

COURT OF APPEALS OF VIRGINIA

Record No. 1066-25-1

CONNIE F. HUBBARD
v.
ALL MAID UP, LLC, d/b/a
MAIDPRO OF HAMPTON ROADS, ET AL.

Record No. 1067-25-1

KAREN A. SPRINKEL, ADMINISTRATOR
OF THE ESTATE OF WILLIAM I. MOORE, DECEASED
v.
ALL MAID UP, LLC, d/b/a
MAIDPRO OF HAMPTON ROADS, ET AL.

Present: Judges Malveaux, Friedman and Lorish

Argued by videoconference

Opinion Issued September 29, 2026

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

Jamilah D. LeCruise, Judge

Jason M. Hart (S. Geoffrey Glick; The Joel Bieber Firm, on briefs), for appellants.

Kathryn E. Bonorchis (Patrick R. Kelly; Lewis, Brisbois, Bisgaard & Smith, LLP, on briefs), for appellees.

PUBLISHED OPINION BY JUDGE LISA M. LORISH

The co-conspirator of a former employee of All Maid Up, LLC d/b/a MaidPro Hampton Roads (“MaidPro Hampton”) killed William I. Moore and injured Connie F. Hubbard (“the Residents”) during a robbery. Hubbard and Karen A. Sprinkel, Administrator of the Estate of William I. Moore, brought separate actions alleging claims of civil conspiracy, negligence per se, negligence, vicarious liability, and negligent hiring against several defendants, including MaidPro

Hampton, MaidPro Franchise, LLC (“MaidPro Franchisor”), Threshold Brands, LLC (“Threshold”), and the former employee, Xavier E. Hudspeth. MaidPro Hampton filed pleas in bar and demurrers, and MaidPro Franchisor demurred as well. The trial court granted the pleas in bar and sustained the demurrers, and the remaining defendants were nonsuited.

Hubbard and Sprinkel now appeal.¹ As to the pleas in bar, they argue that the pleadings constituted impermissible pleas of the general issue and that Hudspeth’s misconduct fit within the scope of his employment with MaidPro Hampton. They then argue that they sufficiently stated claims of negligence against MaidPro Hampton and, through an agency relationship, MaidPro Franchisor, so the court was wrong to sustain the demurrers.

We conclude that the pleas in bar were not pleas of the general issue. Instead, they emphasized that Hudspeth was terminated before the attack on the Residents—a fact that bars Hubbard and Sprinkel’s relevant claims under our caselaw. Additionally, because Hubbard and Sprinkel failed to sufficiently allege that MaidPro Hampton or MaidPro Franchisor assumed a duty to warn or protect that would extend beyond the termination of Hudspeth’s employment, the trial court did not err in sustaining the demurrers. We, therefore, affirm the trial court’s judgment.

BACKGROUND²

MaidPro Hampton is a franchisee of MaidPro Franchisor and Threshold. Before obtaining MaidPro Hampton’s services, Moore received an email “regarding a quote for home cleaning” from an employee of the three entities, in which the employee stated that “one of the ‘things that set MaidPro apart’ was that they ‘complete a background and criminal history check on each staff

¹ While the appeals have not been formally consolidated, the facts, pleadings, records, and briefs are substantially identical. We therefore consider the appeals together.

² We “recite properly pled facts as alleged” in the second amended complaints, accepting such facts and all reasonable inferences therefrom as true. *Steward v. Holland Fam. Props., LLC*, 284 Va. 282, 285-86 (2012).

member before hiring.” Similar language appeared on a website shared by the three entities, which stated that they “know and trust our MaidPro employees on a personal and professional level. Our cleaning PROs undergo thorough background checks prior to employment and are bonded and insured.” Relying on these representations, the Residents began using MaidPro Hampton’s cleaning services in May 2018 for their home in Norfolk.

In early 2021, MaidPro Hampton employee Waltia Nellum recommended that the company hire her son, Hudspeth, despite having “actual and/or constructive knowledge” of his criminal history. Specifically, Hudspeth “had a history of violent, criminal acts, including a record of juvenile offenses involving theft, firearms, and violence,” had spent time in alternative schooling and juvenile detention, and “was also a member of a violent street gang.” MaidPro Hampton hired him as a cleaner in February 2021 without performing a background check or asking about his criminal history.

“[W]hile engaged in the course and scope of his employment with Defendant MaidPro Hampton,” Hudspeth searched for items to steal and scoped out “other items to steal later with the assistance of a co-conspirator.” This enterprise was part of a conspiracy with Andra Brown, who was not a MaidPro employee and is not a party to this case, “to find homes to rob.” Hudspeth particularly sought to “steal firearms for later use in acts and crimes of violence.” He eventually quit his job with MaidPro on September 16, 2021.

In late 2021, two homeowners reported to MaidPro Hampton that firearms had been taken from their homes. On October 18, one of the homeowners reported two firearms missing from their home, which had been cleaned by a crew that included Hudspeth on September 8. And on November 2, the other homeowner reported that a firearm was missing from their home, which had been cleaned on September 13 by yet another crew that included Hudspeth. Despite these reports, MaidPro Hampton did not investigate the “apparent thefts,” nor did it inform authorities.

Instead, MaidPro Hampton subsequently rehired Hudspeth on January 17, 2022, again neglecting to perform a background check. MaidPro Hampton scheduled Hudspeth to clean the Residents' home two days after he was rehired. He did so "while engaged in part of the robbery conspiracy," looking for items to steal "[w]hile cleaning [the] home." Though the cleaners were prohibited from entering Hubbard's room, Hudspeth did so anyway "under the auspices of cleaning the room, looking for items to steal." Hubbard spotted Hudspeth leaving her room, confronted him, and later reported the incident to MaidPro Hampton. About a week later, Moore realized that a handgun was missing from the home, and the Residents suspected Hudspeth had stolen it. Sprinkel ultimately reported the missing gun to MaidPro Hampton on February 16.

Around the same time that Hudspeth cleaned the house of the Residents, he informed Brown that he "had found a home where someone had guns," and the two agreed to "rob the residence and steal the guns." Because the Residents could recognize Hudspeth, he and Brown agreed that he would "serve as a look out" while Brown entered the home and shot the Residents with a firearm provided by Hudspeth.

On January 31, 2022, MaidPro Hampton finally ran a background check on Hudspeth. And "based on Defendant Hudspeth's links to four thefts of homes that he had cleaned," MaidPro Hampton suspended him beginning February 1, 2022 and terminated him the next day.³ About a week after his termination, another customer reported a theft to MaidPro Hampton and informed the company that she had footage of Hudspeth lingering by the site of the theft.

Then, on February 28, 2022, Brown and Hudspeth met up and traveled to the Residents' home. Brown knocked on the door and fatally shot Moore when he came to open it. Brown then

³ An exhibit attached to pleadings submitted by MaidPro Hampton confirmed that Hudspeth was terminated on February 2, 2022.

entered the home and shot Hubbard while she was calling 911. Hudspeth and Brown fled from the home and were arrested shortly thereafter.

Hubbard and Sprinkel filed suit on February 21, 2024. In Counts I and II, they alleged civil conspiracy and negligence per se against Hudspeth and MaidPro Hampton. Count III alleged negligence against MaidPro Hampton. Count IV alleged vicarious liability against MaidPro Franchisor, and Count V alleged negligence against MaidPro Franchisor and Threshold. Finally, Count VI alleged a claim for negligent hiring against MaidPro Hampton.

In response, MaidPro Hampton filed pleas in bar to Counts I, II, and VI as well as demurrers to Counts I, II, and III. As to its pleas in bar, MaidPro Hampton argued that the claims were barred because Hudspeth was terminated before the attack—and Hudspeth and Sprinkel did not contest the date his employment ended. And in support of its demurrers, MaidPro Hampton argued that Hudspeth was not acting within the scope of his employment and that Hubbard and Sprinkel failed to establish the existence of a duty or foreseeability. MaidPro Franchisor also demurred to Counts IV and V. It argued that it could not be vicariously liable if the claims against MaidPro Hampton were dismissed and that Hubbard and Sprinkel failed to establish duty or foreseeability.

The trial court granted the pleas in bar and sustained the demurrers. The claims against both Threshold and Hudspeth were nonsuited. On June 30, 2025, Hubbard and Sprinkel separately appealed.

ANALYSIS

First, we conclude that Hudspeth's termination before the attack bars the claims of civil conspiracy, negligence per se, and negligent hiring. And, because the date of termination is a single issue which bars recovery for those claims, we find it was the proper subject of a plea in bar. We then agree with MaidPro Hampton that it did not assume the duties alleged and that, accordingly,

the trial court properly sustained its demurrers. For similar reasons, the trial court did not err in sustaining MaidPro Franchisor's demurrers.

I. The trial court did not err by granting the pleas in bar.

“A plea in bar asserts a single issue, which, if proved, creates a bar to a plaintiff's recovery.” *Massenburg v. City of Petersburg*, 298 Va. 212, 216 (2019) (quoting *Hawthorne v. VanMarter*, 279 Va. 566, 577 (2010)). “[W]here no evidence is taken in support of a plea in bar, the trial court, and the appellate court upon review, consider solely the pleadings in resolving the issue presented.” *Ingleside Emergency Grp., LLC v. Hollis*, 304 Va. 571, 578 (2025) (alteration in original) (quoting *Massenburg*, 298 Va. at 216). “In so doing, we accept as true all facts alleged in a plaintiff's complaint.” *Montalla, LLC v. Commonwealth*, 303 Va. 150, 164 (2024). “We not only accept as true the facts alleged, but also grant the plaintiff the benefit of all ‘reasonable factual inferences that can be drawn’ from such a view of the facts.” *Id.* (quoting *Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 527 (2023)). “With the facts and inferences viewed in this manner, we conduct a de novo review of whether a plea in bar was meritorious.” *Id.*

A. Hudspeth's termination forecloses MaidPro Hampton's vicarious liability for civil conspiracy and the negligence per se claim is waived.

Hubbard and Sprinkel allege that Hudspeth conspired to commit unlawful acts while engaged in MaidPro Hampton's business and in the course and scope of his employment—cleaning the Residents' home. Thus, MaidPro Hampton should be vicariously liable for his conduct. But their arguments fail because the relevant misconduct occurred after Hudspeth's termination.

First, we must set the scope of vicarious liability. Vicarious liability is “liability for the tort of another person.” 2 Dan B. Dobbs et al., *The Law of Torts* § 425. “By definition, respondeat superior is wholly vicarious in nature.” *Parker v. Carilion Clinic*, 296 Va. 319, 332 n. 3 (2018). “It necessarily follows that a claimant cannot make out a vicarious liability claim against an employer

without first proving ‘that the employee committed a tort’ within the scope of his employment.” *Id.* (quoting 2 Dobbs et al., *supra*, § 425, at 782). This vicarious liability “applies only when the relation of master and servant is shown to exist between the wrongdoer and the person sought to be charged for the result of some neglect or wrong *at the time and in respect to the very transaction out of which the injury arose.*” *Morgan*, 297 Va. at 844-45 (quoting *Parker*, 296 Va. at 336). There is only a master and servant relationship while the employment relationship is still ongoing.

Our Supreme Court has described vicarious liability as a “job-related-service principle.”

Parker, 296 Va. at 336. While

true that vicarious liability “is not limited to those acts of the servant which promote the object of the employment,” it is equally true that no such liability can be imposed if the tortious act did not arise out of the “very transaction,” or service or task, that the employee was being paid to perform.

Id. (quoting *Manuel v. Cassada*, 190 Va. 906, 913 (1950)). “It simply is not enough . . . that the claim ‘arose out of an activity which was within the employee’s scope of employment or within the ordinary course of business.’” *Doe v. Baker*, 299 Va. 628, 648 (2021) (alteration in original) (quoting *Parker*, 296 Va. at 339). “Instead, the employee must have committed the tort *while actively engaged* in a job-related *service.*” *Morgan*, 297 Va. at 845 (quoting *Parker*, 296 Va. at 339).

The significance of the employment relationship is apparent from the Court’s analysis of the complaint in *Morgan*. That complaint alleged that the assailant, who worked as a nursing assistant at the nursing home where the victim resided, sexually assaulted the victim while “*performing* his duties.” *Id.* at 837-38, 848. Because the complaint “allege[d] an employment relationship . . . at the time of the tortious conduct,” it “trigger[ed] the scope-of-employment presumption.” *Id.* at 848. Importantly, the complaint “expressly allege[d] that all of [the assailant’s] wrongful acts—including

the rape—occurred *while* he was performing job-related services within the scope of his employment.” *Id.* at 850.

Thus, for MaidPro Hampton to be vicariously liable, Hubbard and Sprinkel must have alleged that Hudspeth “committed the tort *while actively engaged* in a job-related *service*.” *Id.* at 845 (quoting *Parker*, 296 Va. at 339). The question becomes *when* Hubbard committed the alleged torts—before, or after, being in the employment of MaidPro Hampton. While the appellants admit that Hudspeth was not employed by MaidPro Hampton on the date of the shooting, they contend that Hudspeth was an employee when he searched the Residents’ home for guns and communicated with Brown about the same. They allege this was an overt act in furtherance of the conspiracy to rob and murder the Residents.⁴

Turning to civil conspiracy, “[a] common law conspiracy consists of two or more persons combined to accomplish, by some concerted action, some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means.” *Gelber v. Glock*, 293 Va. 497, 533 (2017) (quoting *Com. Bus. Sys., Inc. v. BellSouth Servs., Inc.*, 249 Va. 39, 48 (1995)). “[I]n Virginia, a common law claim of civil conspiracy generally requires proof that the underlying tort was committed.” *Almy v. Grisham*, 273 Va. 68, 80 (2007). “Thus, . . . a conspiracy claim based on [an] underlying tort would include these same elements of proof.” *Id.* at 81. “The foundation of a civil action of conspiracy is the damage caused by the acts committed in furtherance of the conspiracy.” *Gelber*, 293 Va. at 533 (quoting *BellSouth*, 249 Va. at 48). As such, civil

⁴ They also generally allege that Hudspeth committed the tort of negligence, while still an employee of MaidPro Hampton, by conspiring with Brown while cleaning the home. They offer nothing beyond conclusory statements about how this was negligence for which MaidPro Hampton could be liable. Our role is not “to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Bartley v. Commonwealth*, 67 Va. App. 740, 746 (2017) (quoting *Sneed v. Bd. of Pro. Resp.*, 301 S.W.3d 603, 615 (Tenn. 2010)); *see also* Rule 5A:20. Thus, this claim is waived, and we will not consider it.

conspiracy is another vicarious liability doctrine in that it imposes liability to a co-conspirator who may not be liable for the underlying tort.

That liability depends on injury from the underlying tort and is not based on the conspiracy itself. “The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use unlawful means.” *Id.* (quoting *Gallop v. Sharp*, 179 Va. 335, 338 (1942)). An action for civil conspiracy therefore lies “only if a plaintiff sustains damages as a result of an act that is itself wrongful or tortious.” *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 215 (2014); *see also Gelber*, 293 Va. at 533-34 (explaining that “[n]o cause of action exists without the resulting injury, and the damage produced must arise as the effective result of the conspiracy” (quoting *Gallop*, 179 Va. at 338)).⁵

Returning to the doctrine of vicarious liability, an employer is only vicariously liable for torts committed “while [an employee is] actively engaged in a job-related service.” *Parker*, 296 Va. at 339. An employer cannot be responsible for a tort committed after an employee is terminated because no “master and servant” relationship exists at that point to support vicarious liability. *See Morgan*, 297 Va. at 844-45. As pleaded here, no “tort” occurred while Hudspeth was employed by MaidPro Hampton. The Residents only suffered damage from the civil conspiracy once the underlying torts of murder, robbery, malicious wounding, etc., occurred, when Hudspeth was no longer working for MaidPro Hampton. The complaint does not allege that any damage to person or property resulted from Hudspeth searching for items in the home and

⁵ “By contrast, a minority of states treat civil conspiracy as an independent claim where defendants may be held liable for damages caused by the conspiracy itself, even in the absence of an unlawful act.” *Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 140 (Tex. 2019).

forming an agreement with Brown while he was still employed.⁶ While Hudspeth's casing the home was *a* wrongful act, it was simply not *the* wrongful or tortious act that caused damage to the Residents. See *La Bella Dona Skin Care, Inc. v. Belle Femme Enters., LLC*, 294 Va. 243, 256 (2017) (“[A]n action for civil conspiracy will not lie unless the predicate unlawful act independently imposes liability upon the primary wrongdoer.”).⁷

Hubbard and Sprinkel allege that Hudspeth was terminated by MaidPro Hampton weeks before the attack. MaidPro Hampton could not be vicariously liable for misconduct after his termination from MaidPro Hampton because no “master and servant” relationship then existed. See *Morgan*, 297 Va. at 844-45. The trial court thus did not err in granting the pleas in bar as to claims of civil conspiracy relating to the attack.

B. Hudspeth's termination also forecloses MaidPro Hampton's liability for negligent hiring or negligent retention.

We then turn to Hubbard and Sprinkel's negligent hiring and negligent retention claims.⁸ Whereas “[u]nder respondeat superior, an employer is vicariously liable for an employee's tortious acts committed within the scope of employment,” “negligent hiring is a doctrine of primary liability.” *J. v. Victory Tabernacle Baptist Church*, 236 Va. 206, 211 (1988) (quoting Cindy M. Haerle, Note, *Minnesota Developments: Employer Liability for the Criminal Acts of*

⁶ The complaint alleges that the Residents suspected Hudspeth stole a firearm from them while still employed by MaidPro Hampton, but they have not alleged, or argued, that this theft constituted a tort for which they should be able to recover.

⁷ This holding does not mean an employer could not be vicariously liable for fraud committed by an employee if damage from that fraud is not experienced until after the employee no longer works for the employer. If plaintiffs allege that an injury was proximately caused by representations made by an employee, for example, the timing of the injury alone is not dispositive.

⁸ While the counts were captioned “Negligent Hiring,” Hubbard and Sprinkel also alleged that MaidPro Hampton “continued to employ” Hudspeth, despite knowing of the danger he posed. Therefore, they also effectively alleged that MaidPro Hampton negligently retained Hudspeth.

Employees Under Negligent Hiring Theory: Ponticas v. K.M.S. Investments, 68 Minn. L. Rev. 1303, 1306-07 (1984)). It “is based on the principle that one who conducts an activity through employees is subject to liability for harm resulting from the employer’s conduct if the employer is negligent in the hiring of an improper person in work involving an unreasonable risk of harm to others.” *Interim Pers. of Cent. Va., Inc. v. Messer*, 263 Va. 435, 440 (2002) (quoting *Se. Apts. Mgmt. v. Jackman*, 257 Va. 256, 260 (1999)). “Negligent hiring, therefore, enables plaintiffs to recover in situations where respondeat superior’s ‘scope of employment’ limitation previously protected employers from liability.” *Victory Tabernacle*, 236 Va. at 211 (quoting Haerle, *supra*, at 1306-07).

Liability for the negligent hiring tort “is based upon an employer’s failure to exercise reasonable care in placing an individual with known propensities, or propensities that should have been discovered by reasonable investigation, in an employment position in which . . . it should have been foreseeable that the hired individual posed a threat of injury to others.” *Messer*, 263 Va. at 440. Meanwhile, the related tort of negligent retention is based on the “harm resulting from the employer’s negligence in retaining a dangerous employee who the employer knew or should have known was dangerous and likely to harm [others].” *A.H. v. Church of God in Christ, Inc.*, 297 Va. 604, 629 (2019) (alteration in original) (quoting *Jackman*, 257 Va. at 260-61). “[A] prima facie case of negligent retention requires an amplified showing that both the nature and gravity of the risk render unreasonable any mitigating response short of termination.” *Baker*, 299 Va. at 643 (alteration in original) (quoting *Church of God in Christ*, 297 Va. at 629).

Hubbard and Sprinkel rely heavily on MaidPro Hampton’s failure to reasonably investigate Hudspeth’s background. In one of the first cases establishing “negligent hiring” as an independent tort, our Supreme Court affirmed that there was evidence sufficient to sustain a jury verdict that held an employer liable for the actions of a railroad employee, Ford, where the

employer failed to investigate Ford’s record before hiring him. *Davis v. Merrill*, 133 Va. 69, 71-73, 79-80 (1922). There, Ford told the driver of a vehicle to find a different railroad crossing before ultimately raising the closed railroad gate and shooting at the vehicle, killing one passenger. *Id.* at 71-72. The Court noted that there was evidence that Ford was fired from a previous job for drunkenness and that he “was a man who would become highly incensed over a very simple matter and get dangerously angry from slight provocation.” *Id.* at 79. More importantly, the record showed that Ford’s superior “made no inquiry of anyone else concerning Ford’s past record, habits or general fitness for the position.” *Id.* at 80. “Had [the superior] looked up his record with the [railroad] showing his discharge for drunkenness, and made some inquiry of the members of the police force at Norfolk, he would probably not have given him the position.” *Id.* In other words, the failure to do a background check was sufficient to sustain the jury’s verdict of negligent hiring.

But, critical to this case, “a negligent hiring or a negligent retention claim ceases to be viable for conduct committed *after the employee is no longer retained by the employer.*” *Baker*, 299 Va. at 642 (emphasis added). The Court further explained why the termination of employment is a clear line in the sand:

The termination of employment is a logical and practical boundary for employer liability for claims of negligent hiring or retention. The rationale for holding an employer liable for hiring an unfit or dangerous employee is that a victim might be exposed to risk or danger during the course of the employment—not at some other time in the possibly distant future when the employer has no control over the employee.

Id. at 643 (footnote omitted). The same logic applies to negligent retention claims. *See id.* (“In addition, an employer cannot be liable for ‘retaining’ an employee who is no longer retained.”). Any other conclusion “would impose a duty of care on employers that is unmanageable, utterly

unpredictable, and conceptually limitless.” *Id.* Thus, Hubbard and Sprinkel concede that the essential question is whether Hudspeth was employed at the time he committed the tort.

Our prior analysis about when the tort, as pleaded in the complaint, occurred applies here as well. Hubbard and Sprinkel advance the same argument that Hudspeth was still employed when he conspired with Brown to commit various criminal acts, and that this means he committed the tort while employed by MaidPro Hampton. But, as we have already concluded, merely entering into a conspiracy is not a tort and is insufficient to create liability. Hudspeth’s actions pursuant to the alleged civil conspiracy during his employment do not themselves create a viable claim. The act for which the Residents could recover is the attack itself, which Hubbard and Sprinkel expressly alleged to have occurred after Hudspeth’s termination. Because the relevant conduct was committed after Hudspeth’s termination—as asserted in MaidPro Hampton’s pleas in bar—*Baker* forecloses Hubbard and Sprinkel’s negligent hiring claims. *Id.* The trial court therefore did not err in granting the pleas in bar.

C. The pleas in bar were not pleas of the general issue.

Hubbard and Sprinkel argue that the pleas in bar were impermissible pleas of the “general issue” prohibited by Rule 3:8(a). A plea in bar asserts a single issue that, when proved by the proponent, blocks a claim. *Massenburg*, 298 Va. at 216. In other words, a plea in bar “raises a bar . . . to the allegations in a complaint.” *Our Lady of Peace, Inc. v. Morgan*, 297 Va. 832, 847 n.4 (2019). “Under modern practice, a plea in bar does not point out the legal insufficiency of allegations but rather demonstrates their irrelevance because of some other dispositive point – usually some affirmative defense such as the ‘statute of limitations, res judicata, collateral estoppel by judgment, accord and satisfaction, or statute of frauds.’” *Id.* By contrast, a “plea of the general issue” is a now-defunct plea that, at common law, was “a traverse, a general denial of the plaintiff’s whole declaration or an attack upon some fact the plaintiff would be required to

prove in order to prevail on the merits.” *Stockbridge v. Gemini Air Cargo, Inc.*, 269 Va. 609, 617-18 (2005).

While the pleas here did not raise an affirmative defense, they did highlight a single dispositive point that barred Hubbard and Sprinkel’s claims—that Hudspeth was not employed by MaidPro Hampton at the time of the attack. In *Cornell v. Benedict*, 301 Va. 342, 237 (2022), the Supreme Court affirmed the use of a plea in bar asserting that the defendants were not employers as defined by the statute and that the timing of their resignations was an absolute bar to the claim for unpaid wages. Here too, the plea in bar turned on a “dispositive point” that rendered the other allegations supporting the challenged claims “irrelevan[t].” *Cal. Condo. Ass’n v. Peterson*, 301 Va. 14, 20 (2022). We disagree therefore that it was a plea of the “general issue.”

II. The trial court did not err in sustaining the demurrers.

“We review a circuit court’s decision to sustain or overrule a demurrer de novo.” *Brooks-Buck v. Wahlstrom*, 304 Va. 470, 477 (2025). “‘A demurrer tests the legal sufficiency of a [complaint],’ ensuring that the factual allegations set forth in the pleading are sufficient to state a cause of action.” *La Bella Dona*, 294 Va. at 255 (alteration in original) (quoting *Harris v. Kreutzer*, 271 Va. 188, 195-96 (2006)). “When reviewing a circuit court’s decision on a demurrer, ‘we accept as true all factual allegations expressly pleaded in the complaint and interpret those allegations in the light most favorable to the plaintiff,’ accepting any reasonable inferences that may be fairly drawn from the factual allegations of the complaint.” *Brooks-Buck*, 304 Va. at 477 (quoting *Church of God in Christ*, 297 Va. at 613). “If the pleading fails to state a cause of action, then the demurrer should be sustained.” *La Bella Dona*, 294 Va. at 255.

A. MaidPro Hampton's demurrers

Hubbard and Sprinkel assert that the trial court erred in sustaining MaidPro Hampton's demurrers to their negligence claims. "To plead a cause of action for negligence, a plaintiff must allege a legal duty, 'a violation of that duty' and 'resulting damage.'" *Brown v. Jacobs*, 289 Va. 209, 215 (2015) (quoting *Burdette v. Marks*, 244 Va. 309, 311 (1992)). "[W]hether a legal duty in tort exists is a pure question of law to be reviewed de novo." *Id.* (alteration in original) (quoting *Commonwealth v. Peterson*, 286 Va. 349, 356 (2013)). Here, Hubbard and Sprinkel allege that MaidPro Hampton assumed a duty of care. Generally, "when the issue is not whether the law recognizes a duty, but rather whether the defendant by his conduct assumed a duty, the existence of that duty is a question for the fact-finder." *Burns v. Gagnon*, 283 Va. 657, 672 (2012). After all, it is "ordinarily" the case that all "issues of negligence and proximate cause are for the jury." *Philip Morris, Inc. v. Emerson*, 235 Va. 380, 397 (1988). "But where reasonable men may not disagree on the facts and the inferences to be drawn from the facts, those issues become questions of law for the court to decide." *Id.* In the context of a demurrer then, "the court determines whether the law recognizes an assumed duty based on the facts alleged[,] and the fact-finder determines whether [the] plaintiff has proven those facts." *Terry v. Irish Fleet, Inc.*, 296 Va. 129, 139 n.6 (2018).

Dealing first with the allegedly-assumed duty to protect or warn the Residents, a person generally "has no duty to control the conduct of third persons in order to prevent physical harm to another." *Burdette*, 244 Va. at 311. "This is especially the case when the third person commits acts of assaultive criminal behavior because such conduct cannot reasonably be foreseen." *Marshall v. Winston*, 239 Va. 315, 318 (1990). But "the general rule does not apply when a special relation exists (1) between the defendant and the third person which imposes a duty upon the defendant to control the third person's conduct, or (2) between the defendant and

the plaintiff which gives a right to protection to the plaintiff.” *Burdette*, 244 Va. at 312; *see Restatement (Second) of Torts* § 315 (A.L.I. 1965). While such “a special relationship is that of employer-employee with regard to the employer’s potential duty of protecting or warning an employee,” *A.H. v. Rockingham Publ’g Co.*, 255 Va. 216, 220 (1998), Virginia courts have not recognized “a special-relationship duty on the part of the employer to control his employee so as to prevent the employee from harming third parties,” *Church of God in Christ*, 297 Va. at 622.

Thus, MaidPro Hampton had no general duty to control Hudspeth’s conduct or to prevent physical harm to the Residents. But, “[i]n the absence of satisfying the ‘threshold requirement’ of a special relationship, we have recognized that a defendant may owe a duty to protect against an act of criminal assault by a third party where the defendant voluntarily undertook such duty by expressly communicating his intention to do so.” *Terry*, 296 Va. at 136. This duty is based on the general “common-law principle” that “one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all.” *Burns*, 283 Va. at 672 (quoting *Kellerman v. McDonough*, 278 Va. 478, 489 (2009)). The same “principle is embodied in the *Restatement (Second) of Torts* § 323,” which provides:

[]One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

[](a) his failure to exercise such care increases the risk of such harm, or

[](b) the harm is suffered because of the other’s reliance upon the undertaking.[]

Didato v. Strehler, 262 Va. 617, 628-29 (2001).

The duty assumed, then, arises from the actor’s “affirmative[] undertak[ing].”

Fruiterman v. Granata, 276 Va. 629, 645 (2008). And “[t]he extent of the undertaking defines

the scope of the duty.” *Kellerman*, 278 Va. at 507 (Kinser, J., concurring in part and dissenting in part) (quoting *South v. McCarter*, 119 P.3d 1, 16 (Kan. 2005)). While in general, a duty that did not “otherwise exist may be impliedly assumed from the defendant’s conduct,” Virginia law rejects the notion that an “implied undertaking may give rise to an assumed duty to warn or protect against the danger of a criminal act by a third party.” *Terry*, 296 Va. at 138-39. The undertaking of a duty to protect against the danger of a criminal act by a third party must be clear and express. *Church of God in Christ*, 297 Va. at 624 (“Instead, there must be a clear expression of intent by a defendant to take on a legal duty to protect a plaintiff who is justifiably relying upon that clearly expressed intent.”).

Our caselaw has repeatedly illustrated the latter principles. For example, upon being warned of an impending fight involving a particular student, an assistant principal who “wrote down [the student’s] name and told[the student’s friend] that he would ‘alert [his] security and we’ll make sure this problem gets taken care of’ had demonstrated sufficient express and direct undertakings to create an assumption of the duty to actually alert security and take actions to protect the student. *Burns*, 283 Va. at 664, 672-73 (third alteration in original). Similarly, the express agreement between a daughter’s father and a family friend to prohibit the daughter from riding with inexperienced male drivers created an assumed duty of care to protect the daughter from riding with inexperienced male drivers. *Kellerman*, 278 Va. at 489-90. And Code § 46.2-335(A) sets out a clear and express standard for a supervising adult assisting a driver with a learner’s permit, an express duty that an adult may assume. *Dodson v. Kleffman*, 84 Va. App. 174, 187-191 (2025).

On the other hand, a newspaper publishing company’s voluntary efforts to “advis[e its] carriers about safety precautions while on their routes and equip[] them with whistles” did not amount to an express undertaking of a duty to protect or warn a young newspaper carrier of the

danger of criminal assault by a third party. *Rockingham Publ'g*, 255 Va. at 223. Likewise, taxi dispatchers' efforts to "'screen[] calls of potential cab fares,' to determine the perceived 'safety risk' of the calls in the 'selection process of whom they accept fares from,'" and to document "'known or troubling' callers in a log book for use of other dispatchers" amounted to voluntary efforts and not an express assumption of a duty to warn or protect against the danger of criminal assault by a third person. *Terry*, 296 Va. at 140 (alteration in original).

Here, Hubbard and Sprinkel failed to allege any communication reflecting MaidPro Hampton's express intent to take on a duty to protect or warn the Residents. Instead, they argue that the duty is fairly implied by the promise that MaidPro Hampton only hired "known and trustworthy individuals." They also alleged that, upon learning that Hudspeth had stolen guns from homes he cleaned, "MaidPro Hampton had a duty to warn [the Residents that they] may be the target of further gun thefts to properties that . . . Hudspeth had cleaned."⁹ MaidPro Hampton breached this duty when it "fail[ed] to warn" the Residents of the thefts, which prevented them from taking adequate steps to protect themselves. Because there was no express communication by which MaidPro Hampton undertook a duty to protect or warn, however, the trial court was correct to grant the demurrer. As the Court in *Terry* observed, "[t]he existence of a duty to protect against criminal acts of third parties is the exception, . . . [which] arises only in 'rare circumstances.'" 296 Va. at 140-41 (quoting *Peterson*, 286 Va. at 359). "If we were to recognize that a duty to warn or protect against the danger of criminal assault by third persons could arise outside the context of a special relationship or an express undertaking, the exception would swallow the rule." *Id.* at 141.

⁹ Of course, Hubbard and Sprinkel also allege that MaidPro Hampton already had knowledge that Hudspeth entered a room in the home he was not allowed to enter, that a firearm was stolen from the home, and that they suspected Hudspeth had stolen it.

Before concluding, we also reject Hubbard and Sprinkel’s argument that, apart from a general duty to protect or warn, MaidPro Hampton specifically undertook a duty to complete background checks on its employees and to hire only “known and trustworthy individuals.”¹⁰ This duty was violated, they argue, when MaidPro Hampton hired Hudspeth, failed to vet him, failed to warn the Residents, and let Hudspeth into the home. But this alleged duty only mirrors the duty MaidPro Hampton already expressly owed as an employer.

As we explained above, negligent hiring rests upon “an employer’s failure to exercise reasonable care in placing an individual with known propensities, or propensities that should have been discovered by reasonable investigation, in an employment position in which . . . it should have been foreseeable that the hired individual posed a threat of injury to others.” *Messer*, 263 Va. at 440. Negligent hiring was proven in *Davis* by the failure to do a background check and ensure that the employee was trustworthy and unlikely to commit a crime. *See* 133 Va. at 79-80. As alleged, Hubbard and Sprinkel allege only that MaidPro Hampton assumed a duty it already owed them—to exercise reasonable care in hiring its employees.

The problem for Hubbard and Sprinkel is that liability for negligent hiring ends when employment ends. *Baker*, 299 Va. at 642. If they could show that MaidPro Hampton expressly assumed some broader duty to ensure that their employees would never cause harm or loss, at any point in the future, they could avoid this limitation. But they have alleged no such undertaking; instead, they merely alleged that MaidPro Hampton “assumed a duty . . . to use reasonable care to ensure that the only employees cleaning [the] home were known and trustworthy individuals.” This duty supposedly was breached because MaidPro Hampton permitted Hudspeth to clean the home despite knowing that he was a “dangerous criminal,” after

¹⁰ Hubbard and Sprinkel allege that they relied on this claim in deciding to enter into a business relationship with MaidPro. They have not argued that this amounted to fraudulent inducement, so we do not consider whether that claim can be supported on these facts.

“failing to perform a sufficiently thorough background check and personal vetting.” In other words, they alleged that MaidPro Hampton “plac[ed] an individual with known propensities, or propensities that should have been discovered by reasonable investigation, in an employment position in which . . . it should have been foreseeable that the hired individual posed a threat of injury to others.” *Messer*, 263 Va. at 440. And under our caselaw, a claim alleging negligent hiring must be based on actions that occurred during the employment relationship. *Baker*, 299 Va. at 642.

The claim fails for the same reasons cited by our Supreme Court in *Doe v. Baker*. *Id.*¹¹ Hubbard and Sprinkel offer no limiting principle for when a company’s advertising would amount to an assumption of a perpetual duty of care. These tragic events here unfolded soon after Hudspeth’s employment ended. But what if it was one year later? Or ten years? Under the theory advanced by Hubbard and Sprinkel, these claims might subject the company to liability “in the possibly distant future when the employer has no control over the employee” and “impose a duty of care . . . that is unmanageable, utterly unpredictable, and conceptually limitless[.]” *Id.* at 643. The better rule is that employers assume responsibilities for the post-employment conduct of their employees only through unambiguous words or actions. *See Church of God in Christ*, 297 Va. at 624 (“Instead, there must be a clear expression of intent by a defendant to take on a legal duty to protect a plaintiff who is justifiably relying upon that clearly expressed intent.”).

¹¹ We note that the Supreme Court was conscious in adopting the current rule while explicitly recognizing that there was contrary and “unpersuasive” authority from other jurisdictions that allow liability for negligent hiring based on actions taken by a former employee. *Baker*, 299 Va. at 643 n.5. We are bound by that determination.

Therefore, because Hubbard and Sprinkel failed to state claims of negligence, we affirm the judgment of the trial court sustaining MaidPro Hampton's demurrers.¹²

B. MaidPro Franchisor's demurrers

Finally, the trial court did not err in sustaining MaidPro Franchisor's demurrers. Hubbard and Sprinkel conceded below that their claims of vicarious liability against MaidPro Franchisor depend upon a finding that MaidPro Hampton could be negligent. And regarding their negligence claims against MaidPro Franchisor, they substantially restate their allegations and their arguments as to MaidPro Hampton's negligence. Having found that Hubbard and Sprinkel failed to state a claim of negligence against MaidPro Hampton on such grounds, we need not address them again.

CONCLUSION

We affirm the trial court's judgment. The pleas in bar asserted a dispositive fact that bars Hubbard and Sprinkel's claims of civil conspiracy and negligent hiring. Hubbard and Sprinkel waived any argument that MaidPro Hampton was responsible for Hudspeth's per se negligence by failing to adequately brief it. And because Hubbard and Sprinkel failed to allege that MaidPro Hampton and MaidPro Franchisor assumed a duty, the trial court did not err in sustaining the demurrers.

Affirmed.

¹² To the extent that Hubbard and Sprinkel renew their arguments as to negligent hiring and vicarious liability, we will not address them again here.