Circuit Court for Baltimore City
Case No. 24C16007112

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 188

September Term, 2021

IBRAHIM SHEIKH, *et. al.*,

v.

M. ALI FAROOQ

Graeff,
Berger,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.
Dissenting Opinion by Raker, J.

Filed: January 24, 2022

In 2016, Mr. M. Ali Farooq, appellee, filed suit against Mr. Ibrahim Sheikh and Management Restoration Services, LLC ("MRS"), ("Mr. Sheikh") appellants, in the Circuit Court for Baltimore City. He alleged breach of contract, fraud, and unjust enrichment for claims relating to real property located in Baltimore City at 240 North Milton Avenue ("the property").[1] The parties negotiated a settlement right before the scheduled trial date in 2018, and they put on the record the essential terms of the agreement, with the plan to draft a written agreement encompassing these terms. A written agreement, however, proved elusive. In 2020, Mr. Farooq filed in the Circuit Court for Baltimore City a motion to enforce settlement agreement, which the court granted.

On appeal, Mr. Sheikh presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in denying Mr. Sheikh's defense of laches to bar Mr. Farooq's motion to enforce settlement?

2. Did the circuit court improperly modify the agreement entered into by the parties in its settlement agreement?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On December 30, 2016, Mr. Farooq filed a complaint in the Circuit Court for Baltimore City against Mr. Sheikh, alleging breach of contract, fraud, and unjust enrichment. He alleged that Mr. Sheikh, his business partner, bought the property from

[1] Although Mr. Sheikh and MRS are both appellants in this action, MRS is Mr. Sheikh's business, and the same attorney represents both parties. For convenience, we will refer to them both as Mr. Sheikh.

Mr. Farooq through Mr. Sheikh's business, MRS, for $151,197.50. Mr. Farooq loaned the entirety of the payment to Mr. Sheikh, and Mr. Sheikh agreed that he would repay the loan when Mr. Farooq demanded repayment. The complaint alleged that, after Mr. Sheikh obtained title to the property, he "began to disassociate himself from" Mr. Farooq.

On March 1, 2014, Mr. Farooq requested payment of the loan. Mr. Sheikh said that he was unable to pay the loan, but he offered to execute a deed to transfer the property back to Mr. Farooq in lieu of payment for the loan. Mr. Sheikh, however, had used the property to secure a loan of $100,000, none of which was used to repay Mr. Farooq, but instead was used to purchase a different property.

Mr. Farooq alleged that Mr. Sheikh "intentionally misrepresented" that he would transfer the property if he did not repay the loan, when Mr. Sheikh knew that he would not do so, and Mr. Farooq relied on those representations to his detriment. Mr. Farooq requested judgment in excess of $75,000, plus interest, costs, and attorneys' fees, transfer of the ownership of the property, and for the fraud claim, punitive damages.

In Mr. Sheikh's answer to the complaint, he denied "the execution or existence of written financing instruments or agreements with [Mr. Farooq] regarding the subject property." Mr. Sheikh denied most other factual claims, including the allegations that Mr. Sheikh was indebted to Mr. Farooq and that he used the $100,000 to purchase 1618 Bank Street.

Trial was set for June 26, 2018. Shortly before the trial, the parties agreed to settle the case. The parties appeared in court on the trial date, and counsel for Mr. Farooq, F.

Greggory Shepperd, advised that the parties had reached a settlement, and although the parties "anticipate[d] a written settlement agreement to be exchanged," and although "there's always negotiation of language of that," they "thought it would be prudent to put the essential terms of the agreement on the record" and "have the parties affirmatively assent to it."

Counsel stated that the agreement was for Mr. Sheikh to transfer the property to Mr. Farooq or his designee. The parties estimated that the $100,000 loan on the property had a balance of $85,000, with "monthly payments of approximately $650."

Counsel continued:

> [COUNSEL FOR PLAINTIFF]: But the agreement is, is that Mr. Farooq or a designee will take the property still encumbered by that loan. Mr. Sheikh will make monthly payments to Mr. Farooq of the same amount that he's currently making to service the loan on a monthly basis due the 1st of the month in the approximate $650 balance until he has paid $65,000 of that balance. There will be final language about this.
>
> I believe in Baltimore City there may be rights of first refusal for tenants, the seller will obviously do whatever they have to do to be able to make that transfer. You know, security for this installment payment period will be negotiated by counsel. We don't anticipate a problem there.
>
> There will be a ten percent late fee if payments aren't on time. I understand that there's going to be a 15-day cure period.
>
> There will be a confessed judgment in the amount of the $65,000 obviously to be adjusted as payments reduce that balance.
>
> There will be no admission of liability on behalf of either Defendant.

> And the mutual [re]leases will be exchanged, the releases to be limited exclusively to claims arising out of the 240 Milton property and any claims the parties may have.[2]
>
> I believe according to my notes that that's – those are the terms that we've agreed on. There will be obviously standard terms about notices and things like that that will get ironed out in the paperwork.

Counsel for Mr. Sheikh, Stanley Alpert, advised that this captured the parties' agreement. Counsel confirmed with their clients on the record that they understood and agreed to these terms and had entered into this agreement of their own free will.

On October 8, 2018, counsel for Mr. Farooq wrote to Mr. Alpert advising that he had contacted the title company regarding the transfer of the property pursuant to the agreement, that the title work had been completed, and Mr. Sheikh needed to sign the necessary papers. He attached for Mr. Alpert's review a written agreement, which provided that Mr. Sheikh would transfer title of the property to Mr. Farooq subject to the indebtedness that existed at the time of the settlement, which was approximately $86,500, and Mr. Sheikh would continue "making the monthly payments to the Lender" until Mr. Sheikh transferred the title to Mr. Farooq or his designee. The agreement provided that Mr. Sheikh also would pay Mr. Farooq an additional $65,000, in monthly installments of $681.65, beginning on the first day of the month, after title was transferred, until the entire $65,000 and any unpaid late fees were paid in full. It stated that the parties agreed to a ten percent late fee, with a ten-day period to cure. Mr. Sheikh would "execute a confessed

[2] Both parties agree that the attorney misspoke, and he should have said that mutual *releases* to the property will be exchanged.

judgment note" in Mr. Farooq's favor in the amount of $65,000. The agreement provided that it "[did] not affect the status of any other litigation existing between" the parties, including their ongoing litigation in New York.[3]

The terms of the agreement incorporated these conditions. It also provided that Mr. Sheikh pay down the balance due on any loan secured by the property so the balance did not exceed $86,500 at the time of the transfer.

The attorneys discussed the draft. On November 8, 2018, counsel for Mr. Farooq sent another draft of the agreement. In this agreement, Mr. Farooq agreed to pay off the loan on the property, rather than take ownership of it subject to the loan, when it was transferred, and Mr. Sheikh would make monthly payments of $650 until $65,000 was paid. Mr. Farooq would pay closing costs, and the parties would split any taxes related to the transfer. The grace period to cure money due was extended from 10 days to 15 days. Counsel for Mr. Farooq, however, did not include credits for the mortgage payments made by Mr. Sheikh since the trial date because Mr. Sheikh had collected and retained rental payments during that time.

A series of emails followed. Mr. Alpert stated that the settlement agreement was subject to an agreed written document that contained the settlement terms. He advised counsel for Mr. Farooq to "look at the language put on the record for releases." He further advised that Mr. Sheikh did not have a tenant, and he should be given credit for the

[3] The parties in this case have a number of disputes involving one another in the legal system.

mortgage he paid for the five months since trial because Mr. Farooq was getting a reduction in the principal that he would be paying off at the closing. Mr. Sheikh also took issue with the parties splitting transfer taxes, stating that there was no agreement on that.

Counsel for Mr. Farooq noted that the transcript of the settlement agreement did not say that Mr. Farooq would pay off the loan, but he was willing to do that at Mr. Sheikh's request. He also noted that, although the transcript did not address the payment or recordation of transfer taxes, the Maryland Code provided that, unless otherwise agreed, it was presumed that these costs would be shared equally.[4]

On November 12, 2018, counsel for Mr. Farooq sent another draft of the agreement, which included only minor changes. The wording of the agreement on closing costs and taxes changed slightly, but it still provided that Mr. Farooq would pay closing costs and that the parties would split taxes associated with the transfer. Language regarding the release was modified to read as follows: "The parties mutually release each other but the mutual release is limited exclusively to claims arising out of the [p]roperty."

On November 14, 2018, Mr. Sheikh's counsel responded to this draft, listing several concerns. First, he stated that, due to Mr. Farooq's "failure to proceed with the Settlement Agreement and transfer of the property," Mr. Sheikh had incurred additional expenses. He noted that the settlement took place in June 2018, and during the last five months, Mr.

[4] Md. Code Ann., Real Prop. Art. § 14-1404(b) (2021 Repl. Vol.), provides that, "in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee."

Sheikh had paid monthly mortgage payments of $680.00, arguing that Mr. Sheikh should be given credit against the $65,000 due to Mr. Farooq. The tenant left in July, and Mr. Sheikh did not seek a new tenant "based upon an expected Written Agreement and transfer of property." Mr. Alpert also expressed his view that there should be "an adjustment on taxes, water bills and other expenses attributed to the maintenance of the property in question."

Second, he objected to sharing the transfer taxes and costs, stating initially that the parties did not agree to it. He also questioned the need for this, stating that if Mr. Farooq was going to pay off the lien to allow a transfer of property, and there was no consideration for the transfer, there should be "little in the way of transfer costs." He further stated that, if the bank agreed to a transfer of the property, Mr. Sheikh needed indemnification in the event that Mr. Farooq did not make payment due on the $85,000 lien.

Third, Mr. Alpert objected to language referring to the $65,000 as "an additional sum," noting that Mr. Sheikh was only obligated to pay $65,000. Mr. Sheikh's counsel also objected to language relating to a mutual release. He provided suggestions in that regard.

Based on emails included in the record, it appears that cordial negotiations broke down in early February 2019. On February 8, 2019, counsel for Mr. Farooq sent a letter advising that, although Mr. Sheikh had been unwilling to abide by the agreement placed on the record and execute a deed to transfer the property, he had nonetheless drafted a deed.

He noted that Mr. Sheikh had not paid the water bill since June 2017, and he had not paid property taxes.

Counsel for Mr. Farooq sent additional follow-up letters. On March 7, 2019, he sent a letter asking for additional information to effectuate a transfer, including the current account balance on the loan and the date the tenant moved out. He stated that Mr. Farooq would pay off the mortgage, give Mr. Sheikh credit against the $65,000 owed for mortgage payments since June 6, 2018, and pay the transfer taxes.

On April 3, 2019, Mr. Alpert sent a letter indicating concern regarding the settlement sheet. He indicated that the title company would not provide the settlement sheet without a written agreement, which he said Mr. Farooq refused to provide. He again asked for a mutual release, and he listed expenses that Mr. Sheikh had incurred, including utility bills, loan payments, insurance payments, general maintenance payments, and expenses to Home Depot, which totaled approximately $12,230.71. Mr. Alpert stated that he believed Mr. Farooq was "not in compliance with the Settlement Agreement resulting in expenses and damages to [Mr. Sheikh] including [his] claim for expenditure of attorney's fees for continued responses to failures to comply with the proposed agreement."

On October 29, 2020, Mr. Farooq filed a Motion to Enforce Settlement. He set forth the essential terms of the settlement agreement put on the record on June 26, 2018. He stated that, since the settlement was entered into, he had "attempted to negotiate the language of the Settlement Agreement and Releases and the Deed of Transfer," but Mr. Sheikh had "failed and refused to enter into the agreed written documents to memorialize

the transfer," had failed to make any payments to Mr. Farooq, and had "otherwise failed and refused to live up to the terms of the settlement."[5] He argued that Mr. Sheikh had breached the settlement agreement, and he requested that the court order Mr. Sheikh to perform the transfer of the property and make the agreed payments.

On November 5, 2020, Mr. Sheikh filed a Motion to Strike and/or Response to Plaintiff's Motion to Enforce Settlement. Mr. Sheikh argued that the doctrine of laches barred Mr. Farooq's motion because proceedings had been closed since June 26, 2018, and Mr. Farooq did not show good cause for reopening the proceedings after a delay of two and a half years. Mr. Sheikh asserted that Mr. Farooq failed to seek timely relief because: (1) he did not attempt to provide a written settlement until four months after the parties appeared in court; (2) the proposed settlement agreement did not comply with the preliminary statements made by counsel at the trial;[6] (3) the parties never negotiated security terms for the installment payment period, and at this point, the "circumstances have been altered to the extent that the proposed settlement terms are no longer practical"; (4) no confessed judgment in the amount of $65,000 was submitted with a reduction in the balance, as provided in the record; (5) Mr. Farooq failed to provide mutual releases as provided; and (6) the parties never worked out other terms, "standard terms about notices

[5] The motion stated that the "Plaintiff," who is Mr. Farooq, failed to enter into the written agreement, but it seems clear from context that this was a typo.

[6] Mr. Sheikh explained that, at the hearing, counsel said that Mr. Sheikh would pay $650 a month to Mr. Farooq, with the provision that "[t]here will be final language about this," but there was never final language because Mr. Farooq extended the time period by approximately two and a half years."

and timing," as the parties had agreed. Mr. Sheikh requested that the court deny Mr. Farooq's motion based on the doctrine of laches, abandonment, and failure by Mr. Farooq to request court intervention in a timely manner.

On December 11, 2020, Mr. Farooq filed a reply, arguing that the proceedings were not closed on June 26, 2018, but rather, the parties' agreement made clear that the final agreement would require additional paperwork. Mr. Farooq argued that it would be unjust to require him to file a new lawsuit for breach of the settlement agreement when Mr. Sheikh delayed execution of the agreement. Regarding laches, Mr. Farooq argued that Mr. Sheikh "has a history of reaching 11th hour settlements to avoid trial and then refusing to honor the same once the trial is terminated." He denied Mr. Sheikh's assertion that he did nothing regarding the settlement for two years, asserting that he was working to get the property transferred as soon as the settlement was entered into the record. Mr. Farooq sent a written settlement agreement not long after the trial, and any failure to come to a final agreement was because of Mr. Sheikh's failure to participate in negotiations.

On February 10, 2021, the court held a hearing. Counsel introduced a transcript of the June settlement agreement, an affidavit describing efforts to effectuate the agreement, and several other exhibits. Mr. Farooq's counsel stated that Mr. Farooq had loaned $150,000 to Mr. Sheikh to acquire the property through a short sale. Mr. Farooq subsequently demanded repayment of the loan, and Mr. Sheikh refused to pay it. Mr. Farooq said he had to pay the loan or transfer the property to him. Mr. Sheikh then borrowed $100,000 against the property. Suit was filed, and the evening before trial, the

parties settled the case. The parties put on the record the essential terms of the settlement. Those terms were as follows: Mr. Farooq would take the property subject to a mortgage of $85,000; Mr. Sheikh would disclose the amount of the monthly mortgage payment, which Mr. Sheikh would pay ($681.65) to Mr. Farooq until a total of $65,000 had been paid;[7] there would be a ten percent late-fee and a 15-day cure period before default was called; Mr. Sheikh would agree to a confessed judgment of $65,000, to decrease as payments were made; and there would be a mutual release among the parties regarding claims arising out of the property.

After that settlement, there was "obstruction and delay." Counsel for Mr. Farooq tried to negotiate the written agreement, even though there was no agreement that he had the sole responsibility to do that. Mr. Alpert found fault with all of his drafts, just "punching holes in them, refusing to things and renegotiating some of the terms . . . and never once proposing a document themselves." He argued that the essential terms were agreed to, making it a binding contract, and he was asking the court to enforce it.

Mr. Farooq argued that laches did not apply, stating that it typically applied in cases where a long period of time had expired, "typically beyond the statute of limitations." Here, the delay was caused by Mr. Sheikh, who would not agree to the terms of a written

[7] Counsel for Mr. Farooq stated at a hearing that Mr. Sheikh took out a loan on March 17, 2014, and it had a maturity date of March 17, 2019. Payments were $681.65 on that loan until March 17, 2019, when the balance was due as a balloon payment. Counsel had not been aware at the time of the settlement that a balloon payment was due in March 2019.

agreement.[8] Moreover, for laches to apply, there must be some prejudice, and any such prejudice was caused by Mr. Sheikh's delay.

Counsel for Mr. Farooq alleged that Mr. Sheikh and Mr. Farooq agreed in settlement negotiations for separate litigation between the parties in New York that "they would try to wrap that all up into the New York settlement" and execute this settlement in conjunction with the New York settlement. Settlement negotiations for this separate litigation, however, were still going on in New York two years later, and Mr. Farooq's counsel decided to file the motion to enforce the settlement.

The court asked counsel's position, if the court agreed that there was a binding settlement agreement and no laches, regarding what adjustments would have to be made at this point for items paid or not paid since the settlement. Counsel stated that the only adjustments would be the mortgage payments that were made since June 26, 2018, and they would be credited against the confessed judgment note of $65,000. His position was that no credit should be given for taxes or repairs to the property because Mr. Sheikh had the benefit of ownership. In any event, "worst case" was that Mr. Sheikh get a $23,000 credit off the $65,000 amount owed. Although counsel did not think it was appropriate, he thought that Mr. Farooq would be willing to do that "to get this finally done."

[8] Counsel for Mr. Farooq stated that some delay was due to the discovery, after the settlement, of a "due on sale provision in the indemnity deed of trust," which permitted the lender to declare all payments due on the property upon its sale or transfer without the lender's prior consent, and he opined that, because Mr. Sheikh did not have the $85,000 due on the loan, he "kept punching holes in all these agreements and wouldn't sign anything until he kicked it up to the March deadline." He stated that was why Mr. Farooq agreed to pay the loan balance during negotiations.

Mr. Sheikh's counsel, Mr. Alpert, argued that there was no contract, noting that the transcript showed that counsel said that they anticipated a written settlement agreement, which always involves negotiation. The transcript also said there would be final language about the confessed judgment note, but there was no final language. The transcript also included that standard terms, like notice, needed to be "ironed out in the paperwork," but there was no reference to these terms in the drafts provided.

With respect to laches, Mr. Alpert stated that "it was assumed" that Mr. Farooq's counsel was going to get the written agreement accomplished, and that was why Mr. Sheikh's counsel did not contribute by writing an agreement. The settlement drafts that were given to Mr. Alpert were all deficient.[9] Mr. Alpert further argued that Mr. Farooq demonstrated a lack of diligence by letting the case "sit" for one and a half years after settlement discussions ended. He disputed the argument that Mr. Farooq was waiting for something to be decided in New York.

[9] Mr. Alpert stated that, in the first draft, there was no mention of Mr. Farooq paying off the loan, and any mention of the loan was ambiguous. The next draft was "practically the same thing he had in the original draft." There was no draft of a confessed judgment note, and there was no mutual release in the agreement. Regarding the agreement to pay off the loan, the second agreement said that Mr. Farooq would pay the indebtedness which secured the property at the time it was transferred, but Mr. Sheikh wanted the loan paid off at the time of the closing as was standard in the industry, and so he wanted an indemnification clause. Moreover, in the deed of trust there was a "due on sale" provision, which is why Mr. Sheikh wanted an indemnification provision. Even after the due on sale provision was communicated to Mr. Farooq, however, none of the initial drafts of the settlement included a provision stating that Mr. Farooq would pay off the loan on the property.

Mr. Alpert disagreed with Mr. Farooq's characterization that Mr. Sheikh did not intend to go through with the sale. Although Mr. Sheikh initially had tenants living at the property, he did not renew their lease in anticipation of this settlement. Mr. Sheikh also had to get the loan refinanced or renewed because the loan was set to expire soon, not because he did not intend to make the exchange.

With respect to the mutual releases, the parties disagreed as to the meaning of the agreement put on the record, which was that "mutual [releases] will be exchanged. The release is to be limited exclusively to claims arising out of the [property] and any claims the parties may have." Mr. Alpert argued that this release, particularly the phrase "and any claims the parties may have," referred to all claims that the parties had against one another. Mr. Farooq argued that this release was limited to the property and not every claim that the parties may have against one another.

Mr. Alpert argued that Mr. Sheikh was prejudiced by the delay because Mr. Sheikh had to take out a loan that he otherwise would not have had to take if the settlement had been accomplished. Finally, the delay was inexcusable or unreasonable as Mr. Farooq had no reason for the delay.

In addition to laches, Mr. Alpert stated that there was no settlement agreement "because the terms have changed." There was no compliance with what was put on the record, including no confessed judgment note or mutual release.

If the court denied Mr. Farooq's motion based on laches or for lack of an agreement, the result should be that the case be set for trial. When the court asked counsel's position,

if the court decided to enforce the agreement stated on the record, Mr. Alpert requested that Mr. Sheikh receive credit for the mortgage payments, improvements to property, lost rents, and three years of taxes amounting to approximately $11,000.[10]

In rebuttal, counsel for Mr. Farooq clarified that, if the court ordered the property to be transferred to Mr. Farooq, Mr. Farooq would pay the balance due on the loan, which had been represented to be $79,000. After this, Mr. Farooq would have the right to collect the payment from Mr. Sheikh, which is "what was envisioned to start with."

The court made partial findings on the record after the hearing. It found that there was a settlement agreement reached on the record on June 26, 2018. Although the terms were qualified by the need for a written agreement, the parties "stated with sufficient definiteness the terms at that hearing on the record in order to amount to an enforceable agreement."

The court also found that laches did not apply. It noted that the agreement did not specify which party would take the initiative to draft the final settlement agreement, and therefore, it was a "mutual obligation." Under these circumstances, there was no argument that Mr. Farooq showed a lack of diligence and unreasonable delay. Although there were problems completing settlement, they did not amount to unreasonable delay by Mr. Farooq. Indeed, the court questioned whether a delay of two years could constitute unreasonable delay given that there is a three-year statute of limitations for breach of contract claims.

[10] Mr. Sheikh advised that the monthly mortgage payment after refinancing decreased to $641.05 because interest rates decreased.

Regarding the issue of the mutual release, the court found that the parties agreed to a "mutual limited release of all claims relating to this property that is part of the parties' agreement."

On March 8, 2021, the court issued an order and memorandum opinion ordering Mr. Sheikh to transfer the property to Mr. Farooq or his designee no later than July 1, 2021, with any transfer fees and taxes to be split equally between the parties. The court further ordered that (1) Mr. Farooq make the arrangements for transferring the property, including selecting a title company and preparing a deed, and that Mr. Sheikh cooperate with Mr. Farooq's efforts; (2) Mr. Farooq "pay the full amount necessary to satisfy any lien on the [p]roperty" at the closing up to $87,000, with any excess to be paid by Mr. Sheikh; (3) Mr. Sheikh pay "any amount due for property taxes, water or other utilities, or any expense related to the [p]roperty up to the date of the transfer"; (4) Mr. Sheikh pay Mr. Farooq $65,000, in monthly installments of $681.57, beginning on April 1, 2021, and an additional lump sum payment of $20,449.50 on June 1, 2021, subject to adjustments as provided, with late payments subject to a ten percent late fee and a 15-day period to cure a default.[11] In the event that the amount to satisfy the lien on the property was less than $87,000, then Mr. Sheikh's payment of $65,000 "shall be reduced by the difference between $87,000 and the lower amount actually paid by [Mr. Farooq] to satisfy any such liens." If the difference

[11] In the memorandum opinion, the court explained that, if Mr. Sheikh had complied with the agreement and transferred the property promptly, "the transfer likely would have occurred by September 30, 2018," and the obligation to pay $681.65 per month would have begun on October 1, 2018. The $20,449.50 represented 30 payments from that date until March 1, 2021 that should have been paid at that time.

was greater than $20,449.50, then no lump sum payment would be required, and the monthly payments would be reduced to reflect this amount.

The court ordered that Mr. Farooq provide Mr. Sheikh with a confessed judgment note relating to Mr. Sheikh's payment of $65,000 no later than 15 days after the order was docketed, and Mr. Sheikh sign and deliver the note to Mr. Farooq no later than 45 days after the order was docketed, with the total amount due to be adjusted as provided in the Order, if applicable. Finally, the court ordered that Mr. Sheikh and Mr. Farooq each release the other from "all claims that each has actually asserted or could have asserted against the other relating to [the property] and their dealings relating to that [p]roperty." The Order stated that the release did not affect claims that the parties have against one another unrelated to the property.

In its written memorandum, the court reiterated its finding that there was an enforceable agreement and that laches did not apply. With respect to laches, the court found that the initial delay of several months was "attributable equally to both parties," and in any event, it "was insufficient in length to be unreasonable," and Mr. Sheikh did not suffer any prejudice from that several-month delay. The subsequent delay from October 2018, when the initial draft agreement was tendered, to February or March 2019, when settlement discussions ended, could not be attributed to Mr. Farooq. Those discussions could not be characterized as a refusal by any party to proceed with settlement. With respect to the passage of time after March 2019, that could not be characterized as delay by Mr. Farooq. The court indicated that, after that point, it was Mr. Sheikh who was

refusing to proceed with the transfer of the property, and Mr. Farooq's 19-month delay in bringing the action to enforce the settlement was not unreasonable, noting that the action was brough within the three-year statute of limitations.

Finally, the court found that Mr. Sheikh did not show prejudice resulting from the delay. The court stated that, although Mr. Sheikh incurred expenses, he also had full use of the property and "collected rent from a tenant during much of this time."

The court next explained that the evidence was sufficient to establish the existence of a binding settlement agreement between the parties. The court looked to the various scenarios set forth in *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 27, *cert. denied*, 469 Md. 655 (2020), where parties agree on terms to settle a case while contemplating that the terms eventually will be incorporated in a written agreement. The court found that this case fell into the category of cases where the parties expressly state their intent that the terms constitute a binding agreement, which amounts to a binding contract.

The court recognized the problem that arose when the parties discovered after settlement that the property "could not be transferred subject to the existing lien without the lender's assent," but it stated that this problem was solved when Mr. Farooq agreed to pay the balance due at closing. The court treated this as a modification of the agreement consistent with its essential terms. The court stated that the "core of the agreement" was that Mr. Farooq was entitled to resume ownership of the property in his own name, so the court required Mr. Sheikh to transfer the property back to Mr. Farooq. At this point,

however, it had to "craft appropriate relief to enforce the parties' agreement in light of the long passage of time since June 28, 2018."

The court noted that the lien amount Mr. Farooq agreed to assume in 2018 was $87,000. If the current payoff amount was more than that amount, Mr. Farooq had to pay the higher amount to accomplish the transfer, but he was entitled to recoup that amount from Mr. Sheikh. If it was less than that amount, an adjustment would be made to Mr. Sheikh's obligation to pay $65,000. With respect to Mr. Sheikh's request for credit for expenses paid, the court stated:

> At the closing on transfer of the [p]roperty, any amounts due for property taxes, water bills, utilities or any other expenses related to the [p]roperty up to the date of transfer will be the obligation of [Mr. Sheikh] because they have had use and possession of the [p]roperty until then. For the same reason, the Court rejects [Mr. Sheikh's] claim for an adjustment based on the expenses incurred to maintain the [p]roperty. [Mr. Sheikh] could have shifted those expenses to [Mr. Farooq] long ago by transferring the [p]roperty as required by the parties' agreement. In reciprocal terms, [Mr. Farooq] has not claimed or proved any amount of damages resulting from [Mr. Sheikh's] failure to transfer the [p]roperty earlier.

If Mr. Sheikh failed to pay these or other amounts due at closing, the court stated that Mr. Farooq should pay them, and he then could petition to have Mr. Sheikh held in contempt.

The court then ordered a lump sum payment, with adjustments, as follows:

> If [Mr. Sheikh] had complied with the parties' agreement and transferred the [p]roperty promptly, the transfer likely would have occurred by September 30, 2018. [Mr. Sheikh's] obligation to pay a total of $65,000 at a rate of $681.65 per month would have begun on October 1, 2018. That would have meant 95 full monthly payments of $681.65 and one final payment of $243.25. As of March 1, 2021, thirty of these 96 payments were due. That totals $20,449.50 that should have been paid to date. This amount is subject to one possible downward adjustment. If Mr. Sheikh's payments on the indebtedness secured by the [p]roperty have resulted in the amount of the

> lien encumbrance falling below $87,000, the approximate amount in late 2018, then [Mr. Sheikh] should be credited with the amount of that reduction against the $65,000 they owe because Mr. Farooq will have to pay less to discharge the lien to accomplish transfer of the [p]roperty now than he would have paid in 2018.
>
> Two illustrations may help. First, if the current lien payoff balance is $75,000, then Mr. Farooq will save $12,000 ($87,000 – $75,000) compared to what he would have paid in 2018. [Mr. Sheikh] will receive a $12,000 credit against the total of $65,000 owed, reducing that amount to $53,000. The credit will be applied to the amount already due so that [Mr. Sheikh] would be required to pay $8,449.50 now ($20,449.50 – $12,000.00) and then the remaining monthly payments to reach the revised total of $53,000.
>
> Second, if the current lien payoff balance were even lower, $50,000, then Mr. Farooq would save $37,000 ($87,000 – $50,000) compared to what he would have paid in 2018. [Mr. Sheikh] would receive a $37,000 credit against the total of $65,000 owed, reducing that amount to $28,000. Because this credit of $37,000 would be greater than the amount already due ($20,449.50), it would erase that amount and shorten the number of monthly payments due in the future. Those payments would end once the reduced total of $28,000 is paid.

DISCUSSION

I.

Laches

Mr. Sheikh contends that the circuit court erred in concluding that the doctrine of laches did not bar Mr. Farooq's motion to enforce the settlement. He notes that the motion was not filed until two and a half years after the settlement was reached, and by that time, "the positions of the parties and circumstances [had] been altered to the extent that the proposed settlement terms [were] no longer practical."

Mr. Farooq contends that the court properly rejected the argument that laches barred enforcement of the settlement agreement, and the court's decision in this regard was not clearly erroneous. He asserts that the court properly found that the delay "was neither unreasonable nor attributable to" him, and the delay did not prejudice Mr. Sheikh.

"All claims for purely equitable remedies . . . are potentially subject to laches," which is "the limit equity places on stale claims." *Murray v. Midland Funding, LLC*, 233 Md. App. 254, 260 (2017). An action to enforce a settlement agreement "seeks a decree that the contract be specifically performed," which is "'exclusively within the province of equity and cannot be obtained in a court of law.'" *Calabi v. Gov't Emps. Ins. Co.*, 353 Md. 649, 653–54 (1999) (quoting *Horst v. Kraft*, 247 Md. 455, 459 (1967)). For laches to bar an equitable action, there must be "both an inexcusable delay" in bringing the action, as well as "'prejudice to the party asserting the defense.'" *Murray*, 233 Md. App. at 260 (quoting *Dep't of Human Serv. v. Kamp*, 180 Md. App. 166, 205 (2008)). "Prejudice is 'generally held to be anything that places [the defendant] in a less favorable position.'" *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 586 (2014) (quoting *Ross v. State Bd. of Elections*, 387 Md. 649, 669–70 (2005)).

We recently explained the standard of review for application of the doctrine of laches, as follows:

> [T]he question of whether laches has been established is a mixed question of fact and law. *Liddy v. Lamone*, 398 Md. 233, 245 (2007). Whether the elements have been established is a question of fact to be reviewed under a clearly erroneous standard, but whether, "in view of the established facts, laches should be invoked, is a question of law." *Id.* at 246. "Accordingly, where the issue is whether a party is precluded by laches from challenging

> an action of another party, we shall review the trial court's ultimate determination of the issue *de novo*." *Id.* at 248–49.

Anderson v. Great Bay Solar I, LLC, 243 Md. App. 557, 611 (2019), *cert. denied*, 468 Md. 224 (2020).

A.

Unreasonable Delay

We begin with the issue of unreasonable delay. In addressing this issue, we look to (i) when the claim became ripe, i.e., the time when a claim could be made; and (ii) whether the passage of time between then and the filing of the complaint was unreasonable. *State Ctr., LLC*, 438 Md. at 590. *Accord Anderson*, 243 Md. App. at 612. We consider the "'delay in asserting the claim and its causes and weigh[] that against the prejudice to the defendant caused by the late assertion of the equitable claim.'" *Anderson*, 243 Md. App. at 611 (quoting *Murray*, 233 Md. App. at 260).

Here, the circuit court found no unreasonable delay for the nine-month period of time from the date of the settlement in June 2018 to March 2019 because the parties were actively trying to negotiate the written agreement. That finding is supported by the record and not clearly erroneous.

The court then addressed the delay between March 2019, when communications between the parties broke down, and the filing of the motion to enforce in October 2020, a period of approximately 19 months. The court found that this time could not be characterized as delay by Mr. Farooq, noting that he had done what he could to finalize the agreement, but Mr. Sheikh refused to transfer the property. The court rejected Mr. Sheikh's

argument that Mr. Farooq had a limited amount of time at that point to bring an action to enforce the settlement, noting that Mr. Farooq "had three years to bring an action to enforce the parties' contract, and he acted within that time."

We agree with the circuit court that there was not an unreasonable delay. The Court of Appeals has explained that the doctrine of laches and statute of limitations "have an intertwined relationship," and we should consider this "as a first step in" evaluating whether the delay was unreasonable. *State Ctr., LLC*, 438 Md. at 603. The Court stated: "Choosing the applicable measure of impermissible delay for cases where an equitable remedy is sought is most straightforward in cases where there are concurrent legal and equitable remedies and the applicable statute of limitations for the legal remedy is equally applicable to the equitable one." *Id.* at 604 (quoting *Schaeffer v. Anne Arundel Cnty.*, 338 Md. 75, 81 (1995)). Therefore, when an equitable remedy is sought, "'the period of limitations most nearly apposite at law will be invoked by an equity court, provided there is not present a more compelling equitable reason–such as fraud or other inequitable conduct which would cause injustice if the bar were interposed–why the action should not be barred.'" *Id.* (quoting *Schaeffer*, 338 Md. at 81). *Accord Daughtry v. Nadel*, 248 Md. App. 594, 627–28 (2020). The statute of limitations, however, should be used as a guideline, and courts are not "irrevocably bound" by that time period and may "consider whether the plaintiff's delay was unreasonable and whether it resulted in prejudice to the defendant." *Daughtry*, 248 Md. App. at 627–28.

Here, we agree with the circuit court that, given the three-year statute of limitations to file a breach of contract suit, and that Mr. Sheikh could have taken action to finalize the settlement, the delay was not unreasonable for the purpose of laches. The circuit court's finding in this regard was not clearly erroneous.

B.

Unfair Prejudice

Unfair prejudice "is 'generally held to be any thing that places [the defendant] in a less favorable position.'" *State Ctr., LLC*, 438 Md. at 586 (quoting *Ross*, 387 Md. at 670). Mr. Sheikh contends that he was prejudiced by the delay of two and one-half years because "the positions of the parties and circumstances have been altered to the extent that the proposed settlement terms are no longer practical." Mr. Farooq argues that Mr. Sheikh was not "prejudiced by the passage of time" because he "maintained possession and use of the property during the entire time of delay," and he collected rent and refinanced the loan. He asserts that Mr. Sheikh could have transferred the property to him, and Mr. Sheikh's refusal to do so, which resulted in costs associated with continued ownership, was not prejudice caused by Mr. Farooq.

The court was persuaded by Mr. Farooq's argument. In finding that Mr. Sheikh was not prejudiced by the delay, the court noted that it was Mr. Sheikh who refused to proceed with the transfer, and he had full use of the property during that time and "collected rent from a tenant during much of this time." The court's finding of no prejudice was not clearly erroneous.

Given the court's factual findings, we conclude that the court properly concluded that the doctrine of laches did not bar Mr. Farooq's claim.

II.

Settlement Terms

Mr. Sheikh next contends that the circuit court erred in rewriting the terms of the parties' agreement. He asserts that the court created settlement terms in its order that were not agreed to during the original settlement. As Mr. Farooq noted, however, Mr. Sheikh did not identify in his brief the specific terms that he alleges the court "created" in its order.

In his reply brief, Mr. Sheikh stated that the agreement on the record was supplemented to adapt to changes, and Mr. Farooq agreed to pay the balance due on the property when the parties learned of the due-on-sale provision in the loan. Mr. Sheikh then argued that, as a result of the delay in transferring the property, an adjustment in the terms of the settlement was needed, including credits for expenses he incurred since the settlement. He did not address the issue raised in his initial brief, i.e., that the court allegedly "created" new terms, but instead, he stated that the court "failed to address the prejudicial sequence of events that occurred during the 2 ½ year unexplained and unreasonable delay."[12]

[12] The dissent concludes that the circuit court should have denied the motion to enforce the settlement agreement on the ground that the parties did not reach an enforceable settlement agreement because the agreement was not reduced to a signed writing. The circuit court rejected that argument, and Mr. Sheikh did not contest that finding on appeal. Instead, he implicitly agreed that there was an enforceable agreement by arguing that the court "erred in rewriting the terms of the agreement." At oral argument, when counsel for

Mr. Sheikh cites caselaw in support of his argument that a court cannot rewrite a contract without mistake, fraud, or duress. As indicated, however, he did not specify in his brief what terms the court allegedly altered. "'[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.'" *Anne Arundel Cnty. v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015) (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)). *Accord* Md. Rule 8-504(a)(6) ("A brief shall . . . include . . . [a]rgument in support of the party's position on each issue.").

At oral argument, counsel for Mr. Sheikh said there were two terms the court created: (1) that he pay a lump sum of $20,449.50 on June 1, 2021, unless the amount is adjusted as otherwise provided in the order; and (2) the court rejected his request for an adjustment based on expenses he incurred during the delay. The second provision did not "create" terms, but rather, it rejected Mr. Sheikh's effort to create terms that were not included in the record.

Moreover, with respect to both provisions, Mr. Sheikh acknowledges that the court needed to make adjustments due to the delay, but he cites no law regarding how the court should do that. *See Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010) ("[I]t 'is not

Mr. Sheikh was asked if his position was that, when parties reach a settlement that contains all material terms, but one party subsequently refuses to sign a written document, that party cannot enforce the contract, counsel said "no," and he explained that he was saying that Mr. Farooq failed to comply with the agreement because he did not provide for the agreed upon release in the written documents provided. Because counsel did not argue in his briefs that the circuit court erred in granting the motion to enforce because there was no enforceable agreement, and at oral argument, he specifically rejected that argument as a ground for reversal, we will not address this issue.

our function to seek out the law in support of a party's appellate contentions.'"); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (refusing to consider an argument that was "completely devoid of legal authority"). Under these circumstances, we conclude that Mr. Sheikh's claim regarding the terms of the order is waived, and we will not address the claim on the merits. *See State Roads Comm'n v. Halle*, 228 Md. 24, 31 (1962) (where appellant does not present argument in support of his contentions, the point is waived); *see also Oroian v. Allstate Ins. Co.*, 62 Md. App. 654, 658 (1985) (where appellants cite no authority for their positions, "[w]e deem it waived").

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

Circuit Court for Baltimore City
Case No. 24C16007112

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 188

September Term, 2021

IBRAHIM SHEIKH, *et. al.*,

v.

M. ALI FAROOQ

Graeff,
Berger,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: January 24, 2022

Raker J., dissenting:

I respectfully dissent. I would hold that the circuit court erred or abused its discretion in enforcing the purported settlement agreement. While the parties placed a purported agreement on the record, they anticipated a written, signed, and more detailed settlement agreement, containing releases, which never came to pass. In addition, during negotiations following the court appearance where the parties placed an "agreement" on the record, the ultimate terms of any agreement varied from the terms placed upon the record. The agreement lacked material terms, and the parties failed to agree on those terms during subsequent negotiations. After the lapse of an extended period of time, the agreement stated by the court to be enforced varied from the terms of the purported agreement that was placed on the record and added terms that were not agreed upon by the parties, which evidences that no enforceable agreement was reached.[1]

A settlement agreement may be enforceable by a court if it is the product of a mutual agreement between the parties. A settlement agreement is a matter of contract, and without a meeting of the minds as to *all material terms*, as a matter of basic contract law, there can be no enforceable settlement agreement. *See 4900 Park Heights Avenue LLC v. Cromwell*

[1] I do not need to rely upon the doctrine of laches. Clearly post-settlement negotiations, in drafting final settlement documents, are to be encouraged, and parties should not rush to court to enforce a purported settlement agreement. But, two and one half years is unreasonable delay to enforce a settlement agreement, especially when the facts and circumstances have changed. Even eighteen months from the time any breach of the purported agreement was evident is too long to bring a motion to enforce. *See, e.g.*, *Morris v. Wilson*, 187 Md. 217, 227 (1946) (holding fourteen month delay between filing of "original bill" and filing of "supplemental bill" was unreasonable for purposes of laches analysis).

Realty 1, LLC, 246 Md. App. 1, 18, 31 (2020); *Maslow v. Vanguri*, 168 Md. App. 298, 322 (2006) ("an agreement that omits an important term, or is otherwise too vague or indefinite with respect to essential terms, is not enforceable."). For a court to enforce a settlement agreement, the court must determine that there are sufficient facts to resolve any disputes over material terms and must find that all material agreed-upon terms are sufficiently definite to enable the court to give them an exact meaning. *See Falls Garden Condominium Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 304 (2015); *Hensley v. Alcon Laboratories, Inc.*, 277 F.3d 535, 540-1 (4th Cir. 2002); *Smith v. Farrell*, 98 S.E.2d 3, 7 (Va. 1957). Accordingly, if any material terms of the proposed settlement "agreement" were not resolved by the parties, or changed during later negotiations, there was no enforceable agreement for the court to enforce.

While a verbal settlement agreement may be enforceable, and one where the terms of the agreement are placed upon the record is often enforceable, a settlement that includes a term requiring that it be reduced to a signed writing is not enforceable unless and until that contingency is fulfilled. *Peoples Drug Stores v. Fenton Realty Corp.*, 191 Md. 489, 494 (1948); *see also Golding v. Floyd*, 539 S.E.2d 735, 736, 738 (Va. 2001) (holding that a handwritten "Settlement Agreement Memorandum," agreed to at a mediation, was not a binding settlement agreement where all parties understood that a formal settlement agreement had to be drafted and signed); *Atlantic Coast Realty Co. v. Robertson's Ex'r*, 116 S.E. 476, 478 (Va. 1923) (holding that where the parties contemplate signing a written agreement later, there is a presumption that "no final contract has been entered into, which

requires strong evidence to overcome."). Generally, courts do not rewrite contracts for parties. *See Compania de Astral, S. A. v. Boston Metals Co.*, 205 Md. 237, 271 (1954); *Fultz v. Shaffer*, 111 Md. App. 278, 298 (1996).

As evident from the statement of facts set out in the majority opinion, there were many material terms that the parties did not agree upon.[2] Because the parties did not reach a complete and enforceable settlement agreement, the circuit court should have denied appellants' motion to enforce the settlement agreement. *See Wood v. Va. Hauling Co.*, 528 F.2d 423, 426 (4th Cir. 1975) (holding "there is no such thing as [a] 95 percent settlement," and that a trial court's task is therefore simply to discern whether there was a complete deal that it may enforce); *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 551 (D. Md. 2019).

[2] The trial judge's written ruling states, in pertinent part, as follows:

> "The Court must craft appropriate relief to enforce the parties' agreement in light of the long passage of time since June 28, 2018. At the core of the agreement is [appellee]'s entitlement to resume ownership of the Property in his own name or through a designee. The Court will require that [appellants] transfer the Property to him or his designee within ninety days. [appellee]'s attorney or a title company selected by [appellee] will prepare the deed and make the necessary arrangements for the transfer. Any transfer taxes or fees will be divided equally between [appellee] and [appellants].
>
> ***
>
> At the closing on transfer of the Property, any amounts due for property taxes, water bills, utilities or any other expenses related to the Property up to the date of transfer will be the obligation of [appellants] because they have had use and possession of the property until then.
>
> ***
>
> The past lump sum of $20,449.50 . . . must be paid as a payment under the note by June 1, 2021."

The majority declines to address the issue of whether the settlement agreement is unenforceable because appellants did not make this argument adequately on appeal. The majority finds that appellants argued only about the trial court rewriting, rather than creating, terms. I do not agree with that analysis.

It is clear from the questions presented to this Court on appeal that appellants were arguing that the circuit court modified improperly the parties' agreement by adding material terms that were not contained in that initial settlement agreement that was placed on the record. *See* Maj. Op. at 1. First, approximately five minutes into oral argument, I asked appellants' counsel "are you arguing that the agreement that was put on the record in court lacked material terms?" And, appellants' counsel responded in the affirmative: "it lacked material terms because the terms were changed." I asked again to make sure that counsel understood my question; "but the agreement itself, you're not saying lacked material terms?" Again, appellants' counsel replied: "it did because of the changes." To me, it is clear that appellants were arguing that the agreement lacked material terms. Additionally, about twelve minutes into oral argument, appellants' counsel cited *4900 Park Heights Avenue LLC v. Cromwell Realty 1, LLC*, 246 Md. App. 1 (2020), a recent opinion of this court that discusses extensively the requirement that settlement agreements, to be enforceable, contain all material terms.

Second, I disagree that this argument was not in appellants' opening brief. Appellants' opening brief, on page twenty, states, in pertinent part:

> "Furthermore, reformation of the agreement is erroneous if the evidence and testimonies in the record do not

> support the relief granted to [appellee] . . . . [appellee] 'must also be able to show with equal clearness and certainty the exact and precise form and import that the instrument ought to be made to assume, in order that I may express and effectuate what was really intended by the parties.' *Keedy v. Nally*, 63 Md. 311, 316 (1885); *White v. Shaffer*, 130 Md. 351, 359-61; 99 A. 66, 69 (1917). (Emphasis added)."

The word "[f]urthermore" signifies that appellants were moving away from their argument about replacing terms and into a new argument. That new argument was an argument that the agreement lacked sufficient clarity and certainty for a court to make it work, which is an argument about lacking material terms.

In short, I would consider the argument that the purported settlement agreement was unenforceable for lack of material terms, and I would hold the circuit court should not have granted appellee's motion to enforce.