UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0780

September Term, 2014

FRIENDSHIP REALTY COMPANY, INC., ET AL.

v.

LEROY E. KIRBY, JR.

Zarnoch,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: July 7, 2015

This appeal arises out of an order of the Circuit Court for Baltimore County, entered on March 26, 2014, granting a motion for summary judgment filed by Leroy E. Kirby, Jr. ("Kirby") and denying a joint motion for summary judgment filed by Friendship Realty Company, Inc. ("Friendship"), Michael Patrick Kirby, and Patricia Lee Kirby (collectively, "Kirby's Siblings"). The circuit court's March 26, 2014 order also functioned as a declaratory judgment in which the court declared that a judgment and writ of garnishment entered against Kirby were not "Triggering Events" pursuant to the terms of the Friendship Realty Company, Inc. Restrictive Stock Agreement (the "RSA"), to which Kirby was a party.

On appeal, Friendship presents two issues[1] for our review, which we have rephrased as follows:

[1] The issues, as presented by Friendship, are:

1. Did the Circuit Court err in holding that the Garnishment does not constitute an event which, by operation of law, creates rights with respect to Appellee's shares of stock in a person or entity not a party to the RSA, and thus the Garnishment is not a Triggering Event under the clear and unambiguous language of the RSA?

2. Did the Circuit Court abuse its discretion in granting an injunction requiring Appellants to return Appellee's shares of stock to him and establish his ownership interest in Friendship at 25%, and to pay his respective share of distributions made by Friendship to stockholders dating back to November 12, 2012, where Appellee did not assert that he was irreparably injured at the Hearing, and the Circuit Court failed to make the required finding or conclusion of irreparable injury?

1. Did the circuit court err in declaring that the writ of garnishment entered against Kirby did not constitute a Triggering Event under the terms of the RSA?

2. Did the circuit court abuse its discretion in awarding Kirby injunctive relief absent the determination that Kirby was irreparably harmed?

For the reasons that follow, we affirm the judgment entered by the Circuit Court for Baltimore County.

FACTUAL AND PROCEDURAL BACKGROUND

A. Formation of Friendship and Execution of the RSA

Friendship was founded by Kirby's father, individually, in 1962. On or about July 23, 1996, Kirby's father transferred his sole ownership interest in Friendship to his four children -- Kirby, Kirby's Siblings, and Mary Eileen Zouck -- such that each child owned twenty-five percent (25%) of Friendship's outstanding stock. In 2007, Mary Eileen Zouck died and her Friendship stock passed to her daughter, Ashley Cunningham.

Friendship owns and operates industrial rental property located on approximately 10.613 acres in Linthicum, Maryland. The majority of this property is currently being leased to the Northrop Grumman Corporation. The National Electronics Museum rents a portion of the property as well. Friendship generates profits from the monthly rents it receives from these tenants.

On July 23, 1996, when Kirby's father transferred his ownership interest in Friendship to his four children, Friendship, along with each of Kirby's father's children, executed the

RSA. The recitals of the RSA provide that the purpose of the agreement is "to make provisions for future dispositions of shares of Stock and certain other matters[.]" Section 3.1 of the RSA is entitled "Purchase of Stock Upon Certain Events." It provides as follows:

> In the event of the death of a Stockholder . . . or the pledge, encumbrance or transfer of Stock owned by a Stockholder at a creditor's or judicial sale, or the retention of any shares of Stock by a creditor in satisfaction of a debt, or in the event of a transfer of any shares of Stock to a trustee in bankruptcy, or upon any other transfer of the Stock not permitted by Section 1.2 hereof, *or other event which, by operation of law, would create rights with respect to a Stockholder's shares of Stock in any person or entity not a party hereto*, (collectively, a "Triggering Event"), then the Corporation shall notify such Stockholder, or his or her successors in interest . . . and each of the other Stockholders in writing of such Triggering Event . . . and the parties hereto shall comply with the following procedures[.]

(emphasis added). The RSA further provides that the occurrence of a Triggering Event gives Friendship's remaining shareholders the right to purchase the stock owned by the shareholder responsible for the Triggering Event.

B. The Garnishment

On September 27, 2011, Karen Mayo Kozlowski ("Kozlowski"), Kirby's wife, obtained a $3,206,710 judgment against Kirby in the Superior Court for Nantucket County, Massachusetts. Kozlowski then proceeded to record her judgment against Kirby in the Circuit Court for Kent County, Maryland, where Kirby's residence was located.

On June 5, 2012, Kozlowski filed a writ of garnishment (the "Garnishment") in the Circuit Court for Kent County, directing Friendship to hold any articles of Kirby's personal

property within its possession. The Garnishment further directed Friendship to file an answer to the writ of garnishment in which Friendship "shall admit or deny that [Friendship] is indebted to [Kirby] or has possession of property of [Kirby] and shall specify the amount and nature of any debt and describe any property."

Friendship filed its required answer to the Garnishment on July 13, 2012. In its answer, Friendship admitted "that it [was] indebted to [Kirby] . . . pursuant to [Friendship's] Board of Directors' decision to make a distribution on June 1, 2012." Friendship further specified that it owed Kirby a payment of $15,000[2] as of the date its answer to the Garnishment was filed.

After being served with the Garnishment, Friendship's directors concluded that the Garnishment constituted a Triggering Event under the terms of the RSA. Friendship's directors reasoned that the Garnishment, by operation of Maryland law, "create[d] rights with respect to [Kirby's] shares of Stock in [a] person or entity not a party" to the RSA -- namely, Kozlowski. Friendship's directors interpreted the Garnishment as giving Kozlowski "the right to receive all distributions declared with respect to [Kirby's] stock." Indeed, the record demonstrates that, over several months, Friendship withheld a total of $60,000 in shareholder distributions owed to Kirby as a result of the Garnishment.

[2] In their briefs before this Court, both parties represent that Kirby regularly received approximately $15,000 per month in shareholder distributions from Friendship in or around 2012.

Pursuant to the terms of the RSA, Friendship gave Kirby notice, dated July 13, 2012, that the Garnishment constituted a Triggering Event under the RSA. Kirby's Siblings subsequently followed the procedure provided by the RSA for valuing and purchasing another stockholder's shares in Friendship in the wake of a Triggering Event. Kirby's Siblings closed on the purchase of Kirby's stock in Friendship for $734,000 on November 12, 2012, but Kirby failed to attend the closing or deliver his stock certificates to Kirby's Siblings. Nevertheless, pursuant to Section 4.2 of the RSA, Kirby's Siblings placed the purchase price in an escrow account and recorded the transfer of Kirby's stock to Kirby's Siblings in Friendship's stock transfer book.

Meanwhile, on October 2, 2012, Kirby and Kozlowski executed a marital settlement agreement that detailed the couple's waiver of claims against each other and provided for a division of marital property. A further agreement between Kirby and Kozlowski entitled Agreement Regarding Friendship Realty Company, Inc. (the "Friendship Agreement") was incorporated, but not merged, into the marital settlement agreement. The Friendship Agreement provided that "[a]s soon as is practic[able] following the execution of this Agreement and the Exhibits hereto, Kozlowski shall withdraw/dismiss the Garnishment, and shall forbear from any further collection efforts on the Judgment . . . ." Accordingly, Kozlowski filed a notice of dismissal of the Garnishment, which the Circuit Court for Kent County entered on October 12, 2012. In dismissing the Garnishment, however, Kozlowski did not declare that the judgment she held against Kirby was satisfied. Upon dismissal of the

Garnishment, Friendship released any shareholder distributions owed to Kirby that it had withheld due to the Garnishment. Kirby and Kozlowski were ultimately divorced by a judgment entered by the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida on January 30, 2013.

C. Beginning of Litigation in the Instant Case

On November 9, 2012, Kirby filed a complaint in the Circuit Court for Baltimore County alleging that Friendship and Kirby's Siblings had breached the RSA by classifying the Garnishment as a Triggering Event and attempting to compel Kirby to sell his shares in Friendship.[3] Kirby further requested that the circuit court enter a declaratory judgment ruling that the Garnishment was not a Triggering Event pursuant to the terms of the RSA, and that the appraisal of Kirby's shares in Friendship was invalid and unconscionable. Kirby also sought an injunction that would prevent Kirby's Siblings from divesting Kirby of his shares in Friendship and order Friendship to pay all distributions owed to Kirby that had been withheld as a result of the Garnishment. In the event that the circuit court could not enjoin Kirby's Siblings from forcing the purchase of Kirby's Friendship stock, Kirby requested an award of monetary damages.

Kirby further filed a motion for temporary restraining order and preliminary injunction on November 9, 2012, seeking to enjoin Friendship and Kirby's Siblings from forcing the

[3] We note that Ashley Cunningham, to whom Mary Eileen Zouck's shares in Friendship passed, is not a party to the instant case because she did not assert any right to purchase Kirby's Friendship stock.

sale of Kirby's Friendship stock pursuant to Section 3.1 of the RSA. Following an emergency hearing, the circuit court entered an order, dated December 11, 2012, denying Kirby's request for a temporary restraining order and/or injunction. The circuit court determined that it could not grant Kirby's request for a temporary restraining order because Kirby "failed to show specific facts . . . that immediate, substantial, and irreparable harm would result to [him] before a full adversary hearing [could] be held on the propriety of a preliminary or final injunction." The circuit court, therefore, found that Kirby had failed to satisfy the criteria outlined in Maryland Rule 15-504(a)[4] as required for the issuance of a temporary restraining order.

D. The Circuit Court's Declaratory Judgment

Kirby filed a motion for summary judgment in the circuit court on September 6, 2013. Friendship and Kirby's Siblings filed their own competing joint motion for summary judgment just three days later. Friendship and Kirby's Siblings subsequently filed an

[4] Maryland Rule 15-504(a) provides:

> A temporary restraining order may be granted only if it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

Md. Rule 15-504(a).

opposition to Kirby's motion, and Kirby likewise opposed the joint motion. The circuit court held a hearing on these cross-motions for summary judgment on March 21, 2014.

After hearing oral argument from all parties, the circuit court granted Kirby's motion for summary judgment and denied the cross-motion for summary judgment filed by Friendship and Kirby's Siblings. The circuit court entered a declaratory judgment declaring that neither the Garnishment nor Kozlowski's judgment against Kirby constituted a Triggering Event under the terms of the RSA. Accordingly, the circuit court declared that Kirby was entitled to the return of his Friendship stock as well as his share of any distributions made by Friendship to its stockholders, dating back to November 12, 2012.[5] The declaratory judgment provided, in pertinent part, as follows:

> 3. That [Kirby] is entitled to the return of his shares of stock in Friendship Realty Company, Inc., establishing his ownership of twenty-five percent (25%) of the stock of the corporation;
>
> 4. That [Kirby] shall receive payment of his respective share of distributions made by Friendship Realty Company, Inc. to stockholders dating back to November 12, 2012[.]

The circuit court further denied Kirby's request for monetary damages based on his allegation that Friendship and Kirby's Siblings breached the terms of the RSA.

[5] November 12, 2012 is the date on which Kirby's Siblings purported to force the sale of Kirby's Friendship stock.

E. Motion to Alter or Amend Declaratory Judgment

Friendship and Kirby's Siblings subsequently filed a motion to alter or amend the circuit court's declaratory judgment (the "Motion to Alter or Amend"). In the Motion to Alter or Amend, Friendship and Kirby's Siblings argued that the circuit court failed to adhere to well-developed Maryland case law holding that contracts, like the RSA, are to be interpreted objectively. Friendship and Kirby's Siblings alleged that the circuit court erred by concluding that "the right to receive distributions [was] *not* a 'right' of a stockholder with respect to a stockholder's shares of stock under Maryland law, and thus, even though the subject garnishment created a right to [Kirby's] distributions in a non-party to the RSA, the garnishment [did] not constitute a 'Triggering Event'" pursuant to the terms of the RSA.

Friendship and Kirby's Siblings further contended that the language of the circuit court's declaratory judgment was unclear "as to what actions the Court requires Friendship to take . . . ." Specifically, Friendship and Kirby's Siblings claimed that they could not return Kirby's shares in Friendship because those shares were "formally cancelled and extinguished by the corporation as part of the buy-sell process completed after [Kirby] received notice" that Friendship considered the Garnishment to be a Triggering Event under the terms of the RSA. Friendship and Kirby's Siblings took further issue with the provision in the circuit court's declaratory judgment that required Friendship to pay Kirby "his respective share of distributions made by [Friendship] to stockholders dating back to November 12, 2012," since the court failed to indicate when such payments should begin.

Kirby filed an opposition to the Motion to Alter or Amend filed by Friendship and Kirby's Siblings, and, subsequently, the circuit court denied the Motion to Alter or Amend. In a memorandum opinion and order, the circuit court reaffirmed the declaratory judgment it had previously entered against the criticisms lodged by Friendship and Kirby's Siblings. The circuit court noted that it engaged in an objective analysis of the terms of the RSA, which led it to conclude that the Garnishment did not give Kozlowski the right to receive dividends from Friendship, as the right to receive dividends is exclusively a shareholder right. Accordingly, the circuit court again declared that the Garnishment did not constitute a Triggering Event under the terms of the RSA.

The circuit court's memorandum opinion and order, however, were silent regarding the issues that Friendship and Kirby's Siblings raised regarding the "return" of Kirby's shares in Friendship and the payment of back distributions. Indeed, the circuit court ended its memorandum and order by simply stating "[w]ith respect to all other contentions by [Friendship and Kirby's Siblings] in their Motion to Alter or Amend, the Court believes it correctly stated and applied Maryland law."

Friendship and Kirby's Siblings timely appealed the circuit court's declaratory judgment to this Court on June 30, 2014.

F. Motions to Stay Enforcement of Declaratory Judgement

While awaiting the circuit court's ruling on their Motion to Alter or Amend, Friendship and Kirby's Siblings filed a motion to stay enforcement of declaratory judgment

(the "Motion to Stay"). In their Motion to Stay, Friendship and Kirby's Siblings argued that the circuit court erred when it failed to objectively interpret the terms of the RSA, as required by Maryland case law. Furthermore, Friendship and Kirby's Siblings posited that they would suffer irreparable harm if their request for a stay was denied. Friendship and Kirby's Siblings reasoned that if they were forced to restore Kirby's status as a twenty-five percent (25%) shareholder in Friendship, then he would be subject to the terms of the Friendship Agreement he had executed with Kozlowski. Pursuant to the terms of the Friendship Agreement, Kirby would be required to transfer his shares in Friendship to a trust for his benefit during his lifetime. Friendship and Kirby's Siblings assert that such a transfer would constitute a Triggering Event, or possibly even a breach of the terms of the RSA. Furthermore, Friendship and Kirby's Siblings suggested that the transfer of Kirby's shares in Friendship to a trust could result in the revocation of Friendship's S-corporation tax status.

Following the circuit court's denial of the motion to alter or amend its declaratory judgment filed by Friendship and Kirby's Siblings, Kirby filed a verified petition for contempt and request for order to show cause, and motion to enforce judgment mandating action (the "Petition for Contempt").[6] In his Petition for Contempt, Kirby asserted that Friendship and Kirby's Siblings had neglected to comply with the provisions in the circuit court's declaratory judgment. Specifically, Kirby argued that Friendship and Kirby's

[6] We note that these three motions filed by Kirby on August 15, 2014 were all contained in a single pleading, styled "Plaintiff's Verified Petition for Contempt and Request for Order to Show Cause, and Motion to Enforce Judgment Mandating Action."

Siblings refused to restore his twenty-five percent (25%) interest in Friendship, and that Friendship had not paid Kirby the distributions he was owed dating back to the forced sale of his Friendship stock. Furthermore, Kirby's Siblings continued to receive distributions from Friendship based on the shares of Friendship they had originally acquired *and* the shares they had forced Kirby to sell.

Accordingly, Kirby requested that the circuit court seize Friendship's bank accounts or seize the Friendship stock that Kirby's Siblings had acquired from Kirby in November 2012. Kirby further asked that the circuit court enter a money judgment against Kirby's Siblings or Friendship to compensate Kirby for the distributions he was owed, dating back to the forced sale of his shares. Finally, Kirby requested that the court issue a show cause order to Friendship and Kirby's Siblings, ordering them to show cause why they should not be held in contempt for their failure to comply with the terms of the declaratory judgment.

On August 22, 2014, Friendship and Kirby's Siblings filed an emergency motion to stay enforcement of judgment in this Court pursuant to Maryland Rules 8-422(c), (d), 8-425, and 2-632 pending resolution of the instant appeal. We denied the emergency motion to stay enforcement of the declaratory judgment in the instant case on September 16, 2014.

On October 7, 2014, the Circuit Court for Baltimore County scheduled a hearing on Kirby's Petition for Contempt, as well as the answer and opposition to the Petition for Contempt filed by Friendship and Kirby's Siblings. The circuit court further intended to hear argument regarding the Motion to Stay and Kirby's opposition thereto. On the day of the

hearing, however, Kirby, Friendship, and Kirby's Siblings executed a consent order to stay pending appeal (the "Consent Order"). The Consent Order provided that the Petition for Contempt and the Motion to Stay were deemed withdrawn without prejudice. It further required Kirby's Siblings to pay Kirby the distributions he was owed dating back to the forced sale of his Friendship stock on November 12, 2012, as well as his share of any future distributions that would be made by Friendship during the pendency of the instant appeal. In the Consent Order, the parties agreed to refrain from requiring Friendship to issue stock certificates to Kirby pending the outcome of the instant appeal.

DISCUSSION

I. The Garnishment Did Not Qualify as a Triggering Event Under the Terms of the RSA

A. Standard of Review

The entry of summary judgment is governed by Maryland Rule 2-501, which provides:

> The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Md. Rule 2-501(f).

The Court of Appeals has explained the standard of review of a trial court's grant of a motion for summary judgment as follows:

> On review of an order granting summary judgment, our analysis "begins with the determination [of] whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law." *D'Aoust v. Diamond*, 424 Md.

> 549, 574, 36 A.3d 941, 955 (2012) (quoting *Appiah v. Hall,* 416 Md. 533, 546, 7 A.3d 536, 544 (2010)); *O'Connor v. Balt. Cnty.*, 382 Md. 102, 110, 854 A.2d 1191, 1196 (2004). If no genuine dispute of material fact exists, this Court determines "whether the Circuit Court correctly entered summary judgment as a matter of law." *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condo.*, 404 Md. 560, 571, 948 A.2d 11, 18 (2008) (citations omitted). Thus, "[t]he standard of review of a trial court's grant of a motion for summary judgment on the law is de novo, that is, whether the trial court's legal conclusions were legally correct." *D'Aoust*, 424 Md. at 574, 36 A.3d at 955.

Koste v. Town of Oxford, 431 Md. 14, 24-25, 63 A.3d 582, 589 (2013).

We are "obliged to conduct an independent review of the record to determine if there is a dispute of material fact." *Injured Workers' Ins. Fund v. Orient Express Delivery Serv., Inc.*, 190 Md. App. 438, 450-51, 988 A.2d 1120, 1127 (2010) (citing *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 714, 922 A.2d 538 (2007)). "A material fact is one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute." *Id.* at 451 (citing *Berringer v. Steele*, 133 Md. App. 442, 470-71, 758 A.2d 574 (2000) (citations omitted)). "Mere general allegations of conclusory assertions will not suffice." *Id.* (citing *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738, 625 A.2d 1005 (1993)).

B. Analysis

Friendship and Kirby's Siblings contend that the circuit court erred in declaring that the Garnishment does not constitute a Triggering Event under the terms of the RSA. They further characterize the court's error as one grounded in the court's failure to engage in an objective interpretation of the terms of the RSA, as required by Maryland case law. *See*

Ocean Petroleum, Co. v. Yanek, 416 Md. 74, 86 (2010) ("We employ in Maryland an objective approach to contract interpretation, according to which, unless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation."). We are unpersuaded.

Friendship and Kirby's Siblings allege that the circuit court in the instant case erred in finding that the Garnishment was not a Triggering Event under the RSA. Friendship and Kirby's Siblings maintain that the Garnishment was an "event which, by operation of law, would create rights with respect to a Stockholder's shares of Stock in any person or entity not a party" to the RSA. It is undisputed that the Garnishment is an event that functions by operation of the law, and that Kozlowski is a person who is not a party to the RSA. Friendship and Kirby's Siblings, however, disagree with Kirby and the circuit court over the interpretation of the phrase "rights with respect to a Stockholder's shares of Stock."

Nevertheless, "Maryland Courts have acknowledged that when determining whether a contract is ambiguous, the mere fact that the parties disagree as to the meaning does not necessarily render it ambiguous." *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 334 *cert. denied sub nom. Sierra Club v. Dominion Cove Point LNG*, 438 Md. 741

(2014).[7] On the contrary, "[l]anguage in a contract 'may be ambiguous if it is 'general' and may suggest two meanings to a reasonably prudent layperson.'" *Id.* at 332 (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 389 (1985)).

The arguments raised by Friendship and Kirby's Siblings concerning this issue are based on a fundamental misunderstanding regarding the function of writs of garnishment, rather than a material disagreement over the interpretation of the phrase "rights with respect to a Stockholder's shares of Stock." The RSA provides that the occurrence of a Triggering Event gives the remaining Friendship stockholders a right to purchase the stock of the stockholder responsible for the Triggering Event. Friendship and Kirby's Siblings reason that the Garnishment falls into this category of Triggering Events because "the Garnishment, by operation of law, gave Kozlowski, who is not a party to the RSA, the right to receive the distributions from Friendship made with respect to [Kirby's] shares of stock" in Friendship.[8]

[7] We note that the circuit court, in its oral opinion dated March 21, 2014, found that "[n]one of the parties in this case contend that the language [of the RSA] is ambiguous . . . [t]hey just have different interpretations of it."

[8] Friendship and Kirby's Siblings contend, on appeal, that the circuit court failed to recognize that the right to receive dividends is a right "with respect to a Stockholder's shares of Stock." They argue that the circuit court focused its analysis exclusively on the control rights associated with stock ownership, such as the right to attend stockholders' meetings, right to vote, right to call meetings, right to make proposals, right to inspect corporate documents, etc. We, however, disagree. As the trial court stated, "Kozlowski doesn't have any right to the stock by operation of law and only stockholders have a right to receive dividends." The circuit court found that at all relevant times, ownership of Kirby's stock in Friendship never transferred to Kozlowski. The circuit court further found that Kozlowski "did not have a levy on [Kirby's] shares and the writ of garnishment gave Kozlowski no (continued...)

The Garnishment in the instant case, however, does not give Kozlowski a right to receive shareholder distributions from Friendship *per se*. "A writ of garnishment is a means of enforcing a judgment . . . [that] allows a judgment creditor to recover property owned by the debtor but held by a third party[,]" the garnishee. *Parkville Fed. Sav. Bank v. Maryland Nat. Bank*, 343 Md. 412, 418 (1996). "The general rule is that '[o]nce the writ of garnishment is issued and laid in the hands of the garnishee, he is bound to safely keep the assets of the debtor in his possession, together with any additional assets that come into his possession up to the time of trial.'" *Harbor Bank of Maryland v. Hanlon Park Condo. Ass'n Inc.*, 153 Md. App. 54, 58-59 (2003) (quoting *Catholic Univ. of Am. v. Bragunier Masonry Contractors, Inc.*, 139 Md. App. 277, 293 (2001), *aff'd sub nom. Bragunier Masonry Contractors, Inc. v. The Catholic Univ. of Am.*, 368 Md. 608 (2002). The circuit court, therefore, correctly interpreted the Garnishment as giving Kozlowski "a right to money held by Friendship that was owned by . . . Kirby." It is merely coincidence that at all times relevant to the proceedings before the circuit court, the only money that Friendship held that was owned by Kirby were unpaid shareholder distributions. If Kirby had made a personal loan to Friendship, however, then the Garnishment would have attached to the payments that Friendship owed Kirby on the loan in addition to any unpaid shareholder distributions.

[8] (...continued)
claim to the shares of stock." For the reasons that follow, we agree with the trial court's cogent analysis.

The Garnishment itself did not attach to Kirby's stock in Friendship or to any of the rights that Kirby possesses by virtue of his stock ownership. "A garnishment is used to attach property of the judgment debtor that is in the possession of a third party." *R & D 2001, LLC v. Rice*, 402 Md. 648, 664 (2008). The Garnishment directs Friendship "to hold the property of [Kirby] . . . subject to further proceedings in" the Circuit Court for Kent County. The Garnishment further required Friendship to file an answer in which it "shall admit or deny that [Friendship] is indebted to [Kirby] or has possession of property of [Kirby] and shall specify the amount and nature of any debt and describe any property." The answer that Friendship filed in response to the Garnishment provided that, as of July 13, 2012, Friendship was indebted to Kirby in the amount of $15,000 pursuant to the decision of Friendship's Board of Directors to make a distribution to the company's shareholders. Friendship never claimed to be in possession of Kirby's stock in the company, and, therefore, the Garnishment did not attach to Kirby's stock or any of its attendant rights.

Certificated securities, like Kirby's shares in Friendship, cannot be encumbered by service of a writ of garnishment. Maryland law provides that the only mechanism by which a debt or obligation may attach to a certificated security owned by a debtor is as follows:

> (a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

* * *

> (d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

Md. Code (1975, 2013 Repl.Vol.), § 8-112(a), (d) of the Commercial Law Article. Physical seizure and possession of the security certificate by the creditor or a secured party, therefore, are necessary to attach a debt or obligation to a certificated security owned by a debtor. As previously noted, Friendship was at no time relevant to the instant case in physical possession of the certificates for Kirby's Friendship stock. Accordingly, the Garnishment served on Friendship in the instant case did not -- and could not -- have attached to Kirby's Friendship stock or any rights Kirby had by virtue of his status as a shareholder in Friendship.

Ultimately, Friendship and Kirby's Siblings view the Garnishment as a means of assigning Kirby's right to receive shareholder distributions to Kozlowski. The Garnishment, however, does not confer upon Kozlowski the right to receive all distributions declared on Kirby's stock in Friendship in perpetuity. Rather, as provided by Maryland Rule 2-645, a writ of garnishment "direct[s] the garnishee to hold, subject to further proceedings, the property of each judgment debtor in the possession of the garnishee at the time of service of the writ and all property of each debtor that may come into the garnishee's possession after service of the writ" until a judgment is entered against the garnishee "for the amount admitted plus any amount that has come into the hands of the garnishee after service of the

writ and before the judgment is entered, but not to exceed the amount owed under the creditor's judgment against the debtor and enforcement costs." Md. Rule 2-645(c), (j). The Garnishment, therefore, only requires Friendship to hold distributions owed to Kirby until Kozlowski's judgment of $3,206,710, plus enforcement costs, is satisfied. If, after receiving service of the Garnishment, Friendship elected to issue a $4,000,000 distribution to Kirby for his twenty-five percent (25%) interest in the company, then the Garnishment would not afford Kozlowski the right to receive even one, whole shareholder distribution from Friendship.

We, therefore, hold that the Circuit Court for Baltimore County was legally correct in declaring that "neither the . . . Garnishment nor the Judgment entered in favor of [Kozlowski] against [Kirby] created rights with respect to the shares of stock in Friendship Realty Company, Inc., and therefore, were not 'Triggering Events' pursuant to the terms of the [RSA]." Furthermore, the circuit court correctly found that "Kozlowski . . . didn't have an ownership of [Kirby's] stock" but rather had "a right to money held by Friendship that was owned by . . . Kirby."

II. No Finding of Irreparable Harm Was Necessary to Justify the Circuit Court's Grant of Injunctive Relief in This Case

A. Standard of Review

Injunctive relief is aimed at "prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury . . . [g]enerally, it is a preventive and protective remedy, aimed at future acts, and it is not intended to redress past wrongs."

Carroll County Ethics Comm'n v. Lennon, 119 Md. App. 49, 58 (1998) (alteration in original). We review the granting of a request for injunctive relief under an abuse of discretion standard. *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394-95 (2000). An abuse of discretion exists when "no reasonable person would take the view adopted by the [circuit] court [ ] . . . or when the court acts 'without reference to any guiding rules or principles. An abuse of discretion may also be found where the ruling under consideration is 'clearly against the logic and effect of facts and inferences before the court []' . . . or when the ruling is 'violative of fact and logic.'" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (quoting *In re: Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997)).

B. Analysis

Friendship and Kirby's Siblings further contend that the Circuit Court for Baltimore County abused its discretion in affording Kirby injunctive relief despite the fact that he failed to prove that he suffered irreparable harm that would warrant such relief. Indeed, "[t]he very function of an injunction is to furnish preventive relief against irreparable mischief or injury, and the remedy will not be awarded where it appears to the satisfaction of the court that the injury complained of is not of such character." *Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc.*, 187 Md. App. 601, 628 (2009) (quoting *Coster v. Dep't of Pers.*, 36 Md. App. 523, 526 (1977)).

Friendship and Kirby's Siblings posit that the following portions of the circuit court's declaratory judgment constitute a grant of the request for injunctive relief found in the first count of Kirby's complaint in the instant case:

> 3. That [Kirby] is entitled to the return of his shares of stock in Friendship Realty Company, Inc., establishing his ownership of twenty-five percent (25%) of the stock of the corporation;
>
> 4. That [Kirby] shall receive payment of his respective share of distributions made by Friendship Realty Company, Inc. to stockholders dating back to November 12, 2012[.]

We note, however, that, in their Motion to Alter or Amend, Friendship and Kirby's Siblings concede that the circuit court's declaration that Kirby "is entitled to the return of his shares" may not qualify as a grant of injunctive relief because it does not direct Friendship to act. Rather, it merely says that Kirby is "entitled" to the return of his shares, leaving it somewhat ambiguous as to whether the circuit court was directing Friendship to immediately "return" Kirby's shares of stock in Friendship.

Kirby alleges that Friendship and Kirby's Siblings waived their challenge to the trial court's order requiring them to return Kirby's shares of stock and to pay his respective share of distributions dating back to November 12, 2012. We disagree, and hold that Friendship and Kirby's Siblings explicitly presented the circuit court with their objection to Kirby's request for injunctive relief. Friendship and Kirby's Siblings, in their memorandum in support of defendants' joint motion for summary judgment filed on September 9, 2013, argue

that Kirby is not entitled to a permanent injunction because "[t]he facts in evidence in this case fall well short of establishing an irreparable injury . . . ." Accordingly, we hold that the objection raised by Friendship and Kirby's Siblings, alleging injunctive relief was improper in the instant case absent a showing of irreparable injury, was sufficiently preserved for review on appeal.

In their verified complaint for declaratory judgment, injunctive relief, and damages, Kirby specifically requested the "[a]warding [of] such other and further relief as justice and *equity* may require." (emphasis added). The trial court, by virtue of its general equitable power, clearly wanted -- and was entitled -- to unwind a transaction that, in its view, never should have happened. Thus, the closing on the purchase of Kirby's stock in Friendship for $734,000 was clearly vitiated by the trial court's order that directed "[t]hat [Kirby] is entitled to the return of his shares of stock in Friendship Realty Company, Inc., establishing his ownership of twenty-five percent (25%) of the stock of the corporation[.]"

Furthermore, Friendship and Kirby's Siblings acknowledge in their reply brief before this Court that, "[i]n order to require Friendship to pay distributions to [Kirby], and place him back in the position of a 25% shareholder, [Kirby] needed to obtain an injunction from the Circuit Court, or specific performance." Indeed, "[i]njunctive relief may be granted . . . as the functional equivalent of specific performance." *Seci, Inc. v. Chafitz, Inc.*, 63 Md. App. 719, 726 (1985). Maryland courts have held that specific performance may be granted in

response to prayers for injunctive relief.[9] In the instant case, Kirby specifically prayed for injunctive relief in the first count of his complaint.[10]

Furthermore, "[a] suit for an injunction which seeks to accomplish all the purposes of a decree for specific performance is subject to the principles which apply to an application for the latter remedy . . . ." *Smith v. Meyers*, *supra*, 130 Md. at 67. Most importantly, "[s]pecific performance . . . does not by necessity require the showing of irreparable injury." *Chestnut Real Estate P'ship v. Huber*, *supra*, 148 Md. App. at 206. Moreover, "[w]hile [a] trial court has discretion to grant or deny specific performance in any given case, specific performance will usually be decreed, as a matter of course, where the contract is in its nature and circumstances unobjectionable, that is, fair, reasonable and certain in all its terms." *Maryland-Nat'l Capital Park & Planning Comm'n v. Washington Nat. Arena*, 282 Md. 588,

[9] *See Smith v. Meyers*, 130 Md. 64, 65-67 (1917) (holding that while specific performance may be decreed when a party prays for injunctive relief, specific performance/injunctive relief was not appropriate where "the injury to the defendant would be far greater than the benefit which the plaintiff might derive from that result"); *Chestnut Real Estate P'ship v. Huber*, 148 Md. App. 190, 196, 209 (2002) (holding that it was appropriate for the trial court to decree specific performance as a mechanism to afford injunctive relief "to remedy a violation of a restrictive covenant absent a showing of irreparable harm"); *Seci, Inc. v. Chafitz, Inc.*, *supra*, 63 Md. App. at 723-24, 727 (holding that while specific performance may be decreed when a party prays for injunctive relief, specific performance/injunctive relief was not appropriate to enforce an inapplicable provision of a contractual agreement).

[10] The first count of Kirby's complaint in the instant case requests that the court enter a "Temporary Restraining Order, Preliminary Injunction and Permanent Injunction" that would "[r]estrain[] and enjoin[] the Defendants from taking any action to deprive Plaintiff of ownership of his Friendship stock because of the Kozlowski garnishment" and "[o]rder[] Friendship to pay any distributions that it withholds from Plaintiff."

615(1978). The circuit court in the instant case, therefore, did not abuse its discretion when it decreed specific performance as the functional equivalent of injunctive relief, absent a showing of irreparable harm, to enforce the unobjectionable, fair, reasonable, and certain RSA.

"It is well-settled that 'where [a] contract is, in its nature and circumstances, unobjectionable—or, as it is sometimes stated, fair, reasonable and certain in all its terms—it is as much a matter of course for a court of equity to decree specific performance of it as it is for a court of law to award damages for its breach.'" *M. Leo Storch Ltd. P'ship v. Erol's, Inc.*, 95 Md. App. 253, 259 (1993) (quoting *Gross v. J & L Camping & Sports Ctr., Inc.*, 270 Md. 539, 543-44 (1973)). Indeed, in *Wilcom v. Wilcom*, this Court upheld a trial court's award of specific performance regarding a buy-sell agreement for a closely-held, family-owned corporation. 66 Md. App. 84 (1986). In *Wilcom*, however, the circuit court's grant of specific performance required one shareholder in the company to *sell* his shares of stock to the remaining shareholders pursuant to a prior agreement executed by all of the shareholders of the company. *Id.* at 87-88. Nevertheless, our holding in *Wilcom* is instructive in the instant case.

In *Wilcom*, the shareholders in a closely-held, family-owned corporation had executed an agreement that restricted the transfer of stock in the company. *Id*. at 88. This agreement gave the remaining company shareholders the right of first refusal to purchase the stock of any departing shareholder. *Id.* The *Wilcom* plaintiff, desiring to sell his stock in the

company, sent an offer letter to the remaining company shareholders, offering to sell his stock to them. *Id*. at 89. The circuit court found that the offer letter was a binding contract of sale and we affirmed. *Id.* at 92-94.

The *Wilcom* plaintiff, however, unhappy with the valuation assigned to his stock by the remaining shareholders, attempted to withdraw his offer and refused to tender his stock certificates to the remaining shareholders. *Id.* at 90. The circuit court decreed specific performance and required the *Wilcom* plaintiff to consummate the sale of his stock to the remaining shareholders in the company. *Id.* at 94-95. We affirmed the decree of specific performance, holding that "[t]he bringing of an action for specific performance of contract promptly after it has been breached by the defendant, asserting that the plaintiff stands ready, willing and able to do that which in equity and conscience may be required of him, amounts to a clear and complete offer of performance and a submission to the orders and jurisdiction of the court, *which is all that should be required*." *Wilcom v. Wilcom*, 66 Md. App. 84, 94 (1986) (emphasis added).

Similarly, in the instant case, Kirby has demonstrated his willingness and ability to perform his part of the bargain encapsulated within the RSA. Unlike in *Wilcom*, Kirby is requesting a decree of specific performance to require Friendship and Kirby's Siblings to adhere to the terms of the RSA and *reverse* the forced sale of Kirby's shares in Friendship to Kirby's Siblings. Kirby brought his action promptly after Friendship and Kirby's Siblings breached the terms of the RSA and forced the sale of his stock. Moreover, Kirby is certainly

"ready willing, and able to perform" his part of the bargain, which would merely require him to accept new stock certificates representing a twenty-five percent (25%) interest in the outstanding shares of Friendship. Kirby, therefore, is entitled to an order in the instant case that would require Friendship and Kirby's Siblings to restore Kirby's status a twenty-five percent (25%) shareholder in Friendship.

In *Wilcom*, we reversed the court's decree of specific performance regarding unpaid dividends. *Id*. at 96-99. The *Wilcom* trial court decreed that the plaintiff's company was required to pay the plaintiff his share of dividends that had been withheld while he and the remaining shareholders disputed whether a sale of the plaintiff's stock had actually occurred. *Id*. at 97. We held that the *Wilcom* plaintiff was not entitled to those dividends because equitable title to his shares had already passed to the remaining shareholders. *Id*. at 98. In the instant case, however, we hold that Kirby is entitled to an order requiring Friendship to pay all distributions owed to Kirby dating back to November 12, 2012, when Kirby's Siblings purchased Kirby's Friendship stock. Kirby's Siblings breached the terms of the RSA when they forced Kirby to sell his shares in Friendship. Indeed, Kirby retained equitable title to his shares throughout the proceedings below. Kirby, therefore, is entitled to his share of all shareholder distributions made between November 12, 2012 and the present.

For the foregoing reasons, we hold that the Circuit Court for Baltimore County was legally correct in declaring that the Garnishment did not constitute a Triggering Event under the terms of the RSA. We further hold that the circuit court did not abuse its discretion in

granting Kirby the return of his shares of stock in Friendship. Further, the trial court did not abuse its discretion in ordering that Kirby is entitled to receive payment of his respective share of distributions made by Friendship to its stockholders dating back to November 12, 2012. Accordingly, we affirm the judgment of the Circuit Court for Baltimore County.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.