harmed the corporation outside their official roles, as the circuit court recognized. (*See* Raleigh Cty. Cir. Ct. Order, A.R. 0474 (“There are no allegations in those counts against them specifically that would survive or could be addressed through further discovery that would hold them individually liable outside their capacities as directors or officers of the corporation.” (cleaned up))). Accordingly, the individual-capacity claims against Rachel and Sarah cannot independently survive Rule 12(b)(6) dismissal.

VI. CONCLUSION

According to Ms. Sutphin, “this is a fiduciary duty and corporate waste case.” (Pet’r’s Br. ICA 2, A.R. 0057). On that point, she is correct. Ms. Sutphin alleges that she has been personally harmed by alleged violations of fiduciary duties by the directors and officers of Lewis Chevrolet. As a matter of law, the company’s general manager cannot be held to defend only a civil conspiracy claim. Likewise, the directors and officers of the corporation cannot be held to defend duplicative individual-capacity claims when they could be found liable,

if at all, because of actions in their official capacities. Thus, this Court should reverse the Intermediate Appellate Court's reinstatement of the stand-alone civil conspiracy claim against Chad and the duplicative individual-capacity claims (*i.e.*, conversion, negligence, unjust enrichment, and constructive trust) against Rachel and Sarah.

Respectfully submitted this 13th day of September, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2024, I served the foregoing by electronically filing the same through the West Virginia E-Filing System, which will send notice and a copy to all counsel of record.

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