Circuit Court for Baltimore County
Case No. C-03-CV-22-001258

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1759

September Term, 2024

SAMAN RADPARVAR, ET AL

v.

ANDREW H. SEGAL, M.D., ET AL

Leahy,
Zic,
Geller, Jeffrey M.
(Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: May 13, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from the Circuit Court for Baltimore County's entry of a declaratory judgment and permanent injunction enforcing restrictive covenants. Saman Radparvar, Payam Nourmand, and Ahavat Shalom Congregation, Inc. ("Congregation") (collectively, "Appellants") challenge the circuit court's rulings that: *first*, the use of the properties at issue as a shul[1] and annex building violated the restrictive covenants; *second*, the Declaration of Termination was invalid; and *third*, injunctive relief was appropriate. For the reasons that follow, we affirm.

BACKGROUND

The Subdivision and the Restrictive Covenants

In 1950, Keystone Realty Company, Inc. ("Keystone") created a subdivision, Green Spring Manor, via a deed that imposed "Reservations and Restrictions" on all lots. These restrictions ("1950 Covenants") were recorded in the Land Records of Baltimore County on May 15, 1950. Two of the 1950 Covenants are central here:

> 1. . . . [N]o lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one[ ]detached family dwelling not to exceed two and one-half stories in height and a private garage for not more than three cars.
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> * * *
>
> 10. These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time *said covenants shall be*

[1] The circuit court used the terms "shul" and "synagogue" synonymously, defining both as "a house of worship in the Jewish religion." For consistency, this opinion also uses the terms interchangeably.

> *automatically extended for successive periods of ten years, unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.*

(Emphasis added.) We refer to the first covenant as the "Residential Use Covenant" and to the tenth covenant as the "Modification Covenant."

The Underlying Dispute

In October 2017, Mr. Radparvar entered into an agreement to purchase a lot ("Property I") in Green Spring Manor. The title insurance policy for Property I, which Mr. Radparvar was issued in December 2017, explicitly stated that a restrictive covenant applied to Property I.

Mr. Radparvar initially rented out Property I as an investment property. In September 2020, the Congregation, of which Mr. Radparvar is a member, began using Property I for High Holy Day services. Around the same time, the Congregation spent $250,000 modifying the interior of the home for worship space. The Congregation briefly relocated after receiving notice of Baltimore County code violations in October 2020,[2] but returned to Property I for permanent, full-time use as a synagogue in January 2021. The Congregation regularly hosted daily morning and evening prayer services at Property I and drew large crowds on Fridays, Saturdays, and High Holy Days.

[2] In early 2021, Mr. Radparvar and the Congregation initiated zoning proceedings in the Office of Administrative Hearings for Baltimore County to obtain a variance for construction of "a new building of religious worship[.]" The Administrative Law Judge granted the request for a variance with conditions. The decision was appealed to the Board of Appeals for Baltimore County, which held arguments on March 23, 2022, and initially issued a written decision in November 2022.

In October 2020, one month after the Congregation initially began using Property I, Mr. Nourmand, who is also a member of the Congregation, purchased a lot ("Property II") adjacent to Property I. The Congregation subsequently spent $20,000 renovating the dwelling on Property II. It is undisputed that the Congregation's rabbi, Rabbi Eli Hakkakian, stayed overnight at Property II on the Sabbath and other religious holidays, and that Property II was used as an auxiliary building by the Congregation.

On April 16, 2021, five neighboring property owners ("Appellees") sent a demand letter to Appellants, claiming that their uses of Property I and Property II (collectively, "Properties") were violative of the 1950 Covenants. Appellees filed the underlying lawsuit on March 31, 2022, seeking declaratory and injunctive relief.

Nearly one year later, on March 3, 2023, owners of 88 of the 154 lots executed a "Declaration of Termination" that purported to terminate the 1950 Covenants "ab initio, as if said Reservations and Restrictions were never incorporated into the Deed." The Declaration of Termination was recorded in the Land Records of Baltimore County on April 5, 2023.

Following a three-day bench trial in July 2024, the circuit court issued a written opinion on October 25, 2024, concluding that:[3]

> 1. Appellants' use of Property I as a synagogue violated the Residential Use Covenant because Property I was used for an "active and expanding religious institution" rather than as a residence.

[3] The court found that Appellants had constructive, if not actual, knowledge of the 1950 Covenants when Mr. Radparvar purchased his title insurance policy in 2017. Appellants do not challenge this factual finding for clear error.

2. The modifications to Property I violated the Residential Use Covenant because Property I had been "substantially modified to serve the function of a shul, rather than a dwelling."
3. The use of Property II as "an auxiliary building and rabbi office to the shul" violated the Residential Use Covenant.
4. The Declaration of Termination was invalid because it could not take effect until the expiration of the current ten-year-renewal period in 2030, and it improperly attempted to void the 1950 Covenants "ab initio" rather than prospectively terminate them.
5. All of Appellants' affirmative defenses—namely, comparative hardship, laches, waiver by abandonment—failed on the merits.

The circuit court entered a declaratory judgment and permanent injunction on November 1, 2024, ordering Appellants to cease using Property I as a synagogue and Property II as an auxiliary building. Appellants timely appealed. We supplement with additional facts as necessary.

QUESTIONS PRESENTED

Appellants present three questions for our review, which we have rephrased as follows:[4]

1. Did the circuit court err in determining that Appellants violated the Residential Use Covenant?

[4] Appellants phrased the questions as follows:

I. Did the court err in determining [that] the Congregation's use of the [P]roperties violated the 1950 Covenants?

II. Did the court err in finding the Declaration of Termination of the 1950 Covenants invalid?

III. Did the court abuse its discretion in enjoining use of the [P]roperties as a shul or as a part-time residence for the rabbi?

2. Did the circuit court err in determining that the Declaration of Termination was invalid?

3. Did the circuit court err in granting the permanent injunction?

For the following reasons, we answer all three questions in the negative and affirm the judgment of the circuit court.

STANDARD OF REVIEW

Pursuant to Maryland Rule 8-131(c), "[w]hen an action has been tried without a jury, an appellate court will review the case on both the law and the evidence." Findings of fact are reviewed for clear error. Md. Rule 8-131(c). Relevant here, "the interpretation of a restrictive covenant, including a determination of its continuing vitality, is subject to *de novo* review as a legal question." *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 677 (2007) (citation omitted).

This Court also reviews *de novo* a trial court's legal conclusions. *Schisler v. State*, 394 Md. 519, 535 (2006) (citations omitted). The ultimate decision to (or not to) award equitable relief is reviewed for abuse of discretion. *Bontempo v. Lare*, 444 Md. 344, 363 (2015) (citation omitted). An abuse occurs when the court exercises its discretion in an "arbitrary or capricious" manner, "where no reasonable person would take the view adopted by the trial court," or "when the court acts without reference to any guiding rules or principles." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (internal citations and marks omitted).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN DETERMINING THAT APPELLANTS' USE OF THE PROPERTIES VIOLATED THE 1950 COVENANTS.

A. The Parties' Arguments

Appellants contend that the circuit court erred as a matter of law in construing the phrase "residential purposes" in the Residential Use Covenant to require primary or sole use as a "dwelling." Specifically, they argue that the plural form of the word "purpose" (i.e., purposes) contemplates multiple permissible uses of the lots—including religious purposes. As extrinsic evidence of the Residential Use Covenant's meaning, Appellants reference the 1950 Baltimore Zoning Code, which allowed churches in residential zones. They further argue that Property I nonetheless complies with the Residential Use Covenant because it has remained a "residential style" structure.

In response, Appellees argue that the circuit court correctly determined that the phrase "residential purposes" is clear and unambiguous because it reflects "an intent to restrict the area to residential purposes only[.]" Appellees explain that the court's decision is consistent with case law interpreting similar covenant language to mean use for "living purposes, or a dwelling, or a place of abode." Appellees maintain that operating an "active and expanding religious institution" that hosts daily services and draws large crowds is fundamentally incompatible with residential use, and that the structural modifications to Property I transformed it from a "family dwelling" into a synagogue.

B. Legal Framework

"A restrictive covenant is a species of contract." *Howard Rsch. & Dev. Corp. v. IMH Columbia, LLC*, 268 Md. App. 148, 171 (2025) (citing *City of Bowie*, 398 Md. at 677). "In construing covenants, '[i]t is a cardinal principle that the court should be governed by the intention of the parties as it appears or is implied from the instrument itself.'" *RDC Melanie Drive, LLC v. Eppard*, 474 Md. 547, 568 (2021) (quoting *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n* ("*Belleview*"), 321 Md. 152, 157 (1990) (citations omitted)). "Where the language of the instrument containing a restrictive covenant is unambiguous, a court should simply give effect to that language unless prevented from doing so by public policy or some established principle of law." *City of Bowie*, 398 Md. at 682 (internal marks omitted) (quoting *SDC 214, LLC v. London Towne Prop. Owners Ass'n, Inc.*, 395 Md. 424, 434 (2006) (quotation omitted)); *see also Chestnut Real Estate P'ship v. Huber*, 148 Md. App. 190, 202 (2002) ("[R]estrictive covenants are meant to be enforced as written.").

"If the meaning of the instrument is not clear from its terms, the circumstances surrounding the execution of the instrument should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources." *Belleview*, 321 Md. at 157-58 (citation and internal quotations omitted). A covenant is ambiguous only if its language "is susceptible to multiple interpretations by a reasonable person." *Dumbarton Imp. Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 53 (2013) (citation omitted). A covenant is *not* ambiguous "simply because a strained or conjectural construction can be given to a

word[,]" *Belleview*, 321 Md. at 159, or because it does "not address every conceivable issue or potential outcome[.]" *Dumbarton*, 434 Md. at 57. Maryland appellate courts "will 'not invalidate a plainly written covenant to save a party from what may prove to be a poor business decision.'" *Id.* at 61 (quoting *City of Bowie*, 398 Md. at 683).

The term "residential" has been "consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode." *Lowden v. Bosley*, 395 Md. 58, 60, 67-68 (2006) (holding that a covenant restricting lots to "single family residential purposes only" was unambiguous and did not warrant consideration of extrinsic evidence) (citation omitted). Moreover, "language pertaining to 'single-family' homes connotes a specific, limited use of property for quiet enjoyment, even more so than restrictive covenants merely using the term 'residential.'" *RDC Melanie Drive, LLC*, 474 Md. at 574.

C. Analysis

Considering the above, we agree with the circuit court that the term "residential purposes" in the 1950 Covenants is not ambiguous. Although Appellants correctly note that "purposes" is plural, this does not transform the Residential Use Covenant into one permitting any and all activities that might conceivably occur in a residential neighborhood. Rather, the plural form contemplates the various residential activities that occur in a dwelling: living, sleeping, cooking, gatherings of family and friends, and other similar domestic activities. It does not reasonably encompass operating an institutional religious facility.

Moreover, read as a whole, the 1950 Covenants consistently emphasize the residential character of Green Spring Manor. They impose minimum square footage requirements for "dwellings," specify setback requirements, and prohibit "resubdivid[ing]" any plot.[5] This context reinforces that Keystone intended to create and maintain a *residential* community, and not one where entities, such as religious institutions, can operate freely. *See RDC Melanie Drive, LLC*, 474 Md. at 574.

Because we conclude that the language at issue is not ambiguous, Appellants' reliance on the 1950 Baltimore Zoning Code is misplaced. Extrinsic evidence, such as

[5] Covenants 4, 5, and 6, respectively, state:

> 4. No dwelling shall be permitted on any lot at a cost of less than $11,000.00 based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenants to assure that the dwellings shall be of a quality work[]manship and materials substantially the same, or better than that which can be produced on the date these covenants are recorded, at the minimum cost stated herein for the minimum per[]mitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 800 square feet for a one and one-half story dwelling, nor less than 600 square feet ground floor area for a dwelling of more than one and one-half story.
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> 5. No building shall be located on any lot nearer to the front line or[ ]nearer to the Street line than the minimum building set back lines shown on the recorded Plat. In any event, no building shall be located on any lot nearer than 30 feet to the front lot line, or nearer than 10 feet to any side street line.
>
> 6. No lot shall be resubdivided into, nor shall any dwelling be erected or placed on any lot having a width of less than 55 feet. . . .

zoning regulations, may be consulted to help define ambiguous terms in restrictive covenants. *S. Kaywood Cmty. Ass'n v. Long*, 208 Md. App. 135, 145-52 (2012). In *Long*, we determined that the disputed phrase "single family[,]" which described who was permitted to "occup[y]" a residence in a community, was ambiguous. *Id.* at 139, 150-58. We distinguished the issue in *Long* from that in *Lowden*, 395 Md. at 72-73, where the disputed language was unambiguous (and thus, no extrinsic evidence was necessary to interpret the covenant):

> The issue presented in *Lowden* was whether the restrictive covenant at issue prohibited the owner of homes built on lots in the subdivision from renting the homes to residential tenants on a short term basis. The *Lowden* court held that the covenant at issue was unambiguous in that regard and did not prohibit the short term rentals to a single family of a home. In reaching its decision, the Court focused upon the meaning of the term "residential purposes" as used in the covenant and not on the term "single family."

Long, 208 Md. App. at 158 (internal citations omitted).

In the instant case, as in *Lowden*, the disputed language centers around the phrase "residential purposes." *Lowden*, 395 Md. at 72-73. The language does not, as in *Long*, turn on who is included in the definition of "family[.]" *Long*, 208 Md. App. at 139. Accordingly, we hold that *Lowden* is controlling and decline to consider any extrinsic evidence in our interpretation of the Residential Use Covenant.[6]

[6] On March 4, 2026, after the instant appeal was submitted to this Court, counsel for Appellants filed a letter addressed to the Clerk of Court "to advise the Panel of a change in zoning law affecting a property that is the subject of this appeal." Counsel for Appellees responded, contending that "there [was] no legitimate reason for this letter." Because we hold that the plain language of the Residential Use Covenant is

(continued)

Appellants do not challenge for clear error the circuit court's factual findings as they relate to Appellants' use of the Properties, namely, that Appellants "permanently established and [had been] continuously using [Property I] as a shul, and [Property II] as an auxiliary office to the shul, which uses [] continued through the date of trial[.]" Because the Residential Use Covenant is unambiguous, *see City of Bowie*, 398 Md. at 682, we hold that the court did not err as a matter of law in determining that Appellants violated the Residential Use Covenant.

II. THE CIRCUIT COURT DID NOT ERR IN EITHER REJECTING OR INVALIDATING THE DECLARATION OF TERMINATION.

A. The Parties' Arguments

Appellants next take issue with the circuit court's rejection and invalidation of the Declaration of Termination. They specifically argue that the court erred by prohibiting any termination or modification from being effective prior to May 19, 2030, and by invalidating the Declaration of Termination *sua sponte*. Citing to *Hovnanian Land Inv. Grp., LLC v. Annapolis Towne Ctr. at Parole, LLC*, 421 Md. 94, 121 (2011), Appellants reason that the court erred in prospectively limiting the parties' ability to amend a contract (i.e., the 1950 Covenants). Holding otherwise, Appellants argue, "subverts the will of the majority" and prevents necessary community changes.

Appellees maintain that the Modification Covenant's plain language is unambiguous in that it "automatically extend[s]" the 1950 Covenants for successive

unambiguous, we do not address any arguments concerning the effect of zoning ordinances.

periods of ten years "unless an instrument signed by the majority of the then owners of the lots has been recorded, agreeing to change [the 1950 Covenants] in whole or in part." They argue that this "automatic[]" extension language in the Modification Covenant would become meaningless if amendments could take effect at any point. Appellees also contend that the Declaration of Termination's attempt to "terminate" the 1950 Covenants provided no viable legal basis upon which to do so, and therefore, that the circuit court did not err in declining to void the 1950 Covenants.

B. Legal Framework

As recognized above, our interpretation of covenants "should be governed by the intention of the parties as it appears or is implied from the instrument itself." *RDC Melanie Drive, LLC*, 474 Md. at 568 (quotation and internal marks omitted). Maryland appellate courts "will ordinarily avoid interpreting contracts in a way that renders its provisions superfluous." *Calomiris v. Woods*, 353 Md. 425, 442 (1999) (quotation and internal marks omitted). "Where the language of the instrument containing a restrictive covenant is unambiguous, a court should simply give effect to that language unless prevented from doing so by public policy or some established principle of law." *City of Bowie*, 398 Md. at 682 (quotations and internal marks omitted).

There are limits to what is enforceable; for example, parties may not, "even by an express provision in [the covenant], deprive themselves of the power to alter or vary or discharge it by subsequent agreement." *Hovnanian Land Inv. Grp., LLC*, 421 Md. at 121

(quoting 8-40 Corbin on Contracts § 40.13 (2011)).[7] This does not mean, however, that parties are prohibited from agreeing to specific amendment procedures and timing. *See Hovnanian Land Inv. Grp., LLC*, 421 Md. at 121 ("[T]he freedom to contract includes the freedom to alter that contract.").

Moreover, a contract that is not enforceable (i.e., one that is voidable) is distinguishable from a void contract (i.e., one that is void ab initio). As explained by the Supreme Court of Maryland:

> A void contract is not a contract at all[] and all parties, present and future, would be equally allowed to avoid the contract. A voidable contract, on the other hand, is one where one or more parties thereto have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.

Julian v. Buonassissi, 414 Md. 641, 666-67 (2010) (internal citations and marks omitted); *see Harding v. Ja Laur Corp.*, 20 Md. App. 209, 214-15 (1974) (describing the difference between forgery, which produces something that is "void from its inception[,]" and fraud, which produces an agreement that is "voidable as between the parties thereto, but not as to a bona fide [party]"). Thus, to be void ab initio, the subject agreement must lack a requisite element that inhibits it from becoming a legal contract.

[7] In *Hovnanian Land Inv. Grp., LLC*, the Supreme Court of Maryland described a non-waiver provision, which "limit[ed] th[e] ability of parties to modify their contract," as "disfavored." 421 Md. at 121. The non-waiver clause did not render the contract void; rather, it was construed critically by the Court in favor of the parties' freedom to alter the contract. *See id.* at 121-22.

C. Analysis

Turning to our application, we start with the text of the Modification Covenant:

> These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, *after which time said covenants shall be automatically extended for successive periods of ten years, unless an instrument signed by a majority of the then owners of the lots has been recorded*, agreeing to change said covenants in whole or in part.

(Emphasis added.) The phrase, "after which time said covenants shall be automatically extended for successive periods of ten years," provides that once a renewal period begins, it runs for a full ten-year term. This is modified by the antecedent clause, which outlines an exception: automatic renewal occurs unless, *before a renewal period begins*, a majority of the then property owners act to prevent renewal or otherwise modify the 1950 Covenants. Thus, any amendments taken in one ten-year period take effect at the start of the following ten-year period. The circuit court, accordingly, did not err in determining that the Declaration of Termination could not take effect until the start of the next ten-year period, or on May 19, 2030.[8, 9]

[8] Although we dispose of this issue on the Modification Covenant's plain, unambiguous language, we note that to interpret the Modification Covenant as permitting amendments to take effect at *any* point in time, rather than during the next ten-year period, would render the latter half of the Modification Covenant meaningless. *See Calomiris*, 353 Md. at 441 ("Where possible, courts should avoid interpreting contracts so as to nullify their express terms.").

[9] Appellants rely on two contrary interpretations from North Carolina and Alabama. *Rice v. Coholan*, 205 N.C. App. 103, 115-17 (2010); *Hill v. Rice*, 505 So.2d 382, 383-85 (Ala. 1987). As the circuit court correctly noted, however, these opinions use a purely "strict construction" approach that Maryland has not followed since adopting (continued)

Appellants next argue that the circuit court erred in invalidating *sua sponte* the Declaration of Termination. We clarify at the outset that the court did not, as Appellants contend, invalidate the Declaration of Termination on its own initiative. The Declaration of Termination explicitly provides that "[t]he Reservations and Restrictions of the [1950 Covenants] *are terminated ab initio*, as if said Reservations and Restrictions were never incorporated into the [1950 Covenants]."[10] (Emphasis added.) Thus, because the Declaration of Termination itself claimed to void the 1950 Covenants ab initio, it was within the court's purview to determine whether this claim was lawful.

That clarified, we agree with the circuit court that the Declaration of Termination provided no justification for declaring the 1950 Covenants void ab initio, and, therefore, lacked the authority to do so. For something to be void ab initio, a requisite, irreparable legal element must be absent. *See Harding*, 20 Md. App. at 214-15 (noting that something void ab initio is "void from its inception"). Appellants neither argued before the court (nor do they here) that the 1950 Covenants were, *e.g.*, forged, *see id.*, nor did Appellants present any other basis upon which they could be declared legally deficient.

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the "reasonably strict" standard. *See Miller v. Bay City Prop. Owners Ass'n, Inc.*, 393 Md. 620, 634 (2006) ("The construction of restrictive covenants has evolved over the years from a principle of strict construction to one of reasonably strict construction.") (citing *Balt. Butchers Abattoir & Live Stock Co. v. Union Rendering Co.*, 179 Md. 117, 123 (1941)). For this reason, we conclude that these out-of-state cases are not persuasive.

[10] All individual covenants contained in the 1950 Covenants are listed under a "Reservations and Restrictions" heading. For the sake of clarity, we note that the Declaration of Termination's use of this heading to describe what it purports to void "[within] the 1950 Covenants" is redundant.

It is true that agreements which impermissibly interfere with the right to contract by inhibiting amendments may be deemed unenforceable. *See Hovnanian Land Inv. Grp., LLC*, 421 Md. at 121. This voidability issue bypasses the threshold question presented by voidance ab initio, which concerns whether an agreement (i.e., contract, deed, etc.) exists in the first place. *See Julian*, 414 Md. at 666-67 (defining "void" and "voidable"). Thus, Appellants are incorrect insofar as they rely on *Hovnanian Land Inv. Grp., LLC* for the proposition that the Modification Covenant's amendment restrictions render the 1950 Covenants void ab initio.

For these reasons, we hold that the circuit court did not err in either rejecting or invalidating the Declaration of Termination.

III. THE CIRCUIT COURT DID NOT ERR IN GRANTING THE PERMANENT INJUNCTION.

A. The Parties' Arguments

Appellants last argue that the circuit court abused its discretion in granting the permanent injunction by improperly weighing the comparative hardship factors. They specifically contend that: (1) any harm to Appellees is minimal, consisting mainly of increased parking and pedestrian traffic that could occur with any large family; (2) Appellees' complaints are de minimis; (3) the Congregation faces "extreme hardship and even destruction" if forced to relocate; (4) Appellants acted innocently and in good faith; (5) the 1950 Covenants have been waived by non-enforcement; and (6) Appellees are guilty of laches. Appellants also raise constitutional concerns about selective enforcement against religious use.

Appellees respond that the comparative hardship doctrine does not apply because Appellants' violations were neither innocent nor in good faith. They argue that the title insurance policies for the Properties provided Appellants with constructive notice of the 1950 Covenants, and that, in any event, Appellants had actual notice by April 2021—yet continued to expand the Congregation's operations and make substantial improvements to the Properties. Quoting the circuit court's factual findings, Appellees also maintain that Appellants' asserted inability to find another location is not credible because the court determined that the Congregation "could easily relocate and re-establish a shul within the existing eruv[11] . . . within a reasonable walking distance of [C]ongregation members' homes" that would be in compliance with both existing zoning regulations "and not be within the confines of Green Spring Manor." Appellees contend that Appellants' remaining arguments concerning laches, waiver by abandonment, and discriminatory enforcement are without merit.

B. Analysis

A permanent injunction is "an injunction final or permanent in its nature granted after a determination of the merits of the action." *El Bey v. Moorish Science Temple of America, Inc.*, 362 Md. 339, 354 (2001) (quotation and internal marks omitted). Generally, for a court to grant a permanent injunction, the petitioner must "demonstrate[]

[11] As defined by Rabbi Hakkakian at trial, an eruv is "a virtual[] . . . enclosure built by poles and wires around the stretch of neighborhood and these poles and wires . . . would allow people to carry within that enclosure, even though it's all open but it says it has the format of a doorway and that's an enclosure, or around a neighborhood." Here, the eruv "covers the Pikesville area" but not, for example, Towson.

that it will sustain substantial and irreparable injury as a result of the alleged wrongful conduct." *Id.* at 355 (citation omitted).

Where a permanent injunction is imposed as a form of relief in response to a violation of a restrictive covenant, however, "a suit to enforce [a restrictive covenant] is in the nature of specific performance." *Namleb Corp. v. Garrett*, 149 Md. App. 163, 174 (2002) (citing *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 395-96 (2000)). A request for a permanent injunction following a violation of a restrictive covenant may be granted "on the basis of the strength of the circumstances and equities of each party." *Garrett*, 149 Md. App. at 174 (citing *Zouck v. Zouck*, 204 Md. 285, 296 (1954)).

Several equitable defenses are available to prevent enforcement. We explain each raised by Appellants below and apply them in turn.[12]

1. Comparative hardship

Under the doctrine of comparative hardship, "a court may decline to issue an injunction where the hardship and inconvenience which would result from the injunction is greatly disproportionate to the harm to be remedied." *Colandrea*, 361 Md. at 397. The doctrine only applies when "the violation is committed innocently or mistakenly and enforcement of the covenant would visit much greater harm on the violator compared to

[12] We decline to address Appellants' selective enforcement argument because it was not raised before the circuit court. Md. Rule 8-131(a); *see Johnson v. State*, 63 Md. App. 485, 496 (1985) (citation omitted) (declining to address a constitutional argument because it "was not tried and decided in the circuit court" and was, therefore, "not [] preserved for appellate review"). Here, because the court made no factual findings regarding prior enforcement actions, we decline to use the absence of facts in the record to assess, for the first time, an argument made only on appeal.

the slight amount of harm the beneficiary of the covenant would experience if the covenant was not enforced." *City of Bowie*, 398 Md. at 688 (citation omitted); *see Garrett*, 149 Md. App. at 175 ("When applying the doctrine of comparative hardship, the property owner's prior knowledge of the existence of the restriction, and the interest of the community in maintaining its covenants, are relevant.") (citing *Colandrea*, 361 Md. at 397-98) (further citations omitted). In this context, "innocently" means in "acting in good faith[.]" *Urb. Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship*, 340 Md. 223, 232 (1995) (citation omitted).

Here, the circuit court found (and the record supports) that Appellants knew of the 1950 Covenants before April 2021. Not only were the 1950 Covenants recorded in the Land Records of Baltimore County, but Mr. Radparvar's December 2017 title insurance policy for Property I also specifically listed the 1950 Covenants as an exception to coverage. Although the policy did not include the language of the 1950 Covenants, it noted that recorded use restrictions applying to "Green Spring Manor" existed. Moreover, in October 2020, Baltimore County issued a notice to Mr. Radparvar, stating that use of the Properties as places of worship "must cease." Appellants nonetheless continued operations and made improvements to the Properties. At trial, Appellants proffered no persuasive evidence that they reasonably believed the 1950 Covenants permitted their use of the Properties as a shul and administrative building.[13]

[13] Although Appellants referenced active synagogues in nearby residential neighborhoods, they presented no evidence that these neighborhoods were subject to restrictive covenants akin to the 1950 Covenants.

Based on this evidence, the circuit court found that Appellants knew about the 1950 Covenants—and knew that they applied to properties within the Green Spring Manor subdivision—before April 2021. Because the comparative hardship doctrine requires that violations be mistaken or innocent, *City of Bowie*, 398 Md. at 688, the doctrine could not be successfully invoked by Appellants, who had knowledge of the 1950 Covenants and did not prove that their violations were committed in good faith. Accordingly, the court did not err in holding that the comparative hardship doctrine was unavailable to Appellants as an equitable defense.

2. Laches

Laches is an equitable defense that bars a claim "when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 585-86 (2014) (citation omitted). *See Schaeffer v. Anne Arundel Cnty.*, 338 Md. 75, 83 (1995) ("[L]aches is an *inexcusable* delay, without necessary reference to duration in asserting an equitable claim."). "For the doctrine of laches to be applicable, there must be a showing that the delay in the assertion of a right worked a disadvantage to another[.]" *State Ctr., LLC*, 438 Md. at 586 (cleaned up) (quotation and internal marks omitted). The party asserting laches bears the burden of proof. *Daughtry v. Nadel*, 248 Md. App. 594, 626 (2020) (quoting *State Ctr., LLC*, 438 Md. at 586) (further citations omitted).

The record before us supports that the Congregation began regularly using Property I as a shul in January 2021, and Property II as an auxiliary building at some point after its purchase in October 2020. Appellees sent their first demand letter on April

16, 2021, approximately three months after the consistent violations began, and filed suit on March 31, 2022, approximately 14 months after the consistent violations began. In the interim, the parties participated in zoning proceedings related to use of the Properties for the Congregation's religious practice.

This timeline and series of events does not constitute unreasonable or inexcusable delay by Appellees. *See State Ctr., LLC*, 438 Md. at 585-86; *see also Schaeffer*, 338 Md. at 83. It was reasonable for Appellees to delay pursuing potentially unnecessary litigation against Appellants for slightly more than a year while related administrative proceedings continued. Additionally, the April 2021 demand letter, which was sent only three months after Appellants' consistent violations began, alerted them of possible litigation challenging their use of the Properties. Regarding prejudice, the regular use violations began *after* the Congregation spent $250,000 modifying the interior of Property I for worship space. Thus, even if Appellees were aware that renovation work was occurring in fall 2020, they would not have observed the regular, continuous use of Property I as an institutional house of worship until January 2021. The circuit court also did not find credible the testimony that the Congregation would "cease to exist" if forced to relocate from the Properties. Therefore, Appellants did not satisfy either of the laches requirements, and the court did not err in determining that the doctrine of laches did not apply.

3. Waiver

"Maryland appellate courts have long recognized the equitable defense of waiver in restrictive covenant cases." *City of Bowie*, 398 Md. at 697 (citations omitted). "In this

context, waiver deems unenforceable a covenant because some word or act of the covenantee communicated to the covenantor that the covenant would not be enforced." *Id.* at 698 (citation omitted). *See Lindner v. Woytowitz*, 37 Md. App. 652, 658 (1977) ("The question whether there has been [] an abandonment . . . must be established by evidence clear and unequivocal acts of a decisive nature.").

Waiver can occur by *acquiescence*, "which involves a covenantee abiding the violative actions of the covenantor defendant," or by *abandonment*, "which entails the covenantee abiding the violative actions of others besides the covenantor defendant which are taken as also waiving impliedly violative actions of the covenantor defendant." *City of Bowie*, 398 Md. at 698 (citation omitted). Moreover, a "covenantee must be aware of the covenantor's acts or uses and their possible violative nature." *Id.* at 699 (citations omitted). "The question of whether waiver has occurred is a question of fact, which is reviewed for clear error." *Id.* (internal citations omitted).

Applied here, *first*, the circuit court did not err in finding that a prior conveyance for roads and a school within the Green Spring Manor subdivision did not involve "lots" covered by the Residential Use Covenant. This finding is supported by the plain language of the Residential Use Covenant, which uses the term "lots[,]" and the deed conveyed from Keystone for the roads and the school, which uses the term "parcels[.]"

Second, the circuit court properly found that the non-existence of an architectural committee provided for elsewhere within the 1950 Covenants (i.e., not in the Residential Use Covenant) was irrelevant to Appellants' violations under the Residential Use Covenant. The separate committee covenant within the 1950 Covenants states in part:

> A committee consisting of [individuals] has been selected by the Board of Directors of [Keystone] as an Architectural Control Committee for the property heretofore described, and any vacancy on said Committee caused by death, resignation or removal shall thereafter be filled[]by the Directors of said Company, its successors or assigns. Said Board of Directors of the Corporation, or the Board of the Corporation, or the Board of Directors of the successor or assign of the Corporation, shall have the power at any meeting called for the purpose to change the membership of the Architectural Control Committee and designate their successors, which changes in membership, if any, shall be of record in the minutes of the Corporation and available at its offices at any time for the inspection of the purchaser of any lot [included] in the above-mentioned property. . . .

Simply put, we agree with the circuit court that this covenant does not relate in substance to the Residential Use Covenant, and that, accordingly, it has no bearing on the issue of whether the Residential Use Covenant has been waived.

Third, the circuit court did not err in finding that evidence of two home-run businesses within the Green Spring Manor subdivision was insufficient to constitute waiver of the Residential Use Covenant. The court noted that Appellants provided "limited" information about the extent of the businesses' operations and no evidence that Appellees knew about their existence. On appeal, Appellants do not point this Court to any evidence contradicting the court's findings. This Court cannot be expected to seek out law or facts in favor of either party. *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201-02 (2008) (citing Md. Rules 8-504(a)(4)–(5)). Thus, Appellants did not prove that Appellees had the requisite knowledge of these businesses to establish waiver. *See City of Bowie*, 398 Md. at 699.

In sum, we discern no clear error in the circuit court's rejection of Appellants' specific waiver arguments and hold that the court did not abuse its discretion in granting the permanent injunction.

CONCLUSION

For the reasons above, we hold that the circuit court did not err in determining that the Appellants' use of the Properties violated the Residential Use Covenant or in determining that the Declaration of Termination was invalid. Likewise, the court did not abuse its discretion in granting permanent injunctive relief.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.