Circuit Court for Montgomery County
Case No. 453759V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1442

September Term, 2019

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CHARLES BLESSING, JR.

v.

SANDY SPRING BANK, ET AL.

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Fader, C.J.,
Nazarian,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Fader, C.J.

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Filed: February 19, 2021

Charles Blessing, Jr., the appellant, filed suit in the Circuit Court for Montgomery County against Sandy Spring Bank ("the Bank") and 227 East Diamond LLC ("227"), the appellees. In his two-count complaint, Mr. Blessing: (1) alleged that the Bank had fraudulently conveyed fixtures, equipment, and other personal property to 227; and (2) sought a declaratory judgment that, among other things, he was "the owner of 100% of [that] property[.]" The court dismissed the fraudulent conveyance count for failure to state a claim on which relief could be granted, and awarded summary judgment on the declaratory judgment count to the Bank and 227. We will affirm the dismissal of the fraudulent conveyance claim, vacate the award of judgment on the declaratory judgment count, and remand for further proceedings consistent with this opinion.

## BACKGROUND

### *General Background*

Growlers of Gaithersburg, LLC ("Growlers") is the former operator of a bar and restaurant located at 227 East Diamond Avenue in Gaithersburg, Maryland ("the Premises"). In May 2006, Growlers purchased the business from Gaithersburg Brewing Company. In connection with the transaction, Gaithersburg Brewing Company conveyed to Growlers:

> All of the tangible assets owned by or used in the operation of the Business, including furniture, fixtures and equipment, goodwill and trade name, inventory, supplies, books and records, customer and vendor lists, and all other property, tangible or intangible, used in the Business known as "Summit Station Restaurant and Brewery[.]"

Growlers did not receive "an interest in land or any interest in real property." At the time, the Premises were owned by KB Summit Land, LLC ("KB Summit Land").

Between May 2006 and June 2009, the Bank made a series of loans to KB Restaurants, LLC ("KB Restaurants"), the then-majority member of Growlers. Those loans were secured by agreements executed by KB Restaurants and Growlers, as well as an "Indemnity Deed of Trust and Security Agreement" executed by KB Summit Land, which gave the Bank a security interest in the Premises. The aggregate sum of the loans ultimately amounted to nearly $2.4 million.

***The 2011 Transactions***

On January 13, 2011, the owners of 100% of the membership interests in Growlers assigned those interests to Jr. Rams, LLC ("Jr. Rams").[1] As part of the transaction, title to certain "personal property and fixtures" was transferred to Jr. Rams "free and clear of any liens[.]" The property subject to the transfer was listed on a Bill of Sale attached to the assignment agreement. The list included a variety of furniture, dishes, glassware, utensils, office equipment, clothing, tools, cleaning supplies, and the business's "complete inventory of food and alcohol[.]" (Capitalization removed). We will refer to this property, which did not include any brewing equipment, cooking equipment, or other appliances, as the "Jr. Rams Personal Property."

[1] The owners of the membership interests before the assignment were KB Restaurants, James J. DeMarco, and David V. Sayian.

Also on January 13, 2011, KB Summit Land and Growlers executed a new lease of the Premises. The agreement was signed on behalf of: (1) KB Summit Land, as landlord, by Victor M. Kazanjian, as its manager; (2) Growlers, as tenant, also by Mr. Kazanjian, also as its manager; (3) Jr. Rams, as the contract purchaser of the Growlers membership interests, by Mr. Blessing, as its managing director; and (4) the Bank. Among its terms, the lease provided: "[Growlers] expressly acknowledges they are using certain fixtures of the [Premises], including but not limited to the brewing equipment, cooking equipment and entertainment equipment, and that [Growlers] is solely responsible for the repair and replacement of such equipment as needed." A non-exhaustive list of the fixtures Growlers "[was] using," attached as Exhibit D to the lease, included various appliances (refrigerators, grills, ovens, freezers, sinks, fermenters, tanks, brewing equipment, etc.), televisions, heaters, and a video surveillance system. We will refer to this property, which appears to be the focus of Mr. Blessing's claims in this litigation, as the "Brewing, Cooking, and Entertainment Equipment." Based on a comparison of the lists, there does not appear to be any overlap between the Brewing, Cooking, and Entertainment Equipment and the Jr. Rams Personal Property.[2]

***The Secured Transaction***

Before August 2013, three parties owned membership interests in Jr. Rams. Andrea Martinez-Conte (Mr. Blessing's wife) and Jonathan Silverman each owned a 46.875%

[2] The only possible overlap seems to lie in the designation of "tools" in both lists.

membership interest, while Gerald Chaney owned the remaining 6.25%. In August 2013, Jr. Rams agreed to redeem Mr. Silverman's membership interest in exchange for $258,585.00. The terms of the redemption agreement provided that Jr. Rams would make a $50,000 down payment and tender subsequent monthly payments of $6,404.93. Mr. Blessing and Ms. Martinez-Conte personally guaranteed payment of the note evidencing the debt.

In a simultaneous transaction, Jr. Rams and Mr. Silverman executed a Security Agreement, pursuant to which Jr. Rams "agreed to secure the Note payments by granting to [Mr. Silverman] a security interest in the assets and properties of both JR. RAMS, LLC and its wholly owned subsidiary, Growlers[]." Although the Security Agreement identified both Jr. Rams and Growlers as debtors and obligors, the agreement did not contain a signature line for Growlers and it was executed only by Ms. Martinez-Conte, in her capacity as managing member of Jr. Rams, and Mr. Silverman. Mr. Silverman then filed a UCC Financing Statement with the Maryland State Department of Assessments and Taxation. In that Financing Statement, recorded on August 27, 2013, Mr. Silverman named both Jr. Rams and Growlers as his collateralized debtors and described the property ostensibly securing their debt as follows:

> All of each Debtor's personal property and fixtures, tangible and intangible, real, personal, and mixed, whether now in existence or whether acquired or created at any time hereafter, wherever located, including but not limited to all present and hereafter existing or acquired accounts, contract rights, general intangibles (including goodwill), deposit accounts, investment property, letters of credit, letter of credit rights, equipment, furniture, goods, inventory, fixtures, leasehold

> improvements, commercial tort claims, money, instruments, documents, chattel paper, securities, deposits, credits, claims and demands, and all cash and noncash proceeds, products, additions, replacements, and substitutions of, to or for any of the foregoing.

***Jr. Rams Defaults***

Jr. Rams defaulted on its payment obligations to Mr. Silverman in 2014. According to Mr. Blessing, Mr. Silverman then verbally asserted ownership over all of the property that was subject to the Security Agreement. Mr. Blessing further asserts that, on behalf of Growlers, he verbally assented to Mr. Silverman's claim of ownership in consideration of Mr. Silverman's agreement to forbear any enforcement activity. The parties did not document that arrangement in writing, Mr. Silverman never took possession of any property, and Mr. Silverman did not credit the value of any assets against the outstanding balance owed under the redemption agreement.

***The Receivership, Sale of the Premises, Default, and Eviction***

In 2014, the Bank filed a complaint in which it alleged that KB Restaurants had defaulted on obligations that were secured by the Premises and sought the appointment of a receiver to sell the Premises. In a consent order approved by the parties to that proceeding—which did not include either Jr. Rams or Growlers—the court appointed a receiver, whom it authorized to sell the Premises.

In December 2014, the court approved the receiver's sale of the Premises to 227. In that transaction, the receiver transferred to 227 "all of the rights, title, interest, benefits and privileges of [KB Summit Land], as landlord, under the Lease [with Growlers], including

without limitation all rents, issues and profits arising therefrom[.]" 227 thus became Growlers' landlord.

Growlers subsequently defaulted on the payment of rent to 227, which then sought and obtained a judgment of possession and evicted Growlers from the Premises in June 2017. Mr. Blessing asserts that when 227 did so, it took control over personal property and fixtures of the Growlers business that actually belonged either to Mr. Silverman or to Growlers.

***The Assignment***

Messrs. Blessing and Silverman assert that in August 2018, shortly before this litigation was filed, Mr. Silverman conveyed his interest in all Growlers' assets to Mr. Blessing in exchange for nominal consideration in a verbal transaction that was never reduced to writing. During his deposition in this case, Mr. Silverman described the consideration he received as follows:

> I think it was going to be like a dollar or $10 dollars. It wasn't going to be like a big sale. I don't remember any money going back and forth. It might have been done over beers or at a bar or something like that. There wasn't any like written check or anything.
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> . . .
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> I don't remember [an exchange]. There definitely wasn't a check. I don't remember cash. And again, it might have been over beers, like picking up the tab.

On August 28, 2018, Mr. Blessing filed a UCC Financing Statement Amendment naming himself as the assignee of Mr. Silverman's security interest in the assets of Jr. Rams and Growlers.

***Procedural History***

Mr. Blessing, who represented himself in the circuit court proceedings and continues to do so on appeal, filed this action on August 29, 2018, one day after he filed the UCC Financing Statement Amendment. In the complaint, Mr. Blessing alleged that he "own[ed] all of the personal property of Growlers . . . as the assignee of Jonathan Silverman's . . . 100% ownership interest in [Growlers.]" He further alleged that when the Bank obtained possession of the Premises, it "seiz[ed] all of the personal property in Premises owned by [Growlers]," but later returned only "a personal computer, some office files, and a box or 2 of random equipment in the office."

The Complaint contained two counts. In Count I, Mr. Blessing sought a declaratory judgment to "determine and adjudicate the rights and liabilities of the parties with respect to the ownership of the personal property of [Growlers.]" Among the specific declarations Mr. Blessing requested were that the Bank had no authority to transfer ownership of Growlers' personal property to 227, that the Bank had been aware of Mr. Silverman's UCC filing asserting an interest in that property when it purported to transfer the property to 227, that Mr. Blessing was now the owner of Growlers' personal property, and that the Bank's purported transfer of that property to 227 was void. In Count II, Mr. Blessing asked the court to: (1) declare that the Bank's transfer of the personal property of Growlers to 227

was a fraudulent conveyance; (2) set aside the transfer; (3) award him a money judgment against the Bank and 227 in the amount of $750,000; and (4) award him interest, attorneys' fees, punitive damages, and other unspecified relief.

The Bank and 227 filed a motion to dismiss, which the court granted as to Count II and denied as to Count I. The court concluded that the fraudulent conveyance count did not "state a cause of action as pled against either of the defendants noted" and dismissed it "with prejudice and without leave to amend" because "further efforts in this regard would be futile." In denying the motion to dismiss the declaratory judgment count, the court stated that that count would need to be resolved on summary judgment because a declaratory judgment would need to be issued.

In May 2019, the Bank and 227 moved for summary judgment on Count I. In their motion, they argued that "the security agreement is not effective against [Growlers] because [Growlers] had no underlying liability to Mr. Silverman, did not sign the security agreement, and did not receive value for the redemption of Mr. Silverman's membership interest in J.R. Rams." (Capitalization altered from original.) The Bank and 227 argued that because Mr. Silverman lacked any ownership or security interest in any Growlers property, he lacked the legal capacity to convey any such interest to Mr. Blessing. The Bank and 227 requested that the court enter a judgment declaring, among other things, that the Security Agreement was not effective or enforceable against Growlers; that Mr. Blessing lacked any security interest in any of Growlers' assets; that Growlers never surrendered any property to Mr. Silverman; that 227 "is the owner of all brewing

equipment, cooking equipment, and entertainment equipment" at the Premises; that such equipment constituted "fixtures attached to the underlying realty"; that the receiver, and not the Bank, transferred property to 227; and that Mr. Blessing's requests for declaratory rulings regarding the rights of Growlers be "denied as seeking impermissible advisory opinions[.]"

In opposing the motion, Mr. Blessing argued that disputes of material fact precluded an award of summary judgment; that the Bank had improperly transferred assets in which "Mr. Silverman held a secured interest and title" to 227; that the Bank and 227 had not shown that KB Summit Land, as opposed to Growlers, had owned all of the property transferred to 227; and that the receiver was never granted title to Growlers' personal property and thus lacked the authority to transfer the property to 227.

Following a hearing, the court granted the Bank and 227's motion. But instead of entering the declaratory rulings requested by the parties, the court dismissed Count I. In its oral ruling from the bench, the court provided two reasons for its decision. First, it found that Mr. Silverman did not own the property referenced in Mr. Blessing's complaint. Second, the court determined that Growlers had not signed or authenticated the 2013 Security Agreement. Mr. Blessing timely appealed.

## DISCUSSION

### I. THE CIRCUIT COURT CORRECTLY DISMISSED COUNT II FOR FAILURE TO STATE A CLAIM.

Mr. Blessing first contends that the circuit court erred in dismissing his fraudulent conveyance count (Count II) for failure to state a claim on which relief could be granted. In the alternative, he asserts that the court erroneously denied him the opportunity "to amend his complaint to add a count of conversion." The Bank and 227 counter that Mr. Blessing failed to allege facts sufficient to support his fraudulent conveyance claims. Alternatively, they argue that because Mr. Blessing was not their creditor, he lacked standing to sue them for fraudulent conveyance. Finally, they maintain that the court properly dismissed Count II with prejudice and without leave to amend because amendment would have been futile.

A defendant in a civil suit may move to dismiss if a complaint fails "to state a claim upon which relief can be granted[.]" Md. Rule 2-322(b)(2). We review the grant of such a motion without deference. *Pinner v. Pinner*, 240 Md. App. 90, 113 (2019), *aff'd*, 467 Md. 463 (2020). In so doing, we presume the truth of all well-pled facts in the complaint, as well as any reasonable inferences drawn therefrom. *Parker v. Hamilton*, 453 Md. 127, 132 (2017). Accordingly, we confine our analysis to "the four corners of the complaint and its incorporated supporting exhibits, if any." *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010)). "Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would,

if proven, nonetheless fail to afford relief to the plaintiff." *Pendleton v. State*, 398 Md. 447, 459 (2007) (quoting *Ricketts v. Ricketts*, 393 Md. 479, 492 (2006)). To survive a motion to dismiss for failure to state a claim, a plaintiff "must allege facts with specificity; '[b]ald assertions and conclusory statements . . . will not suffice.'" *Campbell v. Cushwa*, 133 Md. App. 519, 534 (2000) (quoting *Bobo v. State*, 346 Md. 706, 708-09 (1997)).

### A. Mr. Blessing's Fraudulent Conveyance Count Failed to State a Claim on Which Relief Could Be Granted.

Section 15-207 of the Commercial Law Article (2013 Repl.; 2020 Supp.) provides: "Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors, is fraudulent as to both present and future creditors." To establish a prima facie case of fraudulent conveyance, a plaintiff must therefore allege: (1) a conveyance, (2) an actual intent to hinder, delay, or defraud, and (3) a creditor-debtor relationship. For purposes of § 15-207, a "'[c]onveyance' includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property, and also the creation of any lien or incumbrance." *Id.* § 15-201(c). A "creditor," in turn, is "a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent." *Id.* § 15-201(d).

In Count II, Mr. Blessing alleged that (1) the Bank transferred assets belonging to Growlers to 227, (2) at the time of the transfer, Mr. Silverman was a "collateralized creditor" of Growlers, with an ownership interest in the transferred assets, and (3) the sale

"was an intentional, fraudulent transfer." Mr. Blessing makes several other conclusory allegations, including that the transfer was "fraudulent," "made for fraudulent purposes," and made in an "attempt[] to deprive [Mr.] Silverman of the right to ownership of . . . and the right to liquidate" the assets.

For two independent reasons, we hold that the circuit court correctly dismissed Count II. First, the complaint contains only bald and conclusory allegations of fraud. The complaint does not contain a single factual allegation that would support his claim that either the Bank or 227 were ever aware of Mr. Silverman's purported claim to assets located on the Premises, much less that either intended to commit a fraud. Words such as "(fraudulent) are characterizations of the needed facts rather than allegations of them. Charges of fraud are never regarded in law as sufficient unless accompanied with allegations of the facts and circumstances which constitute the fraud." *Sims v. Rylan Grp., Inc.*, 37 Md. App. 470, 474 (1977) (alteration in *Sims*) (quoting *Brack v. Evans*, 230 Md. 548, 553 (1963)).

Second, the complaint fails to identify the existence of a creditor-debtor relationship between either Mr. Silverman or Mr. Blessing, on the one hand, and the Bank or 227, on the other. Fraudulent conveyance is a creditor's cause of action to set aside a conveyance that improperly placed the asset at issue beyond the reach of the creditor by transferring it to a third party. *See* Comm. Law § 15-207. Absent a factual allegation that either Messrs. Blessing or Silverman was a creditor of the Bank at the time of the transfer, however, the complaint fails to state a claim for fraudulent conveyance against the Bank. *See The*

*Redemptorists v. Coulhard Servs., Inc.*, 145 Md. App. 116, 154 (2002) ("Without a finding that [the defendant] owed [the plaintiff] additional funds under the contract, [the plaintiff's] fraudulent conveyance claim would fail due to a lack of proof that, among other things, it is a 'creditor' of [the defendant].").

Because Mr. Blessing's complaint failed to allege facts to support allegations of fraudulent intent and to allege a creditor-debtor relationship between Mr. Blessing or his predecessor and the Bank, it failed to state a claim on which relief could be granted. The circuit court therefore correctly dismissed Count II.

### B. The Circuit Court Did Not Abuse Its Discretion in Dismissing Count II with Prejudice and Without Leave to Amend.

Mr. Blessing contends that even if the court was correct to dismiss Count II, it abused its discretion by doing so with prejudice and without leave to amend. Had the court granted him leave to amend, Mr. Blessing maintains, he might have been able to state a claim for conversion. The Bank and 227 respond that the court properly exercised its discretion, arguing that Mr. Blessing's claim was "flawed irreparably" (quoting *RRC Northeast, LLC*, 413 Md. at 674), was "doomed from its inception" (quoting *Premium of America, LLC v. Sanchez*, 213 Md. App. 91, 121 (2013)), and that any such amendment would have been futile.

We review a trial court's denial of a request for leave to amend a complaint for abuse of discretion. *See Pines Point Marina v. Rehak*, 406 Md. 613, 641 n.10 (2008); *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002). A court abuses

its discretion when its decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable[.]" *Cagle v. State*, 462 Md. 67, 78 (2018) (quoting *Rios v. Montgomery County*, 386 Md. 104, 121 (2005)).

"Although it is well-established that leave to amend complaints should be granted freely to serve the ends of justice . . . , an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Northeast*, 413 Md. at 673-74. The denial of leave to amend is likewise proper where such amendment would either significantly alter the operative facts or would allege a new cause of action which invokes different legal principles than those initially invoked. *See Asphalt & Concrete Servs. v. Perry*, 221 Md. App. 235, 269, *aff'd*, 447 Md. 31 (2016).

We need not reach the merits of Mr. Blessing's contention because he never asked the court for leave to amend Count II. In his opposition to the Bank and 227's motion to dismiss, Mr. Blessing neither requested that the circuit court grant him leave to amend his complaint nor raised conversion as an alternate cause of action. And although the case remained pending after the order of dismissal, he failed to object to the court's order entering judgment without leave to amend and never sought such leave later. Accordingly, this issue is not preserved for appellate review. *See Prince George's County v. Blumberg*, 44 Md. App. 79, 104 (1979) (holding that where the defendant neither requested leave to amend nor objected to the court's denial of such leave, he failed to preserve the issue for

appellate review), *rev'd on other grounds*, 288 Md. 275 (1980). Furthermore, we interpret the court's denial of leave to amend as specific to the fraudulent conveyance count that it had dismissed, and we agree with the circuit court that that count was fatally flawed and that amendment would have been futile. The court was never asked for leave to amend to add a conversion count and we do not interpret its order as precluding such an amendment.

## II. THE COURT ERRED IN AWARDING SUMMARY JUDGMENT WITHOUT ENTERING A DECLARATORY JUDGMENT.

### A. If a Request for Declaratory Judgment Is Justiciable, the Court Must Issue a Declaratory Judgment.

In Count I, Mr. Blessing sought a declaratory judgment adjudicating "the rights and liabilities of the parties with respect to the ownership of the personal property of [Growlers]." A circuit court may grant a motion for summary judgment "in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). An appellate court reviews a grant of summary judgment without deference, "examining the record independently to determine whether any factual disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law." *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020). An appellate court "limits its review to the grounds relied upon by the trial court." *Id.*

"Although a summary judgment in a declaratory judgment action is the exception rather than the rule, circumstances may warrant the entry of a full or partial summary

judgment." *Rupli v. S. Mtn. Heritage Soc'y, Inc.*, 202 Md. App. 673, 682 (2011) (quoting *Loewenthal v. Security Ins.*, 50 Md. App. 112, 117 (1981)). Nonetheless, "whether a declaratory judgment action is decided for or against the plaintiff, there should be a declaration in the judgment or decree defining the rights of the parties under the issues made." *Union United Methodist Church, Inc. v. Burton*, 404 Md. 542, 549 (2008) (quoting *Bowen v. City of Annapolis*, 402 Md. 587, 608 (2007)). As the Court of Appeals has explained:

> [W]hen a declaratory judgment action is brought and the controversy is appropriate for resolution by declaratory judgment, the court must enter a declaratory judgment and that judgment, defining the rights and obligations of the parties or the status of the thing in controversy, *must be in writing*. It is not permissible for the court to issue an oral declaration. . . . *When entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment. Although the judgment may recite that it is based on the reasons set forth in an accompanying memorandum, the terms of the declaratory judgment itself must be set forth separately.* Incorporating by reference an earlier oral ruling is not sufficient, as no one would be able to discern the actual declaration of rights from the document posing as the judgment. This is not just a matter of complying with a hyper-technical rule. The requirement that the court enter its declaration in writing is for the purpose of giving the parties and the public fair notice of what the court has determined.

*Bowen*, 402 Md. at 608-09 (2007) (quoting *Allstate Ins. v. State Farm Mut. Auto. Ins.*, 363 Md. 106, 117 n.1 (2001)); *see also Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 255-56 (2009) ("[W]hile it is permissible for trial courts to resolve matters of law by summary judgment in declaratory judgment actions, the trial court must still declare the

rights of the parties."); *Bushey v. N. Assur. Co. of America*, 362 Md. 626, 651 (2001); *Ashton v. Brown*, 339 Md. 70, 87 (1995).

An exception to this principle exists when the party seeking a declaratory judgment has not raised justiciable claims. "A court cannot consider a declaratory judgment action unless the underlying controversy is justiciable," *Pizza di Joey, LLC v. Mayor & City Council of Baltimore*, 470 Md. 308, 340 (2020), and a claim is only justiciable if the plaintiff has standing to raise it, *see State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 498 (2014). Furthermore, a declaratory judgment complaint must join any "person who has or claims any interest which would be affected by the declaration," because a declaration issued by the court "may not prejudice the rights of any person not a party to the proceeding." Cts. & Jud. Proc. § 3-405(a) (2020 Repl.).

In Count I, Mr. Blessing sought a declaration adjudicating the rights and liabilities of the parties with respect to ownership of certain personal property. He specifically sought a declaration that: (1) the Bank had no authority to transfer Growlers' personal property; (2) the Bank was aware of Mr. Silverman's security interest; (3) only Growlers had authority to transfer its personal property; (4) Mr. Blessing was the owner of all of Growlers' personal property, including that "seized" by 227; (5) the Bank's transfer of Growlers' personal property to 227 is void; and (6) any subsequent transfer of Growlers' personal property is void. In their motion for summary judgment, the Bank and 227 asked the court to enter a different declaration of the rights and responsibilities reflecting that they had no liability to Mr. Blessing.

The circuit court granted the Bank's and 227's motion for summary judgment on Count I without issuing a declaratory judgment or determining that Mr. Blessing's claim was not justiciable. In doing so, the court identified two grounds for its award of summary judgment, both of which it concluded were undisputed on the summary judgment record: (1) Mr. Silverman did not own the property at issue; and (2) Growlers did not sign the 2013 Security Agreement and was not a party to that filing. The court's apparent conclusion was that Mr. Silverman neither owned any of Growlers' personal property nor had a security interest in such property; therefore, he could not have conveyed either the property or security interest to Mr. Blessing; and, therefore, Mr. Blessing lacked any claim to the Growlers' personal property. Even if all of that were true, it would not obviate the need to issue a declaratory judgment defining the rights and obligations of the parties. *See Burton*, 404 Md. at 550 ("Where a party requests a declaratory judgment, it is error for a trial court to dispose of the case simply with oral rulings and a grant of . . . judgment in favor of the prevailing party." (quoting *Jackson v. Millstone*, 369 Md. 575, 593-94 (2002))). We therefore must vacate the award of summary judgment and remand for further proceedings.[3] *See Messing v. Bank of America, N.A.*, 373 Md. 672, 703 n.18 (2003) ("The lack of a declaration of rights . . . requires a vacation.").

[3] The Bank and 227 argue on appeal that at least some aspects of Mr. Blessing's declaratory judgment request are not justiciable because Growlers is a necessary party. In light of our resolution of the appeal on other grounds, we need not reach that issue.

### B. The Basis for Mr. Blessing's Request for Declaratory Relief

For guidance on remand, we will make some additional observations regarding the bases cited by the circuit court in entering summary judgment. *See Rupli,* 202 Md. App. at 680 n.7 (stating that when a circuit court has not entered a proper declaratory judgment, we may, in our discretion, "review the merits of the controversy and remand for the entry of an appropriate declaratory judgment" (quoting *Bushey*, 362 Md. at 651)). To do so, we must first explore the basis for Mr. Blessing's claimed interest in the assets at issue and his contention that genuine disputes of material fact should have precluded the circuit court from entering summary judgment.

When reviewing a court's grant of summary judgment, we must first determine whether there existed a genuine dispute of material fact. *Appiah v. Hall*, 416 Md. 533, 546 (2010). "A material fact is one that will alter the outcome of the case depending upon how the fact-finder resolves the dispute." *Blackwell v. CSX Transp., Inc.*, 220 Md. App. 113 (2014) (quoting *Injured Workers' Ins. Fund v. Orient Express Delivery Serv.*, 190 Md. App. 438, 451 (2010)). To demonstrate the existence of a genuine dispute of material fact, the party opposing summary judgment must "proffer[] facts which would be admissible in evidence." *Boucher Invs. v. Annapolis-West Ltd. P'ship*, 141 Md. App. 1, 10 (2001) (quoting *Beatty v. Trailmaster Prods., Inc*., 330 Md. 726, 737 (1993)). In doing so, the non-moving party must "provide more than 'general allegations which do not show facts in detail and with precision.'" *Benway v. Maryland Port Admin.*, 191 Md. App. 22, 47 (2010) (quoting *Rite Aid Corp. v. Hagley*, 374 Md. 665, 684 (2003)). A party must,

moreover, provide "more than a different theory of how the events transpired." *Benway*, 191 Md. App. at 46.

To say that the presentation of this matter to the circuit court at summary judgment was confusing would be an understatement. Among other challenges: (1) Mr. Blessing contended alternately that the interest he received from Mr. Silverman was an ownership interest and a security interest; (2) it was not entirely clear exactly which assets are the subject of Mr. Blessing's claim; and (3) Mr. Blessing's claim to his (ownership or security) interest is not easy to trace.

Regarding the assets at issue, in his appellate brief, Mr. Blessing indicates that they include at least the Brewing, Cooking, and Entertainment Equipment that was identified in the 2011 Lease between KB Summit Land and Growlers as fixtures that Growlers "[was] using."[4] Mr. Blessing traces his (ownership or security) interest in the Brewing, Cooking, and Entertainment Equipment back to 2006, through the following:

- In 2006, Growlers purchased from the prior owners of the business "[a]ll of the tangible assets owned by or used in the operation of the Business, including furniture, fixtures and equipment, goodwill and trade name, inventory, supplies, books and records, customer and vendor lists, and all other property, tangible or

[4] The Brewing, Cooking, and Entertainment Equipment is identified in greater detail above at page 3. In discovery, Mr. Blessing identified the property at issue in this lawsuit by reference to a different document of uncertain origin. He attached to responses to interrogatories a two-page document titled "Summit Station Fixtures List – Exhibit B" and bearing two different and inconsistent sets of page numbers. It is unclear from the record on appeal what document the list in Exhibit B was drawn from, what other document it may have been part of, why it was created, or what role it may have played in any transaction, although Summit Station was the name of the restaurant before Growlers acquired the business in 2006. The items on the list appear to overlap substantially with items included among the Brewing, Cooking, and Entertainment Equipment.

intangible, used in the Business known as 'Summit Station Restaurant and Brewery[.]'" Mr. Blessing asserts that this transfer included the Brewing, Cooking, and Entertainment Equipment.

- Mr. Blessing contends that Growlers continued to own the Brewing, Cooking, and Entertainment Equipment through the 2011 transactions. Two documents executed in connection with those transactions are potentially relevant:

    - First, when the prior owners of Growlers assigned their membership interests in Growlers to Jr. Rams, they executed an assignment agreement pursuant to which they transferred to Jr. Rams the Jr. Rams Personal Property.[5]

    - Second, the lease executed at that time between KB Summit Land and Growlers identified the Brewing, Cooking, and Entertainment Equipment as fixtures that Growlers "[was] using" and was responsible for maintaining.

- In August 2013, in connection with the agreement by which Jr. Rams bought out Mr. Silverman's interest in that entity, Jr. Rams and Mr. Silverman executed the Security Agreement, in which Jr. Rams purported to assign to Mr. Silverman a security interest "in the assets and properties of both JR. RAMS, LLC and its wholly owned subsidiary, Growlers[.]"

- After Jr. Rams defaulted on its payment obligations to Mr. Silverman, Mr. Blessing contends that Mr. Silverman asserted that he then owned all of Growlers' property and Mr. Blessing, on behalf of Growlers, agreed that he did.

- Shortly before filing this lawsuit, Mr. Silverman conveyed to Mr. Blessing all of his interest in all assets of Growlers in exchange for nominal consideration.

During the same period of time, ownership of the Premises passed as follows:

- In 2006, KB Summit Land purchased the Premises from its prior owners.

[5] The Jr. Rams Personal Property is identified in greater detail above at page 2. As noted above, that property did not include any brewing equipment, cooking equipment (other than pots, pans, utensils, etc.), or other appliances. It is unclear whether any of the Jr. Rams Personal Property is at issue in this litigation.

- Between 2006 and 2009, KB Summit Land gave the Bank a security interest in the Premises as security for loans the Bank made to KB Restaurants, which was then the majority owner of Growlers.
- In May 2014, after KB Restaurants had defaulted on its obligations to the Bank and the Bank initiated receivership proceedings, Black Dog Receiver, LLC took possession of the Premises and was authorized to sell it.
- In December 2014, Black Dog Receiver, as receiver for KB Summit Land, sold the Premises to 227.

Mr. Blessing contends that when Black Dog Receiver sold the Premises to 227, it also mistakenly or fraudulently purported to convey to 227 at least some of the Brewing, Cooking, and Entertainment Equipment, which Mr. Blessing contends was then owned either (1) by Mr. Silverman or (2) by Growlers subject to Mr. Silverman's security interest. Mr. Blessing thus asked the court to declare the rights and obligations of the parties with respect to at least the Brewing, Cooking, and Entertainment Equipment.

The circuit court identified two undisputed material facts as the reasons for its grant of summary judgment. We will address each in turn.

First, the court stated that Mr. Silverman did not own any Growlers property. Mr. Blessing contends that there is a genuine dispute of material fact on that point because: (1) Mr. Blessing averred in his answers to interrogatories that, on behalf of Growlers, he agreed to convey Growlers' personal property to Mr. Silverman in exchange for Mr. Silverman's forbearance from enforcing his security interest; and (2) Mr. Blessing averred in his deposition that he, on behalf of Growlers, agreed with Mr. Silverman's assertion of ownership over Growlers' assets.

We agree with the circuit court that no evidence in the record creates a genuine dispute regarding whether Mr. Silverman owned any of the assets at issue. Mr. Blessing failed to identify any evidence that Jr. Rams, KB Summit Land, or Growlers conveyed assets to Mr. Silverman at any time. As a matter of law, neither Jr. Rams' default on its obligation to Mr. Silverman nor Mr. Blessing's purported oral agreement to convey assets to Mr. Silverman was sufficient to convey the assets without further action. *See Levene v. Antone*, 301 Md. 610, 616 (1984) (stating that delivery is generally required to pass title to personal property). Mr. Blessing has not pointed to any evidence of such further action. The circuit court thus correctly concluded that Mr. Blessing could not have obtained ownership of any of the disputed assets through Mr. Silverman.

Second, the court stated that Growlers did not sign the 2013 Security Agreement. Based on that statement, the court apparently concluded that Growlers had not conveyed a security interest in any assets to Mr. Silverman and, therefore, that Mr. Silverman could not have conveyed any such interest to Mr. Blessing. It is undisputed that Growlers did not sign the 2013 Security Agreement, which purported to give Mr. Silverman a security interest in the assets of both Growlers and Jr. Rams. In assessing the legal effect of that undisputed fact, we turn to § 9-203 of the Commercial Law Article, which governs the formal requirements for the creation of a security interest and provides, in relevant part:

> (b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
>
> (1) Value has been given;

> (2) *The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party*; and
>
> (3) One of the following conditions is met:
>
> > (A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
> >
> > (B) The collateral is not a certificated security and is in the possession of the secured party under § 9-313 pursuant to the debtor's security agreement;
> >
> > (C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 8-301 of this article pursuant to the debtor's security agreement; or
> >
> > (D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under [certain statutes] pursuant to the debtor's security agreement.

(Emphasis added). It is not subject to genuine dispute on this record that (1) Growlers was not a debtor of Mr. Silverman, and (2) none of the conditions in § 9-203(b)(3) were met.

To the extent that Mr. Blessing argues that Jr. Rams had the inherent authority to convey a security interest in its subsidiary's property, he is incorrect. A parent entity and its wholly owned subsidiary are legally independent. *See Burnet v. Clark*, 287 U.S. 410, 415 (1932) ("A corporation and its stockholders are generally to be treated as separate entities."); *Dixon v. Process Corp.*, 38 Md. App. 644, 653 (1978) ("That the parent corporation owns the subsidiary, or the stock is held by one person, does not justify a disregard of the corporate entity." (internal citations omitted)). As an independent legal

entity, a subsidiary generally possesses rights and obligations that are separate and distinct from those of its parent company. Accordingly, ownership of a subsidiary does not, without more, entitle a parent company to ownership of that subsidiary's assets. *See Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003) ("A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary[.]"); *United States v. Bennett*, 621 F.3d 1131, 1136 (9th Cir. 2010) ("[I]t almost goes without saying that a parent corporation does not own the assets of its wholly-owned subsidiary by virtue of that relationship alone."); *Buechner v. Farbenfabriken Bayer Aktiengesellschaft*, 154 A.2d 684, 686 (Del. 1959) ("The shareholder's essential right is to share in the profits and in the distribution of assets on liquidation . . . . He has no interest of any specific assets of the corporation" because "[t]he corporation is an entity, distinct from its stockholders even if the subsidiary's stock is wholly owned by one person or corporation." (internal citation omitted)). A parent company's agreement to convey property owned by its subsidiary is not, therefore, generally enforceable. *See, e.g.*, *United States v. Davidson*, 139 F.2d 908, 910 (5th Cir. 1943).

A parent corporation can nonetheless be treated as the same entity as its subsidiary "when necessary to prevent fraud or to enforce a paramount equity[.]" *Hildreth v. Tidewater Equip. Co.*, 378 Md. 724, 738 (2003). Absent those conditions or a subsidiary acting as a mere instrumentality of its parent, *see Dixon*, 38 Md. App. at 653, parent and subsidiary are separate and a parent's purported grant of a security interest in its subsidiary's assets is enforceable only with its subsidiary's consent, *see In re WL Homes*,

534 Fed. Appx. 165, 169 (3d Cir. 2013) ("The consent of the owner of the collateral is one way to give the debtor sufficient rights in the property to pledge it as security.").

Although we have not found any evidence in the record supporting the application of any of these exceptions, it is appropriate for the circuit court to address this issue in the first instance, including determining whether Growlers and Jr. Rams are necessary parties to the resolution of this controversy. In the same vein, we note that, in addition to the grounds on which the circuit court ruled and their contention that Growlers was a necessary party, the Bank and 227 also argued that they were entitled to summary judgment because: (1) it was undisputed that the only personal property the receiver conveyed to 227 were fixtures attached to real property, which could not have been transferred separate and apart from the Premises; and (2) the receiver, not the Bank, transferred property to 227. Because the circuit court did not rule on those other grounds, and our review of the grant of summary judgment is limited to the grounds on which the circuit court ruled, *see Steamfitters Local Union*, 469 Md. at 746, we express no view on the merit of those other arguments.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY APPELLEES.**