Circuit Court for Montgomery County
Case No. 448227-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 455

September Term, 2020

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LEONARD GREENBERG, *ET AL.*

v.

RONALD GRUDZIECKI, *ET AL.*

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Fader, C.J.,
Nazarian,
Leahy,

JJ.

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Opinion by Nazarian, J.

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Filed: December 23, 2021

* 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.

Don’t it always seem to go
That you don't know what you’ve got till it’s gone
They paved paradise, put up a parking lot[1]

It’s true that this appeal isn’t *just* about a parking space—it arises from a dispute over the use and enjoyment of common areas located within the parking garage of a condo building, including the area around a parking space, an entrance to the garage, and two storage containers built into the garage walls.

Leonard and Linda Greenberg are residents of a residential condominium building known as the Edgemoor Condominium Residences. The Greenbergs filed suit in the Circuit Court for Montgomery County against the Edgemoor Condominium Residence Association (“the Association”), Ronald and Susan Grudziecki, and Miltam DC, Inc. (“Miltam”)[2], seeking equitable and declaratory relief designed to (1) prevent the Grudzieckis from blocking access to and from the garage elevator entrance and (2) dismantle storage units the Grudzieckis and Miltam (actually, Miltam’s predecessor) constructed over a decade ago. After motions from all parties, the court, over the course of three separate hearings conducted by three different judges, ultimately granted summary judgment in favor of the Association, the Grudzieckis, and Miltam on the grounds that the Greenbergs’ claims were barred by the statute of limitations and that they failed to establish that any contractual duties had been breached. The Greenbergs appeal and we affirm.

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[1] J. Mitchell, “Big Yellow Taxi,” from *Ladies of the Canyon* (Reprise Records 1970).

[2] Miltam is a District of Columbia corporation owned by the Levines. The Levines were named in the original complaint in this suit but were ultimately dismissed.

## I. BACKGROUND

This case has a long and complicated history, but it coalesces around two grievances: the Greenbergs object to the way Mr. Grudziecki parks his car in his parking space and to the construction in 2003 of two storage units in the condominium's garage.

Edgemoor is a residential condominium building in Bethesda. The Association governs the condo building's internal affairs. The Greenbergs own and live in one of the units and are fee simple owners of two parking spaces. Ronald and Susan Grudziecki own and live in another unit and are the fee simple owners of two parking spaces.

Both sets of parking spaces are located on the same floor of the garage. The Grudzieckis' parking spaces sit to the left of a garage entrance that provides access to the building's elevators. A small strip of pavement separates the right-most Grudziecki space, Mr. Grudziecki's primary parking spot, from a pillar and the wall located directly next to the elevator vestibule. The Greenbergs' parking spaces sit directly across from the Grudzieckis', separated only by a driving lane. In front of the door to the elevators is a ramp with a handrail; Mr. Grudziecki's parking space sits to the left of the ramp, and there's an open area on its right. The entrance to the elevator vestibule from the right is free of obstruction and satisfies all access requirements.

When Mr. Grudziecki parks his car in his spot, even within the lines, it is difficult, if not impossible, to access the ramp to the garage entrance from the left side. As a practical matter, unit owners who wish to access the elevator area must walk to the right side of the ramp when he is parked there. The Greenbergs argue that it's possible to enter from the left

side if Mr. Grudziecki pulls his car forward or moves farther toward the left side of the parking space. When he doesn't, the Greenbergs contend that they are forced to walk around the right side of the ramp, which is farther away from their parking spaces, because Mrs. Greenberg is disabled and requires the use of a walker.

The Edgemoor Condominium Declaration ("Declaration") and Edgemoor Condominium Rules ("Rules") are the governing documents for the condo and its residents. Both convey certain rights and obligations to unit owners, and both are enforced by the Association against unit owners. At issue in this case are the sections relating to common elements and garage units.

In 2003, the Grudzieckis and Eugene Smith obtained permission from the condo developer, PN Hoffman, to build storage units into the wall directly in front of their parking spaces. At the time, Mr. Smith owned a unit and two parking spaces on the same floor as the Greenbergs and Grudzieckis. Milton and Tamara Levine purchased Mr. Smith's unit in 2012, and it is owned currently by Miltam. Mr. Smith and Mrs. Grudziecki entered into a License Agreement ("the Agreement") with the Association in 2005 that memorialized the construction of the storage units in front of their existing parking spaces. The Agreement recites the fact that there was concern from the Association after construction that the storage units may have enclosed portions of the condo's common elements or spaces. The issue was discussed at a regular meeting of the Association's Board of Directors on March 2, 2005, and reflected in the minutes:

> A motion was made to approve the property line storage areas of Grudziecki and Smith that are adjacent to their parking

> spaces. Under the terms of the proposed license agreement payments equal to other condominium fees for storage units in the building will be paid plus these homeowners will reimburse the association for legal fees in connection with this matter. The motion was seconded and approved.

The Agreement was authorized and recorded in the Montgomery County Circuit Court Land Records office on December 7, 2005. The core purpose of the Agreement was to grant an easement and license to Mrs. Grudziecki and Mr. Smith for use and enjoyment of the storage units in exchange for an annual fee:

> The Association hereby grants and conveys to the respective Condo Owner an irrevocable, perpetual, permanent and exclusive right, easement and license (the "Easement") to utilize for parking and/or storage uses those portions of such Condo Owner's respective Garage Spaces that are not owned by such Condo Owner or that lie within the Building's general or limited Condominium common elements or common areas (the "Common Areas"), in which Common Areas all or any part of such Owner's Storage Space or Garage Spaces exist or are built as of the date hereof.

On May 24, 2018, the Greenbergs filed a complaint in the circuit court against the Grudzieckis and the Association. They alleged five causes of actions (four of which are at issue here) that sought primarily equitable relief for violations of the Declaration and Rules and the Association's failure to enforce the Declaration and Rules against the Grudzieckis. The Greenbergs filed an amended complaint on August 21, 2018 that added Miltam as a party. On February 11, 2019, they filed a second amended complaint that added the Levines as parties and supplemented their factual allegations. The second amended complaint is the

operative complaint for purposes of this appeal.[3] The four relevant counts are:

1. Count I - Preliminary and Permanent Injunction
2. Count II - Specific Performance
3. Count III - Breach of Contract
4. Count IV - Declaratory Judgment.[4]

Count I, "Preliminary and Permanent Injunction," seeks, among other things, to enjoin the Grudzieckis from parking too close to the entrance of the parking garage elevator. It also seeks to enjoin the Grudzieckis and Miltam from using their storage units. Count II, "Specific Performance," seeks essentially the same forms of relief. Count III, "Breach of Contract," seeks monetary relief as well as attorney fees. Count IV, "Declaratory Judgment," asks the court to declare and decree, among other things, that the Grudzieckis have been blocking a common element pathway improperly and that the Association violated the Declaration by not obtaining the required consent before granting a "permanent, irrevocable license" for the storage unit space to the Grudzieckis and Miltam.

The Grudzieckis and the Association moved separately for summary judgment on

[3] Appellants filed a third amended complaint on June 10, 2019 that included, among other things, new breach of contract counts against the Grudzieckis and Edgemoor. But trial had been set for July 9, 2019, and the circuit court declined to grant leave to file the third amended complaint within thirty days before trial. The parties agree that the second amended complaint is the operative one, the circuit court treated it as such, and we will do the same.

[4] The Greenbergs take issue with four counts on appeal. Count V alleged the Grudzieckis and Edgemoor violated the Maryland Fair Housing Act. The Greenbergs do not raise this issue in their brief, and we will not address it.

all counts. The circuit court proceeded with the first summary judgment hearing on April 25, 2019 and treated the motions for summary judgment as directed at the second amended complaint. On July 3, 2019, the court issued an Opinion and Order that granted summary judgment in favor of both the Grudzieckis and the Association on all counts. Miltam then filed a motion to dismiss all counts. On October 8, 2019, the court held a hearing on Miltam's motion to dismiss, and on the following day the court issued an Order granting the motion to dismiss Count II (Specific Performance) and Count III (Breach of Contract). Miltam then filed a motion for summary judgment that the court heard on November 19, 2019. In a November 27, 2019 Order, the court granted Miltam's motion for summary judgment on the remaining counts, Count I (Preliminary and Permanent Injunction) and Count IV (Declaratory Relief). The Greenbergs filed a timely notice of appeal. We supply additional facts as necessary below.

## II. DISCUSSION

The Greenbergs challenge the circuit court's decisions to dismiss or grant summary judgment in favor of the Grudzieckis, the Association, and Miltam on all of their claims.[5]

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[5] The Greenbergs raise four Questions Presented:

> 1. Did the trial court err in ruling that the Greenbergs have no contractual rights against the Appellees?
>
> 2. Did the trial court err in ruling that the Appellees did not violate any contractual duties owed to the Greenbergs and, in any event, that the Appellees did not owe any such duties the Greenbergs.
>
> 3. Did the trial court err in ruling that the Greenbergs failed to state a cause of action against the Appellees for breach of contract?

4. Did the trial court err in finding that there were no genuine issues of material fact in dispute in granting summary judgment in favor of Appellees as to all Counts of the Greenbergs' Complaint?

Edgemoor listed its Questions Presented as follows:

1. Was the circuit court correct in ruling that the Association did not breach the provision in the Condominium's Declaration that subjects common elements "to an easement in favor of all the Unit Owners for reasonable and necessary pedestrian and vehicular ingress and egress to and from improvements within the Property," and then entering summary judgment in favor of the Association?

2. Did the circuit court abuse its discretion in refusing to issue an injunction, or order specific performance – which would have forced modifying or reconfiguring parking spaces and dismantling storage units, and would have also required the court to police the way Mr. Grudziecki parks his car – and then entering summary judgment in favor of the Association and the Grudzieckis?

3. Have the Greenbergs sufficiently raised an issue regarding Count IV, which sought a declaratory judgment?

4. If so, did the circuit court abuse its discretion in declining to issue a declaratory judgment, because a declaratory judgment would serve no useful purpose, and then entering summary judgment in favor of the Association and the Grudzieckis?

5. Was the circuit court correct when it determined that the statute of limitations barred the Greenbergs' 2018 challenge to storage units installed in 2003, and which were the subject of a 2005 written agreement, and then entering summary judgment in favor of the Association?

The Grudzieckis listed their Questions Presented as follows:

1. Did the trial court abuse its discretion in denying the Greenbergs' request for an injunction as to Count I in the absence of both an enforceable right and irreparable harm?

2. Was the trial court legally correct to grant judgment to the Grudzieckis as to Count II (Specific Performance) when there is no allegation that the Grudzieckis breached a duty?

The Greenbergs raise a number of arguments that, they claim, should have defeated summary judgment, and they contend that the circuit court should have invoked its

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> 3. Did the trial court abuse its discretion in denying the Greenbergs' request for specific performance as to Count II when granting the request would transform the court into a "Parking Czar" and be otherwise impossible to enforce?
>
> 4. Was the trial court legally correct when it concluded that there was no genuine dispute of material fact in support of the Greenbergs' claim that the manner in which Mr. Grudziecki parks obstructs ingress and/or egress under the applicable Rules?
>
> 5. Did the trial court abuse its discretion in denying the Greenbergs' request for a declaratory judgment as to Count IV when a grant of the request would not terminate the controversy?

Miltam presented their Questions Presented as follows:

> 1. Did the trial court err in dismissing Count II (Specific Performance) and Count III (Breach of Contract) of the Second Amended Complaint against Miltam where the Greenbergs failed to allege any facts showing that Miltam breached any contractual obligation, and further failed to allege that any actions by Miltam caused them any loss or damage?
>
> 2. Did the trial court err when it determined that the statute of limitations barred the Greenbergs' 2018 challenge of a contract entered into in 2005, relating to storage units constructed in 2003, when it was undisputed that the Greenbergs had been on inquiry notice of the storage units for at least ten years?
>
> 3. Did the trial court err when it granted summary judgment to Miltam as to Count I (Injunction) and Count IV (Declaratory Judgment), when it had previously and correctly granted summary judgment to the Grudzieckis and the Association based on the same issues and operative facts?
>
> 4. May this Court review decisions made by the trial court when the Greenbergs failed to assign error or otherwise raise or argue such decisions on appeal to this Court?

equitable powers to (1) enjoin the Grudzieckis from parking in a way that obstructs the Greenbergs' access to the elevator vestibule and (2) deconstruct the storage units located directly in front of the parking spaces. However, because none of the Greenbergs' appellate theories can stretch the Declaration, Rules, or License Agreement credibly to reach the unit owners or the Association as they'd like, we hold that the circuit court granted summary judgment in favor of the Association, Grudzieckis, and Miltam, and dismissed two counts of the complaint against Miltam correctly.

We apply more than one standard of review because the issues before us were resolved in part by way of summary judgment and in part by way of a motion to dismiss. Summary judgment is appropriate when "there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). When we review a decision to grant summary judgment, we decide whether the trial court's grant of the motion was legally correct. *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152–53 (2008). We resolve all inferences from the record against the moving party. *Id.* Courts should "review any filing that shows, 'in detail and with precision, by facts admissible in evidence,' [] that there is a genuine dispute." *George v. Baltimore Cnty.*, 463 Md. 268, 274 (*quoting Mullan Contracting Co. v. IBM Corp.*, 220 Md. 248, 257 (1959)). So, although ordinarily "'mere allegations neither establish facts, nor show a genuine dispute of fact,'" it is appropriate for us to consider the allegations in the complaint, in conjunction with the evidence and the parties' arguments, to determine whether the grant of summary judgment was appropriate. *Id.* at 273 (*quoting*

*Vanhook v. Merchs. Mut. Ins. Co.*, 22 Md. App. 22, 27 (1974); *see also id.* at 274 (*quoting Cox. V. Sandler's Inc.*, 209 Md. 193, 197 (1956)) (Observing that "courts should look to the 'pleadings, depositions, and admissions on file, together with the affidavits, if any' to determine whether a dispute exists.").

"When the moving party has set forth grounds sufficient for the grant of summary judgment, the opposing party must show with 'some precision' that there is a genuine dispute of a material fact." *Collins v. Li*, 176 Md. App. 502, 591 (2007) (citations omitted). "Facts must be proffered by the opposing party which would be admissible in evidence." *Id.* The existence of some alleged factual dispute and immaterial factual disputes are not genuine disputes of material fact. *Id.*

The circuit court resolved two counts of the Greenbergs' claims by granting Miltam's motion to dismiss Count I (Preliminary and Permanent Injunction) and Count IV (Declaratory Judgment). When reviewing a decision to grant a motion to dismiss for failure to state a claim upon which relief can be granted, "we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Schisler v. State*, 177 Md. App. 731, 743 (2007) (citations omitted). In so doing, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Converge Servs. Grp. v. Curran*, 383 Md. 462, 475 (2004) (*citing Porterfield v. Mascari II, Inc.*, 374 Md. 492, 414 (2003)). That said, "[t]he well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Ne., LLC v. BAA*

*Maryland, Inc.*, 413 Md. 638, 644 (2010) (citations omitted). In addition, "[i]n the interest of judicial efficiency, we may affirm the judgment of a trial court to grant a motion to dismiss on a different ground than that relied upon by the trial court, as long as the alternative ground is before the Court properly on the record." *Forster v. State, Off. of Pub. Def.*, 426 Md. 565, 580–81 (2012) (citations omitted).

The Greenbergs have raised both sets of issues in each of their four counts, so rather than addressing the various counts in numerical order, we'll deal first with the parking space issues, then the storage units.

**A. The Trial Court Correctly Granted Summary Judgment On All Counts Related To The Parking Space.**

*1. Count III - Breach of Contract*

In Count III, Breach of Contract,[6] the Greenbergs sought monetary damages for the Grudzieckis' and the Association's alleged breach of the Declaration (as we'll see, they sought other relief for the same breaches in other counts). The Greenbergs argue that the Grudzieckis breached the Declaration by parking their vehicles in a way that obstructs and blocks the Greenbergs' and other condo owners' use of the left side of the access ramp leading to the elevator vestibule. Despite the court's reluctance to do so, it assumed an enforceable contract had been established, but granted summary judgment on the ground that the Greenbergs had failed to prove that the Grudzieckis or the Association breached

[6] Counts I, II and IV all seek forms of relief arising from the breach of contract claim—that's the only cause of action alleged in those counts. When addressing these issues during the summary judgment hearings, the court considered whether there was a triable issue as to whether any contractual obligation was owed to the Greenbergs.

the Declaration:

> This provision expressly provides Plaintiffs a right to "reasonable and necessary pedestrian and vehicular ingress and egress to and from improvements within the Property." It is undisputed that located directly in front of the elevator bank is an accessible ramp with railings on either side of it. . . . This accessible ramp and the sidewalks supply Plaintiffs with their reasonable and necessary pedestrian ingress and egress.

For the reasons we detail below, the circuit court did not err in granting summary judgment on the Greenbergs' breach of contract claim. At bottom, the Greenbergs have not established that the Grudzieckis or the Association breached their right to access the common areas because access to the narrow strip between the parking space and garage wall is neither reasonable nor necessary for pedestrian ingress and egress to the garage.

We start with the law governing condominiums. A condominium is a "communal form of estate in property consisting of individually owned units which are supported by collectively held facilities and areas." *Andrews v. City of Greenbelt*, 293 Md. 69, 71 (1982). In addition to the interest each unit owner acquires in their particular unit, they also are a tenant in common in the underlying fee and in the spaces and building parts used in common by all unit owners. *Id.* As such, condo unit owners hold a hybrid property interest that consists of an exclusive ownership of a unit and a tenancy in common with the other co-owners in the common elements. *Id.* at 73–74. In exchange for the benefits of owning property in common, condo owners agree to follow the rules and regulations that govern the administration, maintenance, and use of property. *Id.* at 73.

In order to form a condominium regime, the Maryland Condominium Act requires the developer to prepare a declaration, bylaws, and condominium plat and record them in the land records of the county in which the condominium is located. Md. Code (1974, 2015 Rep. Vol., 2021 Cum. Supp.), § 11-102(a) of the Real Property Article ("RP"). Condominiums are treated like real property as each "unit in a condominium has all of the incidents of real property." RP § 11-106(a).

In *Garfink v. Cloisters at Charles, Inc.*, the Court of Appeals held that an easement contained in a condominium's declaration is subject to the traditional law of easements. 392 Md. 374, 392 (2006). "An easement is the 'non-possessory interest in the real property of another' and arises through express grant or implication." *Stansbury v. MDR Dev. Inc.*, 390 Md. 476, 486 (2006) (*quoting Boucher v. Boyer*, 301 Md. 679, 688 (1984)). The scope of an easement is defined using standard principles of contract interpretation. *Garfink*, 392 Md. at 391; *see also Miller v. Kirkpatrick*, 377 Md. 335, 351 (2003) (*quoting Buckler v. Davis Sand and Gravel Corp.*, 221 Md. 532, 538 (1960)) ("'The primary rule for the construction of contracts . . . is applicable to the construction of a grant of an easement.'"). In interpreting a contract, "'a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible.'" *Id.* (*quoting Buckler*, 221 Md. at 538). When contract language is unambiguous, the intent is based on what a reasonable person understands the language to mean. *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019) (citations omitted).

Section 5.3(b) of the Declaration defines an easement in favor of all unit owners that gives them reasonable and necessary pedestrian and vehicle ingress and egress to and from improvement in the condo property:

> Each of the sidewalks, lanes, driveways, paved areas, roadways, and other General Common Elements (not including Garage Units or areas designated as part of a Unit or as a Limited Common Element pursuant to this Declaration of the Condominium Plat) shall be subject to an easement in favor of all of the Unit Owners *for reasonable and necessary pedestrian and vehicular ingress and egress* to and from the improvements within the Property and to and from all public and private roadways and streets serving the Property. Each Unit Owner shall have a right of ingress and egress to and from such Unit Owner's Unit. The Common Elements shall be available for the type of uses contemplated in the Planning Board's regulatory approvals.

(Emphasis added.) This type of easement enacts the unit owners' right to access common areas within the condo unit. *Garfink*, 392 Md. at 393. The issue here is whether the designated sidewalks and paved areas provide reasonable and necessary pedestrian and vehicular ingress and egress. Or, stated in the inverse, whether reasonable and necessary pedestrian and vehicular ingress and egress entitle the Greenbergs to traverse Mr. Grudziecki's parking space (which is not a common area) to get to the narrow strip between the space and the wall, and thus whether Mr. Grudziecki is precluded by the Declarations from parking his car in the portion of his space adjacent to the narrow strip.

The Greenbergs complain that the circuit court ignored multiple disputes of material fact, including the width of the common area between Mr. Grudziecki's parking space and

the entrance to the elevator vestibule,[7] whether Mr. Grudziecki parks within the bounds of his parking space or is parking on a common area, and whether the boundary lines of the parking space were altered. But as the circuit court found, the Greenbergs can't manufacture a genuine dispute of fact simply by disagreeing with the Grudzieckis, the Association, and Miltam about their rights under the Declaration. They point to nothing that substantiates their theories that Mr. Grudziecki is parking outside the lines of his parking spot, other than a one-time observation by their expert. They haven't presented any evidence, nor cited any case or authority, supporting their claim that a second entrance is reasonable or necessary for them to access the elevator vestibule. In their reply brief, they argue that reasonable and necessary pedestrian egress and ingress should be decided by a jury, but they provide no evidence on which a jury could rely. And although it's true, as the Greenbergs argue, that it's possible to enter from the left side of Mr. Grudziecki's parking spot, that doesn't mean that reasonable and necessary access requires it, especially in light of their undisputed access to the elevator vestibule via the ramp on the right-hand side a few feet away as the circuit court explained:

> Moreover, [the Greenbergs] have failed to show the necessity for their use of the two-foot wide space adjacent to the Grudzieckis' parking space to access the common use Condominium elevator. Apparently, the two-foot wide space adjacent to the Grudzieckis' parking space is closer to Ms. Greenberg's parking space and requires her to travel a greater distance to reach [Greenbergs] vehicles from the Condominium and to exit the G-2 parking garage level. . . .

[7] The Greenbergs claim that the true width of the space is around two feet. The Grudzieckis say it's closer to six inches. The circuit court assumed the width was two feet and so will we.

> However, the declaration only entitles [the Greenbergs] to reasonable and necessary pedestrian ingress and egress to and from improvements within the Property, [sic] not multiple means of ingress and egress from which they can choose depending upon where in the garage their parking spaces are located.

We agree with the circuit court that the Declaration doesn't entitle the Greenbergs to access via two entrances to the elevator vestibule. The right-side entrance is essential for the condominium to comply with the Maryland Accessibility Code, as well as the Americans with Disabilities Act Accessibility Guidelines, and satisfies the requirement that the Association provide reasonable and necessary access.[8] The Greenbergs (and everyone else) have unencumbered access to the elevator vestibule via the right-side entrance and ramp, and although that entrance requires a slightly longer walk from the Greenbergs' parking spaces than the left might, the marginal few feet don't render that access point unreasonable.

We recognize that Mrs. Greenberg has suffered a stroke and don't mean to diminish her mobility challenges. And we have no doubt, as the Greenbergs represent, that "Mrs. Greenberg routinely utilized the open area next to Grudzieckis' parking space G2-18 as it provided a shorter and more direct path for her to exit and enter the parking garage." Nevertheless, we agree with the circuit court that the Greenbergs "failed to show the

[8] Common use spaces of a dwelling must be readily accessible and usable for individuals with disabilities and comply with the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physical Handicapped People (commonly cited as ANSI A117.1). Md. Code (1984, 2021 Rep. Vol.), § 20-706(c)(1) and (2) of the State Government Article.

necessity for their use of the two-foot-wide space adjacent to the Grudzieckis' parking space to access the common use Condominium elevator." The possibility that there might be a slightly shorter and more direct path for the Greenbergs does not compel the conclusion that their right to reasonable ingress and egress encompasses that path.

The Greenbergs argue as well that the Grudzieckis and the Association have breached the condo's "No Obstruction" Rule[9]:

> The sidewalks, paths, driveways, hallways, and other areas for use in getting to and from parking spaces, Units and/or common areas shall not be obstructed or used for any purpose other than for ingress to and egress from the parking spaces, Units and/or common areas.

As alleged, though, the Grudzieckis aren't blocking any sidewalks, paths, driveways, or hallways—they're parking their car in their space, which is not a common area. And for the reasons discussed above, the Greenbergs have reasonable and necessary access to the elevator vestibule and the adjacent common areas, which is what the Declaration affords them.

2. *Count II - Specific Performance*

In Count II, Specific Performance, the Greenbergs sought to enjoin the Grudzieckis from parking close to the garage wall in a way that, they allege, encroaches on a common area between the parking space boundary line and garage wall and blocks the Greenbergs' access to the elevator vestibule from the left side. The Greenbergs also sought to compel

[9] The Association contests whether this Rule even applies to this case and stated in its brief that the Rule no longer is in effect. We will assume for present purpose that the Rule remains in effect.

the Association to enforce the Declaration and have the court redefine the parking space lines so the Greenbergs and others can enter and exit the elevator vestibule from the left side.

Specific performance isn't a cause of action in itself—it's a potential remedy for breach of contract, so a prerequisite is an enforceable contract. *Falls Garden Condo. Ass'n, Inc., v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 308 n. 8 (2015). Maryland law requires a breach of contract claim to allege with specificity that the defendant owes a contractual obligation to the plaintiff and breached it. *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 362 (2012). When we consider the sufficiency of the plaintiff's allegations, we construe ambiguity in the complaint against the pleader. *Id.*

The circuit court was not convinced that the Greenbergs had pleaded a breach of contract claim against the Grudzieckis: "Plaintiffs have failed to plead, much less establish, the existence of an enforceable contract between the Grudzieckis and them." And although the prayers for relief in Count II seek an order against Mr. Grudziecki, the allegations underlying Count II focus entirely on the Association's obligation to enforce the Greenbergs' view of the Declaration:

> 29. Under the Declaration, including the Bylaws, *the Association* is responsible, on behalf of the Unit Owners, for enforcing the rules and regulations of The Edgemoor Condominium.
>
> ***
>
> 31. Despite its contractual and fiduciary obligation to Plaintiffs . . . *the Association* has failed and refused to undertake such actions.
>
> 32. For the foregoing reasons the Court should order *the*

> *Association* to perform its duties and responsibilities under the Declaration and Bylaws…

(Emphasis added.) We agree that the circuit court granted summary judgment on this count properly. Specific performance is available only if the Grudzieckis and the Association owed and breached a duty to the Greenbergs under the Declaration, so the specific performance claim falls along with the breach of contract claim itself.

3. *Count I - Preliminary and Permanent Injunction*

The same is true for Count I. A request for injunctive relief doesn't state a cause of action—it's a remedy potentially available if a contract has been breached. And as falls Wichita, so falls Wichita Falls[10]: once the underlying contract claim fails, as the contract claim has here, the requests for relief fail with it, whether couched as separate counts or not.

In Count I, the Greenbergs sought, in eight specific ways, to compel the Grudzieckis to park their vehicle in a way that allows entry to the access ramp from the left side or to redefine the parking spaces in a way that would allow for the Greenbergs to walk through the narrow pathway to the left of the elevator vestibule. They asked first for a preliminary injunction, which maintains the *status quo* until the court can address or resolve the merits of the controversy. *Eastside Vend Distribs. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219 (2006). A complaint seeking a preliminary injunction must establish "'(1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience"

[10] P. Metheny and L. Mays, *As Falls Wichita, So Falls Wichita Falls* (ECM Records 1980).

determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.'" *Ehrlich v. Perez*, 394 Md. 691, 708 (2006) (*quoting Dep't of Transp. v. Armacost*, 299 Md. 392, 404-05 (1984)). The party seeking an injunction has the burden of presenting facts to satisfy these elements. *Id.* (*quoting Fogle v. H & G Rest.*, 337 Md. 441, 456 (1995)) (The "'failure to prove the existence of even one of the four factors'" precludes the grant of injunctive relief. Regarding the factor of the likelihood of success on the merits, "'the party seeking the interlocutory injunction must establish that it has a real *probability* of prevailing on the merits, not merely a remote *possibility* of doing so.'").

The Greenbergs assert that the way in which Mr. Grudziecki parks his car blocks their access to a common element located between his parking space and the wall and, therefore, deny the Greenbergs the full measure of their property rights as unit owners. But even assuming for present purposes that the narrow concrete strip is a common element—the circuit court didn't answer the question definitively—they can't establish a likelihood of success on the merits or, given their unimpeded access to the elevator vestibule from the right side a few feet away, irreparable harm. The circuit court didn't err in denying them preliminary or permanent injunctive relief flowing from a breach of the Declaration.

*4. Count IV - Declaratory Judgment*

Count IV seeks declaratory judgments on ten different items, all of which intertwine with the other claims for equitable relief. The circuit court granted summary judgment in

favor of the Grudzieckis and the Association on this claim. The Greenbergs argue in their brief "[t]he trial court's ruling on the Greenbergs' breach of contract claim effectively resulted in the grant of summary judgment on the Greenbergs' other equitable claims and its declaratory judgment count. Dismissal of a request for declaratory judgment is 'rarely appropriate.' *Broadwater v. State*, 303, Md. 361, 465 (1985)." That's all they say on the issue, and we could opt not to consider it further. *See Mayor & City Council of Baltimore v. Thornton Mellon*, *LLC*, 249 Md. App. 231, 237 (2021) (questions not argued in an appellant's brief are waived or abandoned, and therefore, not preserved). But although a request for declaratory judgment is a separate cause of action, the declaration the Greenbergs seek with regard to the parking spaces tracks the other counts so closely, and their request for a declaratory judgment fails for the same reasons.

A court may grant a declaratory judgment if it will serve to terminate the controversy and if: (1) an actual controversy exists between the parties; (2) antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or (3) a party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it. Md. Code (1974, 2013 Repl. Vol., 2019 Cum. Supp.), § 3-409 of the Courts and Judicial Proceedings Article ("CJ"). The decision to issue a declaratory judgment lies within the sound discretion of the trial court. *Sprenger v. Pub. Serv. Comm'n of Maryland*, 400 Md. 1, 20 (2007). Those kinds of discretionary matters are "'much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed

where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.'" *Dabbs v. Anne Arundel Cnty.*, 458 Md. 331, 347 (*quoting Northwestern Nat'l Ins. Co. v. Samuel R. Rosoff, Ltd*., 195 Md. 421, 436 (1950)).

Relying on *Polakoff v. Hampton*, the circuit court in this case reasoned that entering a declaratory judgment would serve no useful purpose given that the court entered summary judgment on the breach of contract claim. 148 Md. App. 13, 25 (2002) (holding that a declaratory judgment will not serve a useful purpose when the same issues to be resolved in the declaratory judgment action will be decided in pending litigation between the parties). On this record, that was a reasonable exercise of the court's discretionary authority to declare the parties' rights. To issue the declaration the Greenbergs sought, the circuit court would first have had to find that the Greenbergs had a right to access the elevator vestibule from the left side that was being denied by actions of the Grudzieckis or the Association. The failure of that premise, for the reasons explained above, precludes any declaratory relief to that effect. Once the circuit court found that the Greenbergs' rights under the Declaration were not being infringed, the court didn't abuse its discretion in entering summary judgment in favor of the Grudzieckis and the Association on the declaratory judgment count.

**B. The Complaint Fails To Allege That The Grudzieckis, The Association Or Miltam Breached Any Obligations To The Greenbergs With Respect To The Storage Units, And If It Did, The Claims Are Time-Barred.**

The complaint alleges that the Grudzieckis, Miltam, and the Association breached the Declaration by constructing storage units on common elements and by failing to obtain

the required two-thirds unit owner consent before they encumbered common elements within the building. Before discussing the merits of the storage unit argument, we must parse through the three separate circuit court hearings, before three different judges, that resulted in the ultimate disposition of the storage unit claims. Ultimately, as we discuss below, the circuit court's decision to dismiss or grant summary judgment on the storage unit claims was legally correct.

*First*, after the April 25, 2019 hearing, the court granted summary judgment in favor of the Association and the Grudzieckis on all of the storage unit claims. The court concluded that the storage unit claims were barred by the statute of limitations because the Greenbergs were on notice of the storage units' existence for at least ten years:

> The storage unit and the license agreement had been in place for some 13 years before Plaintiffs finally filed this action. Plaintiffs have lived at the Condominium and used the parking garage during this entire time. For at least 10 years, Plaintiffs have complained about how Mr. Grudziecki parks his car. [] It cannot be fairly debated that Plaintiffs knew for at least 10 years of the storage unit's existence and the problem that they contend it caused them. During this time, Plaintiffs had knowledge of facts sufficient to cause a reasonable person to investigate the circumstances surrounding the storage unit's origin and whether Edgemoor had obtained the required two-thirds [2/3] consent prior to entering into the license agreement.

*Second*, on October 9, 2019, a second judge denied Miltam's motion to dismiss the storage unit claims for injunctive relief and declaratory judgment but granted the motion as to specific performance and breach of contract. Miltam argued that no contractual obligation had been alleged between the parties, and that even if an obligation had been

alleged, Miltam did not breach any duty to the Greenbergs. Although Miltam argued the case should be dismissed on laches grounds, the court didn't address this argument in its ruling. In declining to dismiss the claims for injunctive and declaratory relief, the court reasoned that the complaint sufficiently alleged that the unit's previous owner (Mr. Smith) and the Association violated Section 8.5(d) of the Declaration by entering into the 2005 License Agreement without first obtaining approval of two-thirds of the unit owners:

> I think that what the plaintiff has properly alleged here, however, is the fact that this agreement that was reached between the condo association and the prior unit owner, who I think his name was Smith? Was not done pursuant to the provisions of the condo agreement, and therefore I think they have plead a proper case as to Count 1 seeking injunctive relief and Count 4 which seeks declaratory judgment relief.
>
> I think that they have stated a case whereby a court should review the condo documents relative to the actions taken when that 2005 agreement was entered and then rule upon the legality of that. So I'll deny the motion to dismiss as to Count No. 1 and Count No. 4.

The court did not explain why the allegations about the 2005 License Agreement supported the claims for injunctive and declaratory relief but not the breach of contract and specific performance claims.

*Finally*, the remaining claims were resolved at a third and final hearing before a third judge on November 19, 2019. At that point, the only claims left sought injunctive relief and declaratory judgment against Miltam. Miltam moved for summary judgment, arguing the circuit court's opinion and order granting summary judgment for the Grudzieckis and the Association on the storage unit claims was dispositive as to Miltam

based on *res judicata*:

> Here, Miltam is alleged to be, and for purposes of this motion admits that it is, in privity with the other Defendants as to the relevant issues of being bound by the terms and conditions of the Condo Declaration and being a successor-in-interest with respect to the 2005 Agreement. There are no additional allegations in the Second Amended Complaint that distinguish Miltam from the Grudzieckis or [Edgemoor] or that would seek relief against Miltam on any other grounds other than those already litigated against the other Defendants. As such, the Court's grant of summary judgment in favor of the other Defendants is conclusive as to the remaining claims against Miltam under the doctrine of res judicata.

The court granted the motion, reasoning that if the court were to deny the motion for summary judgment and move forward on the merits, inconsistent verdicts could arise.

1. *Counts II and III – Breach of Contract and Specific Performance Against Miltam*

Count II and Count III grow out of the Greenbergs' assertion that the Association violated the Declaration and Rules when they constructed storage units that blocked off a portion of the common area between the front of Miltam's and the Grudzieckis' designated parking spaces and the garage wall. They allege that if the units weren't there, Mr. Grudziecki could park closer to the front wall and leave enough room for the Greenbergs to access the elevator vestibule via the left side ramp. The Greenbergs allege further that the Association violated the Agreement by not obtaining two-thirds consent of the unit owners when the storage units were constructed in 2003. The counts name all of the defendants, but the circuit court ended up considering the merits only against Miltam.

The motions practice and sequencing of the decisions makes these results seem more fractured than they really are, and ultimately all the storage unit claims are resolved

properly on limitation grounds (as we address next). Insofar, though, as the circuit court considered the specific performance and breach of contract theories against Miltam separately, we agree that the Greenbergs failed to allege or establish that Miltam breached any contractual duties that they owed to the Greenbergs or that any such breach caused the Greenbergs to suffer any damages. *RRC Ne., LLC*, 413 Md. at 655; *Kumar v. Dhanda*, 198 Md. App. 337, 345 (2011). A review of the storage unit allegations in Counts II and III reveals that the Greenbergs accuse only the Association of violating the Declaration:

> 29. [*T*]*he Association* is responsible, on behalf of the Unit Owners, for enforcing the rules and regulations of The Edgemoor Condominium.
>
> 30. In addition, the Agreement whereby *the Association* retroactively granted Grudziecki and Smith a permanent, non-revocable license to construct the storage units on the Condominium's General Common Elements violated Section 8.5(d) of the Declaration as well as the Condominium Act as the Association did not obtain, as required, the consent of two-thirds (2/3) of the first mortgagees or two-thirds (2/3) of the Unit Owners. . .
>
> ***
>
> 38. Pursuant to Section 8.5(d) of the Declaration, *the Association* was required to obtain the consent of two-thirds (2/3) of the first mortgagees, or two-thirds (2/3) of the Unit Owners prior to granting Grudziecki and Smith a license to use, or to otherwise encumber, any part of the General Common Elements for the purposes of constructing the storage units.
>
> ***
>
> 39. *The Association* has further breached the Declaration by failing and/or refusing to enforce the Declaration's covenants and the Condominium's Rules against Grudziecki, Smith, and Miltam DC, Inc. and/or Levine relating to the unlawful construction of their respective storage units. . .

(Emphasis added.)

There's no difference between Miltam and the Grudzieckis here, only that the circuit court previously had granted summary judgment to the Grudzieckis on limitations grounds. Both got permission to build the storage units and ultimately obtained licenses, albeit retroactively. And we agree with the circuit court that any potential breach of the Declaration from the decision to grant these licenses lay solely against the Association, and that Miltam (or, for that matter, the Grudzieckis) didn't owe or breach any duty to the Greenbergs by building the storage units and obtaining the licenses after the fact.

*2. Regardless, the Storage Unit Claims are Barred by Limitations.*

This brings us to the issue that ultimately resolves the storage unit claims—we agree with the circuit court that the Greenbergs' storage unit claims against Miltam, the Grudzieckis, and the Association all are time-barred. As alleged, the Greenbergs' storage unit claims arise under § 8.5(d) of the Declaration, which requires a two-thirds vote of unit owners to transfer property rights to a common area:

> *Section 8.5. Consents.* Notwithstanding any other provision of this Declaration, unless otherwise provided by statute. . . . neither the Declarant, the Council of Unit Owners nor the Board of Directors shall take any of the following actions unless the approvals indicated have been obtained:
>
> ***
>
> (d) except as provided pursuant to the Act or other applicable law. . . . seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission without the prior consent of two-thirds (2/3) of the first mortgagees . . . or two-thirds (2/3) of the Unit Owners (other than the Declarant).

In Maryland, the statute of limitations for civil actions is three years from the date

it accrues, unless an exception applies. CJ § 5-101.[11] The Greenbergs' argument on appeal rests on establishing when they first knew of the Agreement. But the circuit court concluded that the discovery of the Agreement was not a disputed material fact: there is no dispute that the storage units were constructed in 2003, the Greenbergs moved into the building in 2005, and any action at law related to them was barred by limitations in 2008, three years from the time the Greenbergs knew or reasonably should have known of the units' existence. The circuit court made its decision based on facts within the court's reach that the storage units had been in place since 2003:

> The storage unit and the license agreement had been in place for some 13 years before Plaintiffs finally filed this action. Plaintiffs have lived at the Condominium and used the parking garage during this entire time. . . . It cannot be fairly debated that Plaintiffs knew for at least 10 years of the storage unit's existence and the problem that they contend it caused them.

"[T]he clock for a statute of limitations begins to run when a claimant gains knowledge sufficient to put him or her on inquiry notice. From that date forward, a claimant will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation." *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 447 (2000). A plaintiff is on inquiry notice, such that the limitations period begins to run, when they have knowledge of circumstances which would cause a reasonable person in the position of the plaintiff to undertake an investigation, which, if pursued with reasonable diligence,

[11] CJ § 5-101 provides: "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced."

would lead to knowledge of the alleged wrong. *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448–49, 450 (1988). If a plaintiff fails to seek out the facts supporting a cause of action, they have slept on their rights and the limitations period isn't tolled. *Id.* at 449.

The record reveals that the Greenbergs were on inquiry notice for more than three years before they filed suit. *See Muffoletto v. Towers*, 244 Md. App. 510, 526–30 (2020). Indeed, the Greenbergs have complained about the way Mr. Grudziecki parks his car, as well as the existence of the storage units, for at least ten years. Although they insist that they had no knowledge of the storage units until they learned about the Agreement, what matters is when they *should* have known that the units were encroaching on common elements. In 2005, Mr. Grudziecki changed jobs and began taking the Metro to work. This meant his car remained parked in the garage for most of the day during the week. He noticed scratches on the side of his car, so he started parking closer to the right boundary line of his space to dissuade people from walking between his car and the pillar. Mr. Grudziecki testified at his deposition that once he began parking his vehicle this way, Mr. Greenberg began complaining to him:

> [COUNSEL FOR THE GREENBERGS]: And how did that come up at that time?
>
> [MR. GRUDZIECKI]: As I think I mentioned before, I stopped driving my car in July of 2005 when I changed jobs and started taking the Metro everyday. And it was at some point after that where I started noticing scratches. And there was some on the side of the car. And at some point, Mr. Greenberg and I had discussions about that.
>
> Q: And what were the nature of those discussions?
>
> A: You know, I don't actually recall. I know he wanted me to move the car so that he could walk through. But I don't recall.

. . . I know we had some discussions at that time.

The Greenbergs do not dispute that they were aware of the storage units before they learned about the Agreement. And they offered no testimony or anything else contradicting the Grudzieckis' deposition testimony about when Mr. Greenberg began complaining about the way Mr. Grudziecki parked his vehicle.

The Greenbergs urge us to remand the case to allow a jury to resolve what they characterize as disputed material facts about whether (and when) they were on inquiry notice for limitations purposes. But "[w]hen a cause of action accrues is usually a legal question for the court." *Moreland v. Aetna U.S. Healthcare, Inc.*, 152 Md. App. 288, 296 (2003) (*citing Poffenberg v. Risser*, 290 Md. 631, 633 (1981)). And in this case, there was no fact-finding required to determine when the Greenbergs were on "notice of the nature and cause of [their] injury." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 96 (2000).

Moreover, the court did not abuse its discretion when holding the continuing harm doctrine did not apply. The Greenbergs assert the "continuing harm" doctrine should toll the statute of limitations. *Litz v. Maryland Dep't of Env't*, 434 Md. 623, 646 (2013) (finding that the statute of limitations could be tolled based on allegations in the complaint that the town had an ongoing duty to limit pollution but continuously discharged contaminated ground water onto plaintiff's property). But the continuing harm test rests on a new affirmative act. *Id.* at 650. And here, the alleged act causing the Greenbergs' harm occurred

in 2003, when the units were constructed.[12] Leaving them in place is a continuing effect of that act, not an affirmative new one.

Accordingly, summary judgment in favor of Miltam, the Grudzieckis and the Association was appropriate on all counts. The three-year limitations period for civil actions bars the Greenberg's claim against the parties, and no exception under the continuing harm doctrine saves them. The limitations period had begun to run from the date of injury, and the Greenbergs were, at that point, "charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation." *O'Hara v. Kovens*, 305 Md. 280, 289 (1986) (*citing Lutheran Hosp. of Maryland v. Levy*, 60 Md. App. 227, 237 (1984)).

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.**

[12] We reject the Greenbergs' argument that the continuing harm stemmed from Mr. Grudziecki parking his car in the space "on a more consistent basis," but that wouldn't help them anyway—Mr. Grudziecki started parking there more consistently in 2005.