Circuit Court for Charles County
Case No. C-08-CV-20-000585

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 148

September Term, 2022

BERRY ROAD PARTNERS, LLC

v.

JANEARL, LLC

Berger,
Friedman,
Albright,

JJ.

Opinion by Berger, J.

Filed: December 22, 2022

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

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal arises from a decision by the Circuit Court for Charles County granting appellee, Janearl, LLC's ("Janearl") motion for summary judgment, and in so doing, denying Berry Road Partners, LLC's ("Berry Road") cross-motion for summary judgment. The dispute arises from a contract to convey real property in Charles County. Berry Road filed a complaint claiming it was entitled to have Janearl specifically perform development work on the property and then convey the property to Berry Road. Janearl twice moved for summary judgment, claiming Berry Road was not entitled to the relief it sought. In response to Janearl's second motion, Berry Road filed a cross-motion for summary judgment, claiming it was indisputable that Janearl was in default and thus Berry Road was contractually entitled to specific performance. The circuit court denied Janearl's first motion but granted its second, and denied Berry Road's cross-motion for summary judgment. The circuit court further awarded the "equitable remedy" of voiding the contract and returning Berry Road the earnest money it paid Janearl over the life of the contract. Berry Road timely appealed the circuit court's order to this Court.

Berry Road presents six questions for our review, which we have rephrased and consolidated into two questions, as follows:[1]

[1] Berry Road's original questions presented read as follows:

1. Whether the trial court erred in granting judgment to Janearl?

2. Whether the trial court erred in its understanding of the parties' contract when it granted summary judgment to Janearl?

I. Whether the circuit court legally erred in interpreting the contract between the parties and in granting summary judgment to Janearl and denying Berry Road's cross-motion for summary judgment.

II. Whether the circuit court abused its discretion in denying Berry Road's request for specific performance of the contract.

For the reasons explained herein, we affirm the circuit court's granting of Janearl's motion for summary judgment, and therein its denial of Berry Road's cross-motion for summary judgment. Additionally, we affirm the circuit court's denial of Berry Road's request for specific performance of the contract.

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3. Whether the trial court erred in allowing Appellee to escape from its admitted breach of contract when it granted summary judgment to Janearl?

4. Whether the trial court erred in ignoring the contract's remedies when it granted summary judgment to Janearl?

5. Whether Berry Road's "rights and remedies against" Janearl as referenced in Section 12 of the parties' agreement include the remedy of specific performance "for the immediate conveyance of the Property by Seller in compliance with the terms and conditions of this agreement," as referenced in Section 9 of the parties' agreement, and if so, can the Circuit Court deny specific performance to Berry Road requiring Janearl to convey the Property in a manner that complies with the parties' agreement?

6. Whether the trial court erred in concluding that specific performance is an extraordinary remedy which is not the appropriate remedy here?

FACTS AND PROCEDURAL HISTORY

On August 11, 2016, Republic Land Development, LLC ("Republic) entered into an "Agreement for Sale and Purchase" ("the Contract") with Janearl, in which Janearl would convey two lots of real property ("the Property"), located within a larger parcel of land also owned by Janearl, to Republic. Several provisions of the Contract are material to this dispute.

Section 15 addresses Janearl's obligation to complete, by the Closing Date, "Seller's Development Work," in accordance with the site development plans. This section further provides that if the Seller defaults on its requirements regarding the Seller's Development Work, the Purchaser may delay the Closing Date until such work is completed, complete any unfinished portions of the Seller's Development Work, and recover from the Seller the actual costs incurred while finishing such work, along with a fifteen percent overhead and a fifteen percent profit. This right is "in addition to all the other rights and remedies of the Purchaser" provided by the Contract.

Section 12 of the Contract expounds upon the "Conditions to Closing." It conditions the obligation to move to Closing upon the Seller completing "in good and workmanlike manner, the Seller's Development Work as required by Section 15." Section 12 is one of two provisions enumerating Purchaser's remedies if such "Closing Conditions are not fully satisfied by the Outside Closing Date." In the event "any Closing Condition is not satisfied due to the default or breach of the Seller," this section allows the Purchaser "to pursue

rights and remedies against the Seller as set forth in [the Contract] for Seller default," referring to the other remedies for Seller default found in Section 9 of the Contract.

Berry Road asserted one such remedy provided by Section 9 in its action against Janearl. Berry Road's complaint sought to "demand and compel an action for specific performance or similar legal proceedings, if necessary, for the immediate conveyance of the Property by Seller in compliance with the terms and conditions of [the Contract]," with Purchaser recovering all costs and expenses, including attorney's fees, incurred in such an action.

Preceding these provisions, Section 3 of the Contract establishes a "Closing Date" as well as an "Outside Closing Date:"

> The "**Closing**" of the transaction herein provided shall take place at the office of the Settlement Agent on or before thirty (30) days following the date that the Closing Conditions set forth in Section 12 have been fully satisfied and/or waived in writing by the Purchaser, but, in any event, no later than the date which is twelve (12) months following the Effective Date of this Agreement (the "**Outside Closing Date**"). Subject to the foregoing time parameters, the date of Closing (the "**Closing Date**") shall be selected by the Purchaser with reasonable notice to the Seller.

Section 3 further grants the Purchaser "the right and option, upon written notice given on or before the original Outside Closing Date to extend the Outside Closing Date for an additional six (6) months," requiring the Purchaser to pay the Seller $30,000 in additional earnest money to exercise this option. Related to these provisions, the parties stipulated in Section 19 of the Contract that "time is of the essence."

On December 16, 2017, Republic assigned their rights and obligations in the Contract to Berry Road, with Berry Road assuming the role of "Purchaser" under the terms of the Contract and all future amendments, while Janearl remained as the "Seller." Following the execution of the Contract, and continuing through the assignment to Berry Road, "Purchaser" (Republic/Berry Road) and "Seller" (Janearl) executed a series of agreements between September 12, 2016 and April 17, 2020 amending the Contract, and later reinstating it. Several of these amendments altered the terms regarding Closing Date and Outside Closing Date. We shall highlight certain provisions from these later agreements that are useful in interpreting the Contract.

Paragraph 1 of the "Second Amendment to [the Contract]" ("the Second Amendment"), dated December 20, 2016, provides that "[c]apitalized terms used and not defined herein shall have the meanings set forth in the Contract."[2] Paragraph 3, entitled "**No Further Modification,**" provides that the Contract is "amended to the extent necessary to give effect to the provisions of this Amendment and all previous Amendments[,]" and that the parties otherwise "ratify and reaffirm" the Agreement. These

[2] On September 12, 2016, Republic and Janearl entered into the First Amendment to Agreement of Purchase and Sale. In Section A of the First Amendment, the parties referred to the original August 11, 2016 "Agreement for Sale and Purchase" (which the parties called the "Agreement of Purchase and Sale" in the First Amendment) as "the **Contract.**" This nomenclature for the original Agreement is used throughout the body text of these subsequent amendments and agreements reinstating the Agreement. Nevertheless, the parties continued to call the August 11, 2016 Contract "the Agreement" in the titles of these subsequent documents.

provisions remained in all subsequent amendments and agreements reinstating the Contract, of which there were eight in total.

On February 27, 2017, the parties entered the "Third Amendment to [the Contract]" ("the Third Amendment"), in which the Purchaser (then Republic) paid "the amount necessary" in earnest money and exercised its extension of the Closing Date. On July 10, 2017, the parties amended Section 3 of the Contract "Agreement to Reinstate and Amend [the Contract]" ("the Fourth Amendment"), "to provide the Outside Closing Date shall be September 1, 2018, with one (1), six (6) month extension, as provided in Section 3 of the Contract."

Berry Road had become the Purchaser by the parties' November 14, 2018 "Agreement to Reinstate and Amend [the Contract]" ("the Fifth Amendment"). It again exercised the Purchaser's option to extend the Outside Closing Date by six months, stating "the Outside Closing Date, for all purposes under the Contract, is now May 31, 2019," and amending the Purchaser's optional extension period from six to nine months. This pattern of amending the Outside Closing Date continued in additional agreements reinstating and amending the Contract on July 15, 2019 ("the Sixth Amendment") and September 30, 2019 ("the Seventh Amendment"), respectively.

On April 17, 2020, the parties agreed to reinstate and amend the Contract for the eighth and final time ("the Final Amendment"). Paragraph 3 of this document extended and amended "the Outside Closing Date, for all purposes under the Contract," to September 30, 2020. Paragraph 4 read that "[n]otwithstanding the foregoing, Closing shall not occur"

more than 30 days after Berry Road received the third round of review comments from Charles County on the site development plan, "but in no event shall Closing occur later than the Outside Closing Date."

On September 29, 2020, Berry Road sent a letter to Janearl and its counsel claiming that Janearl had not completed the Seller's Development Work, and that it was known "Janearl is unable to complete the Seller's Development Work on or before September 30, 2020, which is the current Closing Date." Berry Road cited Section 15(b) of the Contract, which reads that "in the event that the Seller defaults under the requirements" to complete the Seller's Development Work before the Closing Date, "in addition to all of the other rights and remedies of the Purchaser, the Purchaser shall have the right and option to delay the Closing Date until the completion of the unfinished portion of the Seller's Development Work." Berry Road asserted that due to "Janearl's default," Berry Road was "exercising its right and option under Section 15(b) to extend the Closing Date[,]" stating that the extension would continue until the completion of the Seller's Development Work "and further notice by Berry Road."

That same day, Janearl responded, through counsel, stating that on September 24, 2020, Berry Road represented that it was not ready for settlement and sought an extension of the Outside Closing Date beyond September 30, 2020. Janearl asserted that it had completed the Seller's Development Work in accordance Section 15(b) of the Contract. Further, Janearl stated that "[n]otwithstanding the above and pursuant to Paragraph 3 of [the Final Amendment], the 'Outside Closing Date, ***for all purposes under the Contract***,

is now September 30, 2020.' [emphasis added]. Therefore, completion of Seller's Development work is irrelevant." Janearl represented that it was "ready and willing to proceed to settlement on September 30, 2020," and invited Berry Road to provide a location and time for settlement, as well as the necessary documents for review.

The next day -- the September 30, 2020 Outside Closing Date as agreed to in the Final Amendment -- Berry Road filed a complaint in the Circuit Court for Charles County. The complaint alleged that Berry Road had "performed all its obligations under the Contract[,]" while Janearl had not completed, nor could it complete by the September 30, 2020 Outside Closing Date, the Seller's Development Work as required by the Contract. Berry Road stated it had alerted Janearl to this incomplete obligation on September 29, 2020 and sought to exercise "its option under Section 15(b) to extend the Closing Date[,]" which Janearl rejected. Therefore, Berry Road asked the court to grant an order specifically enforcing the Contract, such that Janearl would have to "complete the Seller's Development Work and transfer title and possession of the Property" to Berry Road, with Janearl paying Berry Road's costs and attorney's fees.

On November 23, 2020, Janearl filed a motion for summary judgment, noting that "the outside closing date is September 30, 2020," therefore "[a]s a matter of law, [Berry Road] is not entitled to a mandatory injunction against [Janearl] . . . [and Janearl] is entitled to the grant of Summary Judgment against [Berry Road]" because "[t]here are no genuine disputes between the parties as to any material facts." In its memorandum in support of its motion, Janearl made many of the same arguments it presents to this Court, which we

explore further below. On December 8, 2020, Berry Road responded with its own motion in opposition to Janearl's motion for summary judgment, also making many of the same arguments it presents to this Court and explored further in this opinion. Following a hearing on March 31, 2021, the circuit court denied Janearl's motion, ruling the dispute involved "something that a trier of fact is going to have to sort out."

On October 25, 2021, Janearl again sought summary judgment in the circuit court, asserting the Outside Closing Date was September 30, 2020, and Janearl was therefore entitled to judgment as a matter of law because there were "no genuine disputes between the parties as to any material fact" that Berry Road could not extend Closing beyond that date for any reason. On November 4, 2021, Berry Road again responded, both opposing Janeral's motion for summary judgment, but also filing its own cross-motion for summary judgment. In these competing motions, the parties rehashed much of the same legal ground asserted in their prior motions and reanimated in their briefs to this Court. This time, however, following a February 16, 2022 hearing, the circuit court granted Janearl's motion and denied Berry Road's motion. The circuit court also determined "that an equitable remedy would be that [Berry Road gets its] earnest money back," declaring "the [C]ontract is void. It went outside the closing date." The circuit court memorialized its decision in an Order issued on February 26, 2022. From this order, Berry Road timely appealed to this Court on March 22, 2022.

DISCUSSION

Standard of Review

This court reviews the circuit court's grant or denial of summary judgment under the *de novo* standard, assessing whether the trial court was legally correct. *Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694 (2015); *Asmussen v. CSX Transp. Inc.*, 247 Md. App. 529, 558 (2020). "Thus, we conduct an independent review of the record to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Md. Cas. Co.*, *supra*, 442 Md. at 694. We review the record in the light most favorable to the non-moving party, construing all facts, and reasonable inferences drawn there from, against the moving party. *Id.* If this court concludes that the grant of summary judgment was erroneous, we will not seek to sustain the grant on different grounds. *Bishop v. St. Farm Mut. Auto. Ins.*, 360 Md. 225, 234 (2000).

"[T]he interpretation of a contract, including the question of whether the language of a contract is ambiguous, is a question of law subject to *de novo* review." *W. F. Gebhardt & Co. v. Am. Eur. Ins. Co.*, 250 Md. App. 652, 666 (2021) (quoting *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 392 (2019)). "We review the circuit court's decision to grant an injunction for an abuse of discretion." *Chestnut Real Est. P'ship v. Huber*, 148 Md. App. 190, 200 (2002).

I. The Circuit Court Correctly Interpreted the Contract and Found that Berry Road Was Not Entitled to the Relief and Remedy it Sought.

A. Berry Road was not entitled to an order from the circuit court requiring Janearl to specifically perform both the unfinished development work and the conveyance of the Property.

In assessing whether the circuit court was legally correct in granting Janearl's motion for summary judgment, we must conduct our own analysis of the Contract to deduce its meaning and the rights, obligations, and remedies it affords the parties. Because the Contract did not furnish Berry Road the right to compel Janearl to both specifically perform unfinished Seller's Development Work and to convey the Property after the Outside Closing Date, we find no legal error in the circuit court's interpretation of the Contract.

When interpreting contracts, "Maryland courts subscribe to the objective theory," in which the primary goal is to "ascertain the intent of the parties in entering the agreement and to interpret 'the contract in a manner consistent with [that] intent.'" *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019) (quoting *Ocean Petroleum, Inc. v. Yanek*, 416 Md. 74, 88 (2010)). Our interpretation begins by assessing what the language of the agreement would mean to a reasonable person in the position of the parties at the time they formed the agreement. *Id.* at 393–94. This requires us to consider the plain language of any disputed provisions in the context of the entire contract. *Id.* at 394.

"When the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." *W.F. Gebhardt & Co., supra*, 250 Md. App. at 668 (quoting *Md. Cas. Co. v. Blackstone*

Int'l Ltd., 442 Md. 685, 695 (2015)). "In applying the objective theory of contract interpretation, we look to dictionary definitions to identify the common and popular understanding of the words used in the contract as evidence of what a reasonable person in the position of the parties would have understood those terms to mean." *Id.* We attempt to "construe contracts as a whole, to interpret their separate provisions harmoniously," giving effect to each clause as to avoid an interpretation that casts out or disregards meaningful language, "unless no other course can be sensibly and reasonably followed." *Credible Behav. Health, Inc*, *supra*, 466 Md. at 396–97 (citations omitted); *DIRECTV Inc. v. Mattingly*, 376 Md. 302, 320 (2003).

"[When] the terms of the contract at issue are clear and unambiguous, a trial court may not rewrite the contract 'even to avoid a hardship.'" *Panitz v. Panitz*, 144 Md. App. 627, 641 (2002) (quoting *Stueber v. Arrowhead Farm Ests. Ltd. P'ship*, 69 Md. App. 775, 780 (1987)). Where there is ambiguity in a contract, the conduct of the parties may help assess the parties' understanding of the contract's terms. *See Walker v. Assoc.'d Dry Goods Corp.*, 231 Md. 168, 179 (1963). If the parties amend or modify the agreement, such new provisions that conflict with the terms of the original contract control and are given effect to the extent that they overwrite or conflict with the original terms. *See Worthington v. Bullitt*, 6 Md. 172, 196 (1854) (holding modification of contract regarding payments was "the last stipulation," and therefore "must be considered as binding on the parties.") (citing *Dorsey v. Smith*, 7 H. & J. 345, 363 (1826)).

In our efforts to discern each party's rights, obligations, and remedies, we shall read the Contract as a whole, interpreting each provision in context and giving all terms voice, tuning our understanding of these clauses to avoid dissonance so that the separate provisions may sing together "harmoniously." *See Credible Behav. Health, Inc.*, *supra*, 466 Md. at 396–97. Ultimately dispositive to this dispute is the meaning and effect of "Closing Date" compared to "Outside Closing Date" as established in Section 3 of the Contract and amended in the subsequent agreements up and through the Final Amendment. Thus, we start our analysis there.

The terms "Closing Date" and "Outside Closing Date" are contextually defined by their differing usage in the Contract and subsequent amendments.[3] Beginning with the

[3]

> [Section] 3. **CLOSING**. The "**Closing**" of the transaction herein provided shall take place at the office of the Settlement Agent on or before thirty (30) days following the date that the Closing Conditions set forth in Section 12 have been fully satisfied and/or waived in writing by the Purchaser, but, in any event, no later than the date which is twelve (12) months following the Effective Date of this Agreement (the "**Outside Closing Date**"). Subject to the foregoing time parameters, the date of Closing (the "**Closing Date**") shall be selected by the Purchaser with reasonable notice to the Seller. The Purchaser shall have the right and option, by written notice given to the Seller on or before the original Outside Closing Date to extend the Outside Closing Date for an additional six (6) months, provided that the Purchaser shall pay to the Seller, along with the Purchaser's written notice of extension, the sum of Thirty Thousand and 00/100 Dollars($30,000.00), which shall be considered part of the Earnest Money, and shall be non-refundable(except for default by Seller), and which may be used by the Seller for the purposes of application to the

Second Amendment, made by Republic and Janearl, and continuing through each subsequent amendment (including all those where Berry Road assumed the role of Purchaser), the parties affirmed that "[c]apitalized terms used and not defined herein shall have the meanings set forth in the [C]ontract."

Section 3 of the Contract provided that the "Closing Date" and the "Outside Closing Date" were independent terms. "Closing Date" meant "the date of Closing," an event that "shall take place" upon certain conditions precedent being met, namely the completion of the Seller's Development Work, and the Purchaser calling the Closing. The time period for Closing was not fixed, as the performance of the conditions precedent provided variability, and Berry Road as Purchaser had authority to select the Closing Date.

The Outside Closing Date, however, was distinct from the Closing Date. No conditions precedent triggered the occurrence of Outside Closing. The Outside Closing Date functioned as a deadline for the exercise of any and all rights within the Contract.

> 2017/2018 real estate taxes on the 228 Business Center (in the same manner as provided above in Section 2(a)(i) for the 2016/2017 real estate taxes). As part of the Earnest Money, this extension payment shall be credited to the Purchase Price at Closing.

Both the introductory paragraph, and Section 27 of the Contract define the "Effective Date" as "the date the last party signs this Agreement as set forth on the signature page of this Agreement." Because Republic's representative signed the Contract on August 10, 2016, and Janearl's representative signed the Contract on August 11, 2016, the latter should be considered the "Effective Date." However, the parties later amended the Contract provisions regarding the Closing Date and Outside Closing Date and the Effective Date. Ultimately, establishing the Effective Date is not material to resolving this dispute.

This understanding was made clear by the wording of Section 3 of the Contract and by the wording of the Final Amendment. Section 3 of the Contract reads:

> The '**Closing**' of the transaction herein provided shall take place at the office of the Settlement Agent on or before thirty (30) days following the date that the Closing Conditions set forth in Section 12 have been fully satisfied and/or waived in writing by the Purchaser, *but, in any event, no later than . . .* (the '**Outside Closing Date**').

(italics emphasis added). Such language was altered slightly, but otherwise repeated, in the Final Amendment: "Notwithstanding the foregoing, Closing shall not occur later than thirty (30) days of Purchaser's receipt of a third round of review comments from Charles County on Purchaser's site development plan, *but in no event shall Closing occur later than the Outside Closing Date*." (emphasis added).

The word "event" is popularly understood to mean "something that happens." *Event*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/event (accessed Oct. 19, 2022). Based on this definition, the popular understanding of either phraseology -- "but, in any event, no later," or "but in no event . . . later" -- would be "but, regardless of any 'something that happens.'" *See W.F. Gebhardt & Co., supra*, 250 Md. App. at 668. Therefore, in understanding when Closing *must* occur, a reasonable person in the position of the parties at the time of drafting and agreeing to both the Contract and the Final Amendment would understand both the clause "but, in any event, no later than . . . (the '**Outside Closing Date**')" and the clause "but in no event shall Closing occur later than Outside Closing Date," to mean "but, regardless of anything else that may happen, Closing *must* occur by the Outside Closing Date." *See id.* Within the context of

the Contract, Section 19's "Time [is] of the Essence" clause bolsters this understanding that the Contract set a timeframe for when all contractual rights and performances must conclude or be forfeited, and thus Section 3's "Outside Closing Date" set the uttermost boundary of that timeframe.[4]

Though we do not read Section 3 of this Contract, nor the distinct use of the terms "Closing Date" and "Outside Closing Date," as ambiguous, the conduct of the parties as intimates that their understanding of these Contract terms aligns with ours. *See Walker*, *supra*, 231 Md. at 179 (1963). The Contract provided Purchaser, Republic and then Berry Road, an option to extend the Outside Closing Date upon written notice and the paying of $30,000 in earnest money. The parties made sure to provide this option for an extension in the Third, Fourth, and Fifth Amendments. Berry Road exercised this option in the Fifth Amendment. The parties agreed to extend and amend Outside Closing in the Sixth, Seventh, and Final Amendments. Further, from the Second Amendment on, each agreement asserted the parties "ratif[ied] and reaffirm[ed]" the unamended portions of the Contract.[5]

[4] "[Section] 19. **TIME OF THE ESSENCE**. Time is of the essence in the performance of each of the terms and conditions of this Agreement."

[5] Paragraph 3 of the Second Amendment, entitled "**No Further Modification,**" states that the Contract is "amended to the extent necessary to give effect to the provisions of this Amendment and all previous Amendments[,]" and that the parties otherwise "ratify and reaffirm" the Agreement.

Though not dispositive, we infer from these transactions that *both* Berry Road (and Republic before it) and Janearl were concerned about the impending deadline of the Outside Closing Date and understood that their rights under the Contract would be affected if Closing occurred past the Outside Closing Date. We surmise that is why they continued to postpone the Outside Closing Date, and to create an option in the Contract for the Purchaser to delay it further, upon the paying of earnest money. This further supports our interpretation that the Contract, and all subsequent Amendments, prevented "any event" from occurring later than the Outside Closing Date. Therefore, any attempts by either party to delay closing later than the Outside Closing Date, *for any reason*, would not be permitted by the Contract.

Sections 15, 12, and 9 all relate to each other in establishing rights, obligations, and remedies. We, therefore, must read these provisions in concert. Section 15(b) lays out the Seller's obligations regarding Seller's Development Work, establishing such work must be completed by the Closing Date.[6] Section 15(b) also provides Purchaser the right and option

[6]

> [Section] 15. **ADDITIONAL COVENANTS OF THE PARTIES**. The Seller and the Purchaser further agree as follows:
>
> …
>
> (b) Seller shall complete, in good order and repair, and using first class materials, the site development work and the site construction work as required by the approved plans and specifications for the 228 Business Center, both on-site and off-site, at the Seller's sole cost and expense, including, but not limited to, all streets, utility mains and facilities, public and private drainage areas and facilities (collectively, "**Seller's**

to delay Closing until any unfinished Seller's Development Work is complete and to "undertake and complete any unfinished portion of Seller's Development Work, and in that event" to have Seller reimburse Purchaser for the "actual costs incurred" in finishing the work, as well as to collect a fifteen percent overhead and a fifteen percent profit, which may be deducted from the Purchase Price at Closing.

Echoing portions of Section 15, Section 12 addresses Conditions to Closing, and provides that the Purchaser's obligation to purchase the Property is contingent upon the

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> **Development Work**"). All of the Seller's Development Work shall be completed strictly in accordance with the approved plans and specifications therefor and strictly in accordance with all applicable laws, regulations and ordinances. Seller shall, at its sole cost, post all necessary bonds and obtain all necessary permits and approvals for the Seller's Development Work. The Seller's Development Work shall proceed and shall be completed based upon the following milestone dates: (i) actual tangible work/activities shall have commenced in the field and shall be ongoing by the end of the Inspection Period; and (ii) the Seller's Development Work shall be completed by the Closing Date. In the event that the Seller defaults under the requirements of this Section 15(b), in addition to all of the other rights and remedies of the Purchaser, the Purchaser shall have the right and option to delay the Closing Date until the completion of the unfinished portion of the Seller's Development Work, and to undertake and complete any unfinished portion of the Seller's Development Work, and in that event, the Seiler shall reimburse the Purchaser immediately for the actual costs incurred by the Purchaser in undertaking the unfinished portion of the Seller's Development Work, plus fifteen percent (15%) overhead and fifteen percent (15%) profit, and the Purchaser shall have the right to deduct said costs and expenses and overhead and profit from the Purchase Price due to the Seller at Closing hereunder.

Seller performing its obligations under the Contract, including completing the Seller's Development Work.[7] Further, Section 12 grants Purchaser the "right and authority" to exercise one of three options if such Closing Conditions are not fully satisfied by the Outside Closing Date.[8] The Purchaser may (i) waive the unsatisfied conditions and

[7]

> [Section] 12. **CONDITIONS TO CLOSING**. Notwithstanding anything to the contrary set forth herein, the obligations of Purchaser to purchase the Property and to perform the other covenants and obligations to be performed by it at Closing shall be subject to the following conditions (all or any of which may be waived in writing, in whole or in part, by Purchaser) (collectively, the "**Closing Conditions**"):
> …
> (b) Seller shall have performed, or shall be fully and timely prepared to perform, all terms, covenants and obligations required herein to be performed, on, before or after the Closing Date.
> …
> (g) Seller shall have obtained all permits and approvals for, and shall have bonded, all of the Seller's Development Work (hereinafter defined), and shall have completed, in good and workmanlike manner, the Seller's Development Work as required by Section 15 below.

[8]

> [Section 12. CONDITIONS TO CLOSING. . . .] Notwithstanding anything to the contrary set forth herein, if any one or more of the foregoing Closing Conditions are not fully satisfied by the Outside Closing Date, the Purchaser shall have the right and authority to: (i) waive the unsatisfied Closing Condition(s) in writing and proceed to Closing under this Agreement by on or before the Outside Closing Date; (ii) terminate this Agreement by written notice given to the Seller, whereupon the Earnest Money paid to the date of termination shall be forfeited to Seller, and neither party shall have any further rights or obligations under this Agreement; or (iii) if

proceed to Closing on or before the Outside Closing Date; (ii) terminate the Contract, but in so doing forfeit the earnest money paid to Seller thus far; or (iii) if the unsatisfied Closing Conditions are due to the default or breach of the Seller, to "pursue [Purchaser's] rights and remedies against the Seller as set forth in this Agreement for a Seller Default." This language thus directs us to Section 9(b), addressing Purchaser's rights and remedies in the event of Seller default or breach. [9]

> any Closing Condition is not satisfied due to the default or breach of the Seller, pursue its rights and remedies against the Seller as set forth in this Agreement for Seller default.
>
> As to each Closing Condition which is the Purchaser's responsibility, Purchaser shall use commercially reasonable efforts at all times to pursue the satisfaction of the Closing Conditions, and if governmental ordinances or procedures require the Seller's participation and/or approval, as owner of the Property, the Seller will promptly provide its participation and/or approval at no cost to the Purchaser.

[9]

> [Section] 9. **DEFAULT AND REMEDIES**.
> …
> (b) In the event that Seller breaches or defaults as to any of its obligations, covenants, representations, warranties or obligations hereunder, Purchaser shall have the following rights and options as Purchaser's remedies: (i) immediately terminate this Agreement upon written notice to the Seller and receive back the full amount of the Earnest Money and upon return of the same the parties hereto shall have no further rights and obligations or liabilities to each other hereunder, or (ii) demand and compel by an action for specific performance or similar legal proceedings, if necessary, for the immediate conveyance of the Property by Seller in compliance with the terms and conditions of this Agreement, and to recover all costs

Pursuant to Section 9(b), upon Seller's default, Purchaser may either: (i) terminate the Contract and receive back the full earnest money, at which point the parties have "no further rights, obligations, or liabilities to each other;" or (ii) "demand and compel an action for specific performance . . . for immediate conveyance of the Property by Seller in compliance with the terms of this Agreement," recovering all costs and expenses incurred in bringing such an action.

Reading these provisions in concert, the following rings true: Under Section 15, Janearl, as Seller, was obligated to complete its Seller's Development Work in order for Berry Road, as Purchaser, to declare the Closing Date. Janearl's failure to do so on or before the Outside Closing Date put them in breach, triggering Berry Road's options under Section 12, of which Berry Road elected the third choice presented, to pursue its rights under Section 9 regarding default and remedies.[10] Under Section 9(b), Berry Road could

> and expenses including reasonable attorney's fees incurred by Purchaser in such action.

[10] Berry Road points to an affidavit cataloguing Janearl's alleged deficiencies as to the Seller's Development Work, as well as highlighted portions of Janearl's Response to Berry Road's Request for Admissions in which Janearl admits to not completing Seller's Development Work. Janearl, though, does not concede such complete default as to the Seller's Development Work in its brief. Further, it points to other portions of its Response to the Request for Admissions that assert Janearl "substantially completed" the required work. This issue is, however, not truly in dispute in this appeal, as Janearl moved for summary judgment based on the premise that, regardless of whether default occurred, Berry Road's complaint sought relief of which it was not entitled under the contract. Further, because we are reviewing such a grant of a motion for summary judgment brought by, and awarded to, Janearl, we interpret all facts and inferences therefrom in the light most favorable to Berry Road, the nonmoving party. *Wadsworth v. Sharma*, 479 Md. 606, 616 (2022) ("In reviewing a grant of summary judgment, we independently review the record

either terminate the Contract and receive back its earnest money, or it could pursue an action for specific performance, forcing Janearl to convey the property.

Where we diverge with Berry Road, and to a lesser extent with Janearl, is in our interpretation of what specific performance to convey the property "in compliance with the terms and conditions of this [Contract]" meant. Berry Road asserts that the only way to read this provision and give it effect, rather than cast out or disregard such language, is to understand the clause as providing Berry Road the right to seek immediate conveyance of the property *after* the court forces Janearl to complete the Seller's Development Work. Berry Road argues this interpretation is the only way to provide Berry Road its full rights and remedies without excising from the Contract Janearl's obligations to complete the Seller's Development Work in Section 15.

In our view, this reading, while giving effect to relevant portions of Sections 9(b), 12, and 15, disregards Section 3's mandate that Closing *must* occur on or before the Outside Closing Date. Further, this reading ignores the additional remedies afforded Berry Road in Section 15(b), in which Berry Road had the right to finish the work itself, recovering all costs plus the additional fifteen percent markups for overhead and profit, respectively. The way to read these provisions together -- giving full meaning to each -- is to read Section 9(b)'s right for Berry Road to pursue specific performance "for the immediate conveyance

in the light most favorable to the nonmoving party and construe reasonable inferences against the moving party.").

of the Property by [Janearl] in compliance with the terms and conditions of this [Contract]," is as follows:

Berry Road's right to specific performance -- seeking to force Janearl to convey the Property in accordance with the terms of the Contract -- meant Berry Road could have demanded Janearl specifically perform the conveyance, and Berry Road could have enforced its right to finish the Seller's Development Work and recover those costs, along with the contractually guaranteed mark up, from Janearl during or even after that conveyance, *so long as the conveyance occurred on or before the Outside Closing Date*. We see no other way to read these provisions without treating as nullary Berry Road's rights and remedies included in Section 15(b) and the time parameters of Section 3.[11] Our interpretation requires any conveyance of the Property to have been brought before the Outside Closing Date to ensure settlement occurred before the parties' agreed-to deadline. So long as specific performance was sought by the Outside Closing Date, Janearl could be

[11] Berry Road argues that the Contract provides for the transfer of two parcels of land within a larger plat, in which all surrounding land is owned by Janearl. Because portions of the Seller's Development Work require access to this land outside of the Property, Berry Road would be unable to complete the Seller's Development Work. We find this unpersuasive. First, Section 15 provides Berry Road the broad right to "complete any unfinished portion of the Seller's Development Work." This reasonably implies a license from Janearl to enter these parcels and complete such work. Second, Section 12 requires the Seller to "promptly provide its participation and/or approval at no costs to Purchaser" in Purchaser's satisfaction of Closing Conditions regarding "governmental ordinances or procedures." We find a fair interpretation of this provision creates in Janearl an obligation to assist in, or at least not obstruct, Berry Road in the completion of unfinished Seller's Development Work. Third, "[i]t is well settled that, where cooperation is necessary to the performance of a condition, a duty to cooperate will be implied." *Alios v. Waldman*, 219 Md. 369, 375 (1959).

forced to convey the land. Once the Property was in Berry Road's possession, Berry Road could have completed the work and pursued its contractual right to recover those costs, along with the fifteen percent markups.

Berry Road argues that our interpretation of the Outside Closing Date as a "do or die" deadline for conveyance permitted Janearl to freely default on its obligations, knowing it could "run out the clock" and avoid consequence, walking away with whatever earnest money had been paid thus far. But implied in this framing would be a tacit endorsement of Berry Road's ability to sleep on its rights under the Contract up until the Outside Closing Date and to be rescued by a generous order of specific performance for *both* the conveyance of the Property *past* the Outside Closing Date -- when the Contract clearly states no such conveyance can occur -- *and* the completion of the Seller's Development Work by Janearl -- when the Contract clearly provides Berry Road other rights and remedies to cure such default. To maintain the ability to exercise its rights under the Contract, it was incumbent upon Berry Road to, at some point reasonably before the Outside Closing Date, verify Janearl's progress on the Seller's Development Work.[12] Knowing the Conditions

[12] Berry Road argues we should infer a "reasonable time" for such "immediate conveyance" so that requiring Janearl to specifically perform its Seller's Development Work prior to the conveyance but after the Outside Closing Date does not violate the Contract. We see no need to make this inference, because we believe our interpretation of these provisions gives meaningful application to all of the Contract's clauses in a manner a reasonably prudent person would read them within the context of the entire contract. *W.F. Gebhardt & Co. v. Am. Eur. Ins. Co.*, 250 Md. App. 652, 668 (2021). We somewhat borrow this "reasonable time," in our understanding of when Berry Road could have exercised the rights and remedies laid out above. Berry Road contacted Janearl on September 29, 2020, a day prior to the Outside Closing Date, after which Berry Road would

for Closing required the completion of such work, but that it was Berry Road, as Purchaser, who had the right and option to select the Closing Date, it is reasonable to infer Berry Road had a responsibility to keep tabs on when and if Conditions for Closing might coalesce so that it could act upon any potential default on or before the Outside Closing Date.

Therefore, the circuit court did not err in its interpretation of the Contract. *Asmussen*, *supra*, 247 Md. App. at 558. Accordingly, we agree with the circuit court that there are no genuine disputes of material fact as to whether Janearl, as the moving party, was entitled to judgment as a matter of law. *Md. Cas. Co.*, *supra*, 442 Md. at 694. In short, the Contract did not provide Berry Road the relief it sought in its complaint. Berry Road was not entitled to specific performance compelling Janearl to complete the Seller's Development Work and then convey the Property at some undetermined time *after* the Outside Closing Date. As such, we affirm the circuit court's granting of Janearl's motion for summary judgment.

lose all claims it could bring under the Contract. Had, at that time, Berry Road informed Janearl of its alleged breach, Berry Road could have proceeded to settlement, asserted its right to specific performance, and alerted Janearl it would be responsible for paying the costs incurred as Berry Road finished the Seller's Development Work. Janearl could not have objected and illogically assert it would complete such work by Outside Closing the following day. Moreover, we believe Berry Road had the right to protect its interest in the contract by discovering, in "reasonable time" prior to the Outside Closing Date, Janearl's impending default as to the Seller's Development Work and to have asserted Berry Road's right to complete such work and move to Closing a "reasonable time" prior to Outside Closing.

B. Because the Outside Closing Date sets a definitive date when interests created by the Contract will vest, or fail to vest, the Contract does not violate the Rule Against Perpetuities.

In its motion for summary judgment, and during the hearings for that motion before the circuit court and once again in a footnote in its brief to this Court, Janearl argued that construing the remedies provisions as Berry Road suggests creates a perpetuities issue. While we agree the Rule Against Perpetuities should be considered in contractual disputes such as this case, the Contract does not violate the rule, nor that the rule is dispositive to our resolution.

Contracts that create equitable rights in real property enforceable by specific performance are subject to the Rule Against Perpetuities. *Cattail Assocs., Inc. v. Sass*, 170 Md. App. 474, 489 (2006) (quoting *Dorado Ltd. P'ship v. Broadneck Dev. Corp.*, 317 Md. 148, 152 (1989)). "If a condition of the contract possibly may cause legal title to vest in the purchaser outside the period of the rule, the contract violates the rule and is not enforceable." *Brown v. Parran*, 120 Md. App. 653, 659 (1998) (quoting *Dorado Ltd. P'ship v. Broadneck Dev. Corp.*, 317 Md. 148, 153–54 (1989)). "Under the traditional rule, a court must construe the conveyance in question independent of the rule and then apply the rule." *Id.*

Maryland applies the traditional formulation of the Rule Against Perpetuities, in which "[n]o interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest." *Cattail Assocs., Inc.*, *supra*, 170 Md. App. at 488–89 (quoting *Dorado Ltd. P'ship v. Broadneck Dev. Corp.*, 317 Md. 148,

152 (1989)). "The [r]ule is applied to determine whether the interest could vest beyond the permissible period, based on the possibility of events, not actual events." *Id.* at 490 (quoting *Arundel Corp. v. Marie*, 383 Md. 489, 496 (2004)).

The court may invalidate a future interest if it is not absolutely certain to vest within the perpetuities period; the probability of it vesting, even if great, is not sufficient. *Id.* Nevertheless, when feasible, courts should strive to interpret contracts to avoid the conclusion that they violate the Rule Against Perpetuities. *See Stewart v. Tuli*, 82 Md. App. 726, 735–36 (1990). To avoid such potential violations of the Rule Against Perpetuities, drafters often use "savings clauses" in contracts -- provisions establishing a termination date for future interests to vest along with contingencies if such conditions for vesting do not occur -- which courts generally view as effective tools to protect contractually created future interests from invalidation. *See Cattail Assocs., Inc.*, *supra*, 170 Md. App. at 494.

Janearl asserts that if Berry Road's contractual right to compel specific performance to convey the Property "in compliance with the terms and conditions of this Agreement" means Berry Road may continue to push settlement past the Outside Closing Date, until whatever time Janearl receives all required permits and approval from Charles County and completes all Seller's Development Work, this creates the possibility of an infinite number of extensions, with no guarantee of settlement occurring within a hypothetical perpetuities period. Janearl further argues that because the completion of the Seller's Development Work is dependent upon such approvals from the county, which are not guaranteed, the

Closing Conditions may never come to fruition, and thus Berry Road's interest in the property may never vest. In so doing, Janearl analogizes to *Dorado Ltd. P'Ship v. Broadneck Dev. Corp.*, in which the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[13] found that, because the contract for conveying property was contingent on the county approving sewer allocation, for which the county had issued a moratorium, legal title might never vest. 317 Md. 148, 152 (1989). Because the moratorium created uncertainty as to when, if ever, Broadneck's interest in the property would vest, the Supreme Court of Maryland found that the contract violated the Rule Against Perpetuities as "[i]t is conceivable that [vesting] could occur after a life in being plus 21 years." *Id.*

Berry Road combats this argument by analogizing to case law in which this Court did not find a violation of the Rule Against Perpetuities, because an implied "reasonable time" for performing contract conditions ensured the interest would vest prior to the perpetuities period expiring, and because it was "ridiculous to presume" government officials would not act on applications for permits within a life in being plus 21 years. *See Brown*, *supra*, 120 Md. App. at 663 (holding contract contingent upon approval of permits

[13] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

by Calvert County could be performed within perpetuities period); *Stewart, supra*, 82 Md. App. at 736 (1990) (holding contract contingent on seller clearing all defects of title "within a reasonable period of time" would be "ridiculous to suggest that a reasonable period of time would exceed a life in being and 21 years").

We need not weigh whether the future interest vesting in the Contract in this dispute aligns more with those running afoul of the Rule Against Perpetuities as in *Dorado*, or if such an interpretation would be "unreasonable" or "ridiculous" as in *Stewart* or *Brown*. 317 Md. at 156; 82 Md. App. at 735–36; 120 Md. App. at 663. That is so because we read the Contract as divesting Berry Road of any such future interest in the Property if Berry Road did not exercise its right to purchase the Property and come to settlement on or before the Outside Closing Date. Effectively, the Outside Closing Date functions as a perpetuities "savings clause," in that it provides a termination date for the vesting of Berry Road's interest in the Property. *See Cattail Assocs., Inc., supra*, 170 Md. App. at 494. Under the terms of the Contract, settlement, and thus conveyance of the Property, must occur by the Outside Closing Date. Therefore, we will know with certainty if Berry Road's interest in the Property vests within a life in being and 21 years because Berry Road must act upon its rights in the Contract by the Outside Closing Date. Under the terms of the Contract, Berry Road's future interest in the property was created upon the Effective Date, December 17, 2017. Because the original Outside Closing Date was to be no later than 12 months thereafter, Berry Road's interest would have vested -- or failed to have vested -- well before the ending of any perpetuities period. Even after multiple amendments eventually

postponed the Outside Closing Date until September 30, 2020, this still meant that from the creation of the interest in the property until the point it would have definitively vested or failed to, not even three full years elapsed -- a timeframe well within the perpetuities period. As such, we hold that the Contract did not violate the Rule Against Perpetuities.

II. The Circuit Court Did Not Abuse Its Discretion by Failing to Issue an Injunction Compelling Specific Performance That Would Have Required Janearl to Complete the Seller Development Work After the Outside Closing Date and Then to Convey the Property Immediately Thereafter.

Berry Road and Janearl exchange numerous arguments about whether a hypothetical order for Janearl to finish its Seller's Development Work and convey the property takes the character of a mandatory injunction, and from there the appropriateness or inappropriateness of such a remedy in this situation. We see no need to parse these assertions, when our interpretation of the Contract does not provide the relief Berry Road seeks, and when we find no abuse of the circuit court's discretion in its denial of Berry Road's petition, regardless of how we characterize such relief as a contractual right or an extraordinary remedy.

"It is instructive to compare the remedies of specific performance and injunction, because in certain circumstances," such as enforcing the terms of a contract, the requirements for both are the same. *Chestnut Real Est. P'ship, supra*, 148 Md. App. at 207. "Specific performance is an 'extraordinary equitable remedy which may be granted, in the discretion of the chancellor, where more traditional remedies, such as damages, are either unavailable or inadequate.'" *Yaffe v. Scarlet Place Residential Condo., Inc.*, 205 Md. App. 429, 454 (2012) (quoting *Archway Motors, Inc. v Herman*, 37 Md. App. 674,

681 (1977)). Whether specific performance of a contract for the sale of real property shall be decreed, and what the terms of that decree may be, are within the sound discretion of the equity court. *Boyd v. Mercantile-Safe Deposit & Tr. Co.*, 28 Md. App. 18, 22 (1975). Courts may order specific performance "where the contract is in its nature and circumstances unobjectionable, that is, fair, reasonable and certain in all its terms[,]" but "injunctive relief will not normally issue unless the complainant demonstrates that he sustained substantial and irreparable injury as a result of the wrongful conduct." *Chestnut Real Est. P'ship*, *supra*, 148 Md. App. at 207.

Maryland defines "injunction" as "an order mandating or prohibiting a specified act." Md. Rule 15-501(a). "[I]njunctive relief is '"a preventative and protective remedy *aimed at future acts*, and is not intended to redress past wrongs."'" *El Bey v. Moorish Sci. Temple of Am. Inc.*, 362 Md. 339, 353 (2001) (quoting *Colandrea v. Wilde Lake Community Ass'n, Inc.*, 361 Md. 371, 394 (2000)). A party seeking injunctive relief must allege and prove "irreparable injury" as a result of the nonmoving party's acts. *Id.* at 355 (2001). "[I]rreparable injury is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate." *Chestnut Real Est. P'ship*, *supra*, 148 Md. App. at 205 (quoting *Md.-Nat'l Park & Plan. Comm. v. Wash. Nat'l Arena*, 282 Md. 588, 615 (1978)). Additionally, if the act complained of is susceptible to continuance or repetition, equity may warrant injunctive relief, even if no actual or substantive injury has been shown. *Id.* at 209.

We examine Berry Road's demand in the traditional context of specific performance akin to the extraordinary remedy of injunction. In doing so, we affirm the circuit court's denial of the relief sought by Berry Road. In our synergistic reading of Sections 3, 9(b), 12 and 15(b) of the Contract, we stated *infra* that Berry Road could have sought the conveyance of the property and then undertaken the unfinished Seller's Development Work itself, collecting the costs, and then some, from Janearl. This means that any injury that befell Berry Road in regards to unfinished Seller's Development Work was not "irreparable" as it could have been compensated for in damages under Section 15(b). *El Bey*, *supra*, 362 Md. at 355 ("An injury may be said to be irreparable when it cannot be measured by any known pecuniary standard."). Further, the "injury" Berry Road asserts was not such likely to repeat or continue. *Chestnut Real Est. P'ship*, *supra*, 148 Md. App. at 209 ("[W]here the act complained of is such that by its repetition or continuance it may become the foundation of adverse rights, equity may interfere by injunction.") (citation omitted). Janearl's alleged failure to complete its Seller's Development work on or before the Outside Closing Date resulted in a single, compensable injury, upon which Berry Road could have taken action and asserted its rights and remedies under the Contract. Therefore, the circuit court did not err in determining that Berry Road was not entitled to the extraordinary relief of specific performance.

Lastly, ordering an injunction to specifically enforce the conveyance of the land is unnecessary. Such an equitable order would customarily be used to force a party to fulfil its contractual obligation to convey, where, as here, the contractual provision being

enforced is the specific performance itself. This removes specific performance from the traditional context into a realm where the court evaluates such a demand within the context of performing a contract.

As we articulated *infra*, the Contract provided Berry Road the right to specific performance to convey the Property "in compliance with the terms of the agreement," meaning Berry Road could have sought specific performance to convey the Property *on or before* the Outside Closing Date, and that "in compliance with the terms of the agreement" meant they could complete the unfinished work and collect under the reimbursement provisions of Section 15(b). It did not mean Berry Road could order Janearl to continue to perform work and then convey the property *after* Outside Closing. Since we hold that the *contractual right to specific performance* ended -- like all rights of the Contract -- when the parties did not proceed to settlement on or before the Outside Closing Date, Berry Road's claim for specific performance, or its interest in the land it sought to have conveyed, expired on that Outside Closing Date as well. Accordingly, once the Outside Closing Date passed, Section 9(b)(i)'s contractual performance of "specific performance . . . to convey the property" was no longer enforceable. As such, the circuit court did not abuse its discretion by ruling that the equitable remedy of injunctive relief for specific performance was not appropriate in this case.

Further, we hold that the circuit court did not abuse its discretion in ordering the return of the earnest money paid by Berry Road to Janearl, totaling $135,096.74. *Noor v. Centreville Bank*, 193 Md. App. 160, 175 (2010) (As a general rule "the award of equitable

relief is discretionary with the court, that a party ordinarily has no legal entitlement to an equitable remedy, and that any 'right' to equitable relief is subject to counter equities that may be relevant. . . . [however] [t]here are limits to that discretion."). As Janearl acknowledged during the February 16, 2022 hearing on its second motion for summary judgment, the court "certainly has equitable powers . . . to impose an equitable remedy." In providing such an "equitable remedy" the court looked at the remedies provided in the Contract for Seller's default and effectively breathed life into one such option provided for in Section 9(b)(ii) by declaring the Contract void, terminating all rights and obligations of the parties, and ordering the return of all Earnest Money paid by the Purchaser.

Therefore, we affirm the circuit court's granting of Janearl's motion for summary judgment, and, as such, affirm the circuit court's denial of Berry Road's cross-motion for summary judgment.

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