Circuit Court for Montgomery County
Case No. 435789V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1026

September Term, 2020

MICHAEL J. BOBBITT

v.

CRAIG HANNA

Berger,
Zic,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 4, 2021

This is an appeal from a declaratory judgment in the Circuit Court for Montgomery County after we vacated the circuit court's judgment in a previous appeal and remanded the case. *See Bobbitt v. Hanna*, No. 920, Sept. Term 2018 (Md. App. Oct. 22, 2019). The case originates from a dispute between appellant, Michael Bobbitt, and appellee, Craig Hanna, over the division of proceeds from the sale of residential property located at 30 Wellesley Circle in Glen Echo, Maryland ("the Property"). The deed listed Bobbitt and Hanna, an unmarried couple with a son, as joint tenants. Hanna had paid the full down payment on the Property when it was purchased. Hanna had also paid all the mortgage payments, property taxes, and the vast majority of maintenance costs for the Property.

After the couple experienced difficulties in their relationship that they could not resolve, Hanna moved out of the Property. Hanna filed a complaint for a declaratory judgment seeking contribution from Bobbitt for half of all payments Hanna had made for the maintenance and upkeep of the Property. The Property was then sold for $600,000, and the net proceeds of $279,792 were placed in escrow pending the outcome of the declaratory judgment action. In a bench trial, the circuit court found that Hanna and Bobbitt did not form a contract dividing the proceeds from the sale of the Property, and that Hanna had been the sole owner of the Property. Bobbitt appealed, and we vacated the judgment. *Bobbitt*, No. 920, Sept. Term 2018. We determined that the circuit court's finding that Hanna was the sole owner of the Property was clearly erroneous. *Id*. at 16.

We also recognized that the circuit court had failed to state why it found a lack of contract formation, but we did not otherwise address the merits of that issue. *Id*. at 21.

On remand, the circuit court conducted a contribution analysis and determined that Hanna was entitled to all proceeds from the sale of the Property. The circuit court also found that Bobbitt had not acted in good faith when he agreed to not oppose the sale of the Property. Bobbitt timely appealed, and presents three questions for our review, which we rephrase and reformat into two questions:[1]

> I. Whether the circuit court erred in finding that Hanna is entitled to contribution from Bobbitt of all proceeds from the sale of the Property.
>
> II. Whether the circuit court erred in finding a lack of contract formation related to the division of proceeds from the sale of the Property.

For the reasons that follow, we shall affirm the judgment.

[1] Bobbitt phrased the issues as follows:

> 1. Whether Craig Hanna is entitled to contribution from Michael Bobbitt for expenses Mr. Hanna incurred associated with their jointly-owned property when he and Mr. Bobbitt made a binding contract to split the proceeds from the sale equally.
>
> 2. Whether Mr. Hanna is entitled to contribution when he never asserted any right to contribution.
>
> 3. Whether the Parties formed a binding contract when Mr. Hanna promised to split the proceeds from the sale of the Property with Mr. Bobbitt in exchange for Mr. Bobbitt's agreement to abandon legal proceedings objecting to the sale.

FACTUAL BACKGROUND

Although Bobbitt and Hanna were in a romantic relationship for about twenty years, they never married. At the start of their relationship in 1996, they lived together in a townhouse in the District of Columbia. Hanna was the sole owner of that townhouse. After about five years together, the couple adopted a son. The next year, they moved to the Property.

The Property was purchased in November 2003 for $575,000. The deed conveyed the Property to Hanna and Bobbitt in fee simple as joint tenants. Hanna sold his D.C. townhouse and used the proceeds toward the down payment on the Property. Hanna paid the full down payment of $210,000, and he took out a mortgage to pay the remaining purchase price of the Property. Hanna and Bobbitt executed a deed of trust defining both as "Borrower[.]" After the purchase of the Property, Bobbitt twice asked Hanna to marry him, but Hanna declined both times.

For the next fourteen years, Hanna paid all the mortgage payments, amounting to about $365,000. Hanna paid all the real estate taxes, amounting to about $89,575. Hanna also paid for most of the maintenance and upkeep of the Property, including the installation of a retaining wall, replacement of major appliances, painting, and molding. In sum, Hanna contributed over $665,000 to the Property. Bobbitt contributed less than $8,000 to the Property, although Bobbitt had offered to contribute more.

Hanna moved out of the Property around December 2016. Bobbitt continued living at the Property with their son. Hanna and Bobbitt agreed that the Property should be sold as quickly as possible.

In June 2017, Hanna emailed Bobbitt: "Confirm that I agree to split the proceeds of the house 50/50 after netting out whatever repair expenses I pay into prior to sale[.]" Two minutes later, Bobbitt responded by email, copying their attorneys: "This is to [c]onfirm that I received Craig's note." The parties dispute the circumstances surrounding those emails. At trial, Hanna described the circumstances as contentious:

> HANNA: [Bobbitt] confronted me when I had gone to the property to pick up my son for an outing, and raised with me moving ahead with the sale of the house. I indicated to him at that time that it was not my intention to evenly split the proceeds. He became very agitated and upset, saying that he would refuse to sell. I felt threatened. He demanded that I send an e-mail that I would agree to an even split so that he would have something in writing, apparently, to block me into that agreement.
>
> [COUNSEL FOR HANNA]: Did you send such an e-mail, sir?
>
> HANNA: I did.
>
> [COUNSEL FOR HANNA]: Did you intend to evenly split the proceeds of the sale, sir?
>
> HANNA: At the time, I sent the e-mail simply to get out of the house. I felt threatened. I, I still did not want to evenly split the proceeds. And subsequently, I went back to that position.
>
> [COUNSEL FOR HANNA]: So you never promised Mr. Bobbitt that you were going to evenly split the proceeds of the sale of the house, is that correct?

> HANNA: I wrote that e-mail, but it was under duress in, in a very heated, threatening encounter. And I literally sent it because it was demanded of me, and I felt cornered.
>
> [COUNSEL FOR HANNA]: What do you mean you felt cornered?
>
> HANNA: Both physically, not able to extricate myself from the interaction, as well as his statement that he would not proceed with the sale. I was threatened in, in both manners.

Hanna described Bobbitt's tone during this conversation as "very stern and threatening[.]"

Hanna also said that Bobbitt slammed something down during the interaction.

Bobbitt's testimony about the circumstances surrounding the emails differed from Hanna's account:

> BOBBITT: Mr. Hanna came to the house to have an outing with our son, and he brought documents for me to sign, the listing agreement document for me to sign. I recall [our son] being upstairs getting ready to go. We were, Mr. Hanna and I were standing in the family room. He walked up to me and handed me the papers with a pen.
>
> I looked at him and said, are you still planning on splitting the house 50/50?
>
> His response was, we'll see.
>
> I said nothing and just handed the documents back to him and walked away. When I walked away, he screamed at me, Michael, it's not fair, I pay the mortgage and the taxes.
>
> I was, responded and said, I gave you . . . 20 years of a, of a committed relationship.
>
> He said, okay.
>
> And then I said, please send an e-mail to our lawyers stating this . . . .

> When I saw the e-mail pop into my inbox, I saw that it wasn't signed by him, and I asked him to send it again with his name on it, and he did. And I took the documents and I signed it. And he took them and walked, and left.
>
> [COUNSEL FOR BOBBITT]: At any point during this exchange, did you raise your voice?
>
> BOBBITT: I did not.
>
> [COUNSEL FOR BOBBITT]: At any point during this exchange, did you block Mr. Hanna's egress from the room?
>
> BOBBITT: No. In fact, I walked away from him, and there were two other points of egress for Mr. Hanna.

In July 2017, Bobbitt and Hanna signed a contract to sell the Property to Synergy Real Estate Solutions. Before the closing date, Bobbitt discovered that Hanna did not plan to split the proceeds. Hanna then filed a complaint for a declaratory judgment in August 2017. Later that month, the Property was sold for $600,000. The net proceeds of the sale were $279,792. Those proceeds were held in escrow.

PROCEDURAL BACKGROUND

Hanna's complaint for a declaratory judgment sought contribution from Bobbitt for half of all payments Hanna had made for the maintenance and upkeep of the Property. Bobbitt filed a motion for summary judgment asserting, among other things, that Hanna was not entitled to contribution and that Hanna's payments were gifts. The circuit court denied Bobbitt's motion for summary judgment. In a bench trial, the circuit court found the following:

- Hanna's payments were not gifts,

- Hanna was the sole owner of the Property from the purchase date until it was sold in August 2017, and
- Hanna was entitled to the full $279,792 held in escrow.

Addressing the June 2017 email, the circuit court found that it was "not persuaded that a contract was formed."

An appeal followed, and we vacated the circuit court's judgment and remanded the case for further proceedings. *Bobbitt v. Hanna*, No. 920, Sept. Term 2018. We ruled that the circuit court had erred in finding that Hanna was the sole owner of the Property. *Id*. at 16. We tasked the circuit court with two objectives on remand. First, the circuit court needed to make necessary factual findings about whether Hanna was entitled to proceeds as contribution from Bobbitt. *Id*. at 18. Second, the circuit court needed to state why it had found a lack of contract formation. *Id*. at 21. We recognized that the circuit court had failed to make a factual finding about whether Bobbitt's "agreement not to oppose the sale in exchange for half the proceeds was made in good faith." *Id*.

On remand, the circuit court found that Bobbitt was obligated on the mortgage through the deed of trust. The court then applied a contribution calculation and determined that Hanna was entitled to all proceeds from the sale of the Property. The circuit court also found that Bobbitt "did not forbear on his right to refuse to sell the house in good faith." Thus, the court found that there was not an enforceable contract regarding the division of the proceeds.

STANDARD OF REVIEW

When reviewing bench trials, we will not set aside the trial court's judgment on the evidence unless it is clearly erroneous. Md. Rule 8-131(c). We "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. This Court reviews the trial court's factual findings for clear error and its legal findings de novo. *MBC Realty, LLC v. Mayor & City Council of Baltimore*, 192 Md. App. 218, 233 (2010). We view the evidence in the light most favorable to the party who prevailed at trial, and we resolve all evidentiary conflicts in their favor. *Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (2013) (citations omitted).

Courts have broad discretion when allocating the proceeds of the sale of jointly owned property. *Meyer v. Meyer*, 193 Md. App. 640, 651 (2010). We afford considerable deference to a trial court's exercise of discretion. *Id*. Nevertheless, deference has its limits. We do not defer to a lower court's exercise of discretion when it was based on an error of law. *Id*. (citing *Davis v. Davis*, 280 Md. 119, 125-26 (1977)). Nor do we defer to a lower court's exercise of discretion when its ruling is "clearly against the logic and effect of facts and inferences before the court." *Meyer*, 193 Md. App. at 651 (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

DISCUSSION

I. The circuit court did not err in finding that Hanna is entitled to contribution from Bobbitt for all proceeds from the sale of the Property.

When we remanded this case, we determined that there was an unresolved issue as to whether Bobbitt was an obligated party to the mortgage. *Bobbitt*, No. 920, Sept. Term

2018 at 17-18. We recognized that Bobbitt was listed as a borrower on the deed of trust, but Hanna testified that the mortgage was solely in Hanna's name. *Id*. at 17. On remand, the circuit court concluded that Bobbitt was obligated on the mortgage through the deed of trust. As a result, the circuit court ordered that Hanna is entitled to all proceeds from the sale of the Property as contribution for protecting Bobbitt's interest in the Property "from being foreclosed upon by the lender for 14 years." Bobbitt argues that this ruling was wrong for essentially two reasons. First, Bobbitt states that Hanna never asserted any right to contribution. Second, Bobbitt claims that he was not obligated on the mortgage. In response, Hanna notes that Bobbitt and Hanna were both listed as borrowers on the deed of trust. Hanna thus argues that he is entitled to contribution from Bobbitt.

We recognize that the deed conveyed the Property to Bobbitt and Hanna as joint tenants, and the parties agreed that they owned the Property as joint tenants. To create a joint tenancy, a written instrument must expressly provide that the property granted is to be held in joint tenancy. Md. Code, Real Prop. § 2-117. Joint tenants own an undivided share in the estate. *Roland v. Messersmith*, 208 Md. App. 532, 540 (2012). Joint tenants also have an equal right to possess, use, and enjoy the property. *Id*. Finally, each joint tenant has the right of survivorship. *Id*.

When property is sold, there is a presumption that joint tenants are entitled to equal shares of the proceeds. *Carozza v. Murray*, 63 Md. App. 496, 500 (1985), *cert. denied*, 304 Md. 297 (1985). That presumption can be rebutted by evidence reflecting unequal payments or services. *Id*. at 501-02. The presumption can also be rebutted by evidence

reflecting unequal payments toward removing encumbrances from the property. *Id.* The party opposing the presumption has the burden of proof by a preponderance of the evidence. *Id*. at 502.

Contribution is an equitable doctrine. The doctrine seeks to reimburse a co-tenant who advances money for the property beyond their required share. *Kamin-A-Kalaw v. Dulic*, 322 Md. 49, 55 (1991). Generally, if X and Y are co-tenants, and X "pays the mortgage, taxes, and various carrying charges of jointly-owned property[,]" then X is entitled to contribution from Y. *Spessard v. Spessard*, 64 Md. App. 83, 88 (1985). Under such circumstances, equity requires contribution because Y's "interest has been protected from extinction by a tax or foreclosure sale." *Id*. at 93. But if co-tenant Y is not a party to the underlying debt, then Y lacks liability in an action for contribution. *See Meyer*, 193 Md. App. at 661.

Here, the deed of trust defines both Hanna and Bobbitt as "Borrower[.]" We have recognized that "deeds of trust that evidence a security interest are treated as mortgages." *Conrad/Dommel, LLC v. West Dev. Co.*, 149 Md. App. 239, 275 (2003) (citing *Darnestown Valley-WHM Ltd. P'shp. v. McDonald's Corp.*, 102 Md. App. 577, 584 (1994), *cert. denied*, 338 Md. 201 (1995)). Bobbitt and Hanna both executed the deed of trust held by the lender. The deed of trust states in relevant part:

> DEFINITIONS: …
>
> (B) "Borrower" is CRAIG A. HANNA. UNMARRIED and MICHAEL BOBBITT. UNMARRIED. …

(C) "Lender" is FIRST SAVINGS MORTGAGE CORPORATION. …

(D) "Trustee" is Larry F. Pratt of Fairfax County, Virginia.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. . . .

(F) "Note" means the promissory note signed by Borrower and dated November 12, 2003. The Note states that Borrower owes Lender Three Hundred Sixty Five Thousand and no/100 (U.S. $365,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than December 1, 2033. . . .

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest. . . .

TRANSFER OF RIGHTS IN THE PROPERTY . . .

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property . . .

Parcel ID Number: . . .
30 WELLESLEY CIRCLE . . .
GLEN ECHO . . . Maryland 20812 . . .

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of these interests,

> including, but not limited to, the right to foreclose and sell the property[.]

By defining "Borrower" to include both Hanna and Bobbitt, the deed of trust makes them both parties to the debt. *See Meyer*, 193 Md. App. at 661. To be sure, Hanna testified that Bobbitt was not obligated on the note. Bobbitt's obligation under the deed of trust, however, is apparent: if the lender stopped receiving payments, it could have forced a sale and extinguished Bobbitt's interest in the Property.

In support of the argument that Hanna is not entitled to contribution, Bobbitt claims that the facts here are identical to those in *Meyer v. Meyer*, 193 Md. App. 640 (2010). Bobbitt's reliance on *Meyer* is unpersuasive. In *Meyer*, a mother and father executed a voluntary separation agreement, which transferred all their "right title and interest in the marital home" to the father, who assumed all "the obligations of the mortgage." *Id*. at 644. When they signed the separation agreement in November 1990, the property was subject to a mortgage of about $103,000. *Id*. at 644-45. In November 1991, the father and mother conveyed the property to the father, son, and daughter as joint tenants with the right of survivorship. *Id*. at 645. At that time, the son was six years old and the daughter was three years old. *Id*. The deed covenanted that the grantors had not encumbered the property. *Id*. But at the time of the transfer, the property was subject to a mortgage naming the father and mother as the borrowers. *Id*.

In 2007, the father filed a complaint against the son and daughter for sale in lieu of partition of the property. *Id*. at 647. The father requested that the court adjust the proceeds to reimburse him for a portion of his mortgage, tax, and insurance payments since July

1998 (the date the son and daughter moved to the mother's house). *Id*. The daughter and son filed their own complaint for the same cause of action, and the cases were consolidated. *Id*. After a hearing, the circuit court ruled that the father was entitled to contribution from the son and daughter for mortgage, tax, and insurance payments since July 1998. *Id*. at 650.

On appeal, we concluded that the circuit court had erred in imposing this obligation of contribution on the daughter and son. *Id*. at 662. We noted that the deed to the children had conveyed their interest to them with no conditions, reservations, or restrictions. *Id*. at 659. The deed also contained a specific covenant that the grantors had not encumbered the property. *Id*. The property, however, was subject to a mortgage at the time of transfer. *Id*. We determined that the covenant against encumbrances evidenced the father's intention to convey the interest to his children free of the existing mortgage. *Id*. (citing *Maas v. Lucas*, 29 Md. App. 521, 534 (1975)). In addition, the conveyance to the children lacked consideration and was presumptively a gift. *Id*. at 658. The mother testified that she and the father both intended the transfer of the property to the children as a gift. *Id*. at 659. We concluded that the father had "failed to present any evidence, much less clear and convincing evidence, to rebut the presumption that the conveyance of partial interests in the [p]roperty, and the subsequent payments, were gifts" to the son and daughter. *Id*. at 660.

Notably, *Meyer* dealt with the father's failure to rebut the presumption in favor of a finding that the conveyance and payments were gifts. *Id*. Here, we already upheld the

circuit court's finding that Hanna's payments for the Property had not been gifts. *Bobbitt*, No. 920, Sept. Term 2018 at 18, n.10 (citing *Rudo v. Karp*, 80 Md. App. 424, 432-33 (1989) (noting that whether a gift was intended is a factual issue reversed only if it is clearly erroneous)). Further, the son and daughter in *Meyer* were six and three years old, respectively, when they first received their interest in the property, which was subject to a mortgage naming their mother and father as borrowers. 193 Md. App. at 645. By contrast, when Hanna and Bobbitt first received their interest in the Property, they executed the deed of trust listing them both as borrowers.

Hanna's payments for the Property far outweighed Bobbitt's payments. The Property was encumbered by a mortgage requiring repayment of a loan for $365,000. Hanna paid all the mortgage payments on the Property since purchase in 2003 until the Property was sold in 2017, amounting to about $365,000. Bobbitt made no mortgage payments. Hanna also paid all the real estate taxes, amounting to about $89,575. Hanna paid a significant amount in maintenance and upkeep of the Property, including replacement of major appliances, lighting, painting, molding, and the installation of a retaining wall. Bobbitt contributed less than $8,000 to the Property. In total, Hanna contributed over $665,000 to the Property. The net proceeds of the sale of the Property amounted to $279,792. On remand, the circuit court conducted a proper contribution analysis, and it did not err in ruling that Hanna was entitled to all the proceeds. *See Meyer*, 193 Md. App. at 651 (recognizing that courts have broad discretion when allocating the proceeds of a sale of jointly owned property).

II. The circuit court did not err in finding a lack of contract formation.

Bobbitt contends that the June 2017 email created an enforceable contract to split the proceeds of the house evenly. When the circuit court addressed this issue at trial, it only stated that it was "not persuaded that a contract was formed." On the first appeal, we determined that the circuit court had "made no factual finding" about whether Bobbitt's "agreement not to oppose the sale in exchange for half the proceeds was made in good faith." *Bobbitt*, No. 920, Sept. Term 2018 at 21. As a result, we remanded the case for the circuit court to explain why it had found that there was no contract. *Id*. On remand, the circuit court explained its reasoning and ultimately found that Bobbitt "did not forbear on his right to refuse to sell the house in good faith." We find no error in the circuit court's determination.

Consideration is necessary to create a binding contract. *Chernick v. Chernick*, 327 Md. 470, 479 (1992). To create consideration, "a performance or a return promise must be bargained for." *Id*. (quoting Restatement (Second) of Contracts § 71 (Am. L. Inst. 1981)). Generally, forbearance from exercising a right or asserting a good faith claim is valid consideration to support an agreement when the abandoned claim is -- at a minimum -- doubtful. *See Hoffman v. Seth*, 207 Md. 234, 241 (1955) (contrasting doubtful claims with those that are groundless and lacking legal justification). *See also Wickman v. Kane*, 136 Md. App. 554, 561-62 (2001) (recognizing, within the context of accord and satisfaction, that the compromise of a dispute is consideration when the dispute is asserted in good faith and the subject matter is reasonably doubtful). Good faith requires that the forbearing party

believed that the claim was "well founded." *Fiege v. Boehm*, 210 Md. 352, 361 (1956). The forbearing party must have had an "honest intention to prosecute" the claim. *Id.* The abandoned claim must also not be "frivolous, vexatious, or unlawful[.]" *Id.*

On remand, the circuit court examined the following trial testimony and did not credit Bobbitt's argument that he had been proceeding in good faith:

> [COUNSEL FOR BOBBITT]: If Mr. Hanna had not agreed to a 50/50 split on the house that day, how did you plan to respond?
>
> BOBBITT: I wouldn't have sold the house.
>
> [COUNSEL FOR BOBBITT]: And by, I wouldn't have sold the house, you mean you would not sign the paper that he presented to you?
>
> BOBBITT: Right. I would not have agreed to listing the house.
>
> [COUNSEL FOR BOBBITT]: Okay.
>
> BOBBITT: There were other options to explore.
>
> [COUNSEL FOR BOBBITT]: Did you understand that Mr. Hanna, as a joint owner of the property, would have had the right to bring a lawsuit to force the sale of the house anyway?
>
> BOBBITT: I understand that now. At the time, I did not.
>
> [COUNSEL FOR BOBBITT]: Okay. Why was a 50/50 split important to you? . . .
>
> BOBBITT: We were still in negotiations of the custody agreement, as well as talks about the child support. Until then, I was scrambling to figure out what the payments for taking care of our son was.

> Prior to that, there were cut off expenses that were automatic debits on Mr. Hanna's credit card. I didn't know what was coming down the line because Mr. Hanna paid for everything. And so I needed some security, some cash. I knew that the house was, I was hoping that the house would go on sale.

The circuit court found that Bobbitt mistakenly believed that he had a right to indefinitely prevent the sale of the property. The circuit court thus ruled that Bobbitt "did not make this trade knowingly and in good faith."

Forbearance of a groundless claim lacking legal justification is not valid consideration. *See Hoffman*, 207 Md. at 241. *See also Wickman*, 136 Md. App. at 569 (examining the objective rationality of a claim and recognizing that forbearance of a claim that directly contradicts clearly stated controlling law does not serve as consideration). Even if Bobbitt had refused to consent to the sale, Hanna could have filed a complaint for sale in lieu of partition under Maryland Code, § 14-107(a) of the Real Property Article:

> A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant[.] . . . If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights.

Bobbitt testified that he had been unaware that Hanna had the option (as a joint tenant) to try to force the sale of the property through a partition action. Instead, as the circuit court found, Bobbitt believed that he had the right to indefinitely prevent the sale of the Property. Bobbitt did not have that right. Forbearance of a nonexistent right fails to serve as consideration. *Hoffman*, 207 Md. at 241; *Wickman*, 136 Md. App. at 569. Thus, the circuit

court properly found that Bobbitt "did not forbear on his right to refuse to sell the house in good faith."

Even if Bobbitt's agreement to not oppose the sale constituted legal detriment, the circuit court also found that Bobbitt had failed to proceed in good faith for another reason: Bobbitt did not honestly intend to prevent the sale of the Property, and he threatened to stall the sale as a nuisance measure. For an abandoned claim to serve as consideration, the claim must not be "vexatious[.]" *Fiege*, 210 Md. at 361. *See also Wickman*, 136 Md. App. at 562 (citations omitted) (recognizing that if a claim is made to capitalize on its nuisance value, then forbearance of that claim is not asserted in good faith). Bobbitt testified that -- around the time of the June 2017 email -- he had hoped that the house would go up for sale, he needed cash, and he was unaware that Hanna had an option to seek the sale of the Property through a partition action. The circuit court examined this testimony and determined that Bobbitt did not honestly intend to indefinitely prevent the sale of the Property. As a result, the court determined that Bobbitt did not act in good faith. That determination was not clearly erroneous. *See Gruss v. Gruss*, 123 Md. App. 311, 321 (1998) (stating that subjective good faith is a factual determination). Accordingly, the trial court did not err in finding a lack of contract formation.

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

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1026s20cn.pdf