Circuit Court for Prince George's County
Case Nos. CAL19-17412, CAL19-17413 & CAL19-24223

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 1876, 1880, & 1884
September Term, 2021

CONSOLIDATED CASES

No. 1876
WYNTON SANDERS
v.
SM LANDOVER, LLC

No. 1880
TOSHA LINDSEY
v.
SM PARKSIDE, LLC

No. 1884
AMAR JAMES
v.
STANLEY MARTIN COMPANIES, LLC

Shaw,
Albright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: January 30, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

These consolidated appeals arise from the entry of summary judgment in three putative class action lawsuits by the Circuit Court for Prince George's County. Each lawsuit is based on a contract for the purchase of a newly constructed home. Appellants Amar James ("James"), Wynton Sanders ("Sanders"), and Tosha Lindsey ("Lindsey") (collectively "Appellants") entered into their respective contracts at various times in 2018 and thereafter settled on their new homes, took delivery of the deeds to their new homes, and have since lived in their new homes.

The claims asserted by Appellants allege that Appellees SM Waterford Estates, LLC ("SM Waterford Estates"), SM Landover, LLC ("SM Landover"), and SM Parkside, LLC ("SM Parkside") (collectively "Appellees") failed to properly disclose information related to deferred water and sewer fees in accordance with Md. Code Ann., Real Prop. § 14-117(a)(3)(i). The central issue in this appeal involves the statute of limitations with respect to the water and sewer claims under § 14-117(a)(3)(i). The second part of this appeal involves additional claims for money had and received in violation of the Maryland Consumer Protection Act ("MCPA"). Appellants question the enforceability of a "First-Time Maryland Home Buyer Transfer and Recordation Tax Addendum" where Appellants paid the Appellees the entire amount of recordation tax and local transfer tax imposed onto them at their respective settlements.

The Circuit Court consolidated the three cases for pre-trial purposes, and Appellees then filed an Omnibus Motion to Dismiss. At the conclusion of a hearing on the Motion, but before issuing the decision, the Circuit Court advised that it was "going to treat the

motion as a motion for summary judgment" because "matters outside the pleadings were filed by both parties." The Circuit Court then granted Appellees' Omnibus Motion and dismissed all three operative complaints with prejudice, finding:

> (1) Appellants' fully-performed Purchase Agreements are enforceable "because Stanley Martin did register as a home builder and was party to the purchase agreement[s]" and therefore, Appellees did not also have to register.
>
> (2) Appellant's disclosure "claims accrued at the time of the contract when the[] disclosures that are at issue were made" and because they waited more than one year later to file their complaints, the claims are time-barred by the contractual one-year statute of limitations period in the Purchase Agreements.
>
> (3) "No valid claim for money had and received or under the Maryland Consumer Protection Act" exists because "the [P]urchase [A]greements were fully performed" and Appellants "got the benefit of their bargains."

Appellants timely appealed and present the following rephrased questions for our review:[1]

[1] Appellants' original questions presented are stated as follows:

Whether a seller of a new home that meets one or more definitions of a "home builder" under the Maryland Home Builder Registration Act is required to be registered as a "home builder" at the time a purchaser signs a contract for a new home when the builder of the new home is a registered home builder and is a party to the same contract?

Whether a provision in a contract stating that there is a "one (1) year statute of limitations" is an enforceable contractual limitation period?

Whether the Circuit Court erred in finding that a claim for statutory damages pursuant to RP § 14-117(b)(2)(i) for a violation of RP § 14-117(a)(3)(i) accrues at the time the home purchaser enters into a contract for the sale of a home that is subject to deferred water and sewer charges that will be imposed onto the purchaser when the purchaser takes possession of the home?

1. Did the Circuit Court err in dismissing Appellants' disclosure claims under RP § 14-117(a)(3)(i) as time-barred pursuant to the one-year contractual statute of limitations provision in the Purchase Agreements?

2. Did the Circuit Court err in finding that Appellees could enforce the "First-Time Maryland Home Buyer Transfer and Recordation Tax Addendum" requiring payment of the entire amount of recordation tax and local transfer tax at settlement?

We affirm in part and reverse in part.

BACKGROUND

Sanders, a first-time Maryland home buyer, entered into a Purchase Agreement with SM Landover and Stanley Martin Companies for the construction and sale of a new home located in Landover, Maryland on April 8, 2018. After signing the Purchase Agreement, Sanders settled on his new home on November 15, 2018. At settlement, Sanders paid $8,072.58 in total recordation tax and local transfer tax to SM Landover. Sanders filed a Class Action Complaint dated May 21, 2019, against SM Landover alleging violations of RP § 14-117(a)(3)(i) and (ii). Sanders' operative Complaint, the Second Amended Class Action Complaint, added two additional counts (Count Four – Money Had and Received; and Count Five – Violation of the MCPA).

Lindsey entered into a Purchase Agreement with SM Parkside and Stanley Martin Companies for the construction and sale of a new home located in Upper Marlboro, Maryland on April 30, 2018. After signing the Purchase Agreement, Lindsey settled on

Whether the Circuit Court erred in finding that SM Landover and SM Waterford Estates could enforce the "First-Time Maryland Home Buyer Transfer and Recordation Tax Addendum" which required Sanders and James – both first-time Maryland homebuyers – to pay the entire amount of recordation tax and local transfer tax imposed at their respective settlements?

her new home on December 17, 2018. Lindsey filed a Class Action Complaint dated May 21, 2019, against SM Parkside alleging violations of RP § 14-117(a)(3)(i). Lindsey's operative Complaint, the Third Amended Complaint, only contains counts related to the water and sewer fees under RP § 14-117(a)(3)(i).

James, a first-time Maryland home buyer, entered into a Purchase Agreement with SM Waterford Estates and Stanley Martin Companies for the construction and sale of a new home located in Riverdale, Maryland on February 26, 2018. After signing the Purchase Agreement, James settled on his new home on August 10, 2018. At settlement, James paid $10,860.94 in total recordation tax and local transfer tax to SM Waterford Estates. James filed a Class Action Complaint dated July 31, 2019, against SM Waterford Estates alleging a violation of RP § 14-117(a)(3)(i) related to SM Waterford Estates' disclosures in the Purchase Agreement regarding the deferred water and sewer charges. James' operative Complaint, the Second Amended Class Action Complaint, added two additional counts (Count Three – Money Had and Received; and Count Four – Violation of the MCPA).

Each Purchase Agreement identifies either SM Landover, SM Parkside, or SM Waterford as the "Seller" and owner of the real property to be developed, and Stanley Martin Companies as the "Builder," retained to construct Appellants' new homes. Each Purchase Agreement also includes a contractual statute of limitations provision where the parties agreed that:

> Any and all disputes and/or claims between the parties relating to this Contract or the Property, irrespective of whether the dispute is submitted to arbitration or to a court, shall be governed by a one (1) year statute of

> limitations, notwithstanding the period of limitations that would otherwise be applicable.

The parties further agreed "that the delivery and acceptance by Purchaser of the Deed at the time of settlement hereunder shall constitute and be deemed full performance by Seller of, and full compliance by Seller with, all of the terms of this Contract" and "that none of the terms hereof shall survive the delivery and acceptance of the said Deed" except for certain specific paragraphs, including paragraph 21 which contains the one-year contractual limitations period.

Attached to the Purchase Agreements are a series of addenda and disclosures signed by Appellants, acknowledging their receipt at the time of contract. These included (i) the Maryland Home Builder Registration Addendum; (ii) the Deposit Disclosure and Certificate of Compliance with Deposit Protection Requirements; and (iii) the Notice to Purchaser of Deferred Water and Sewer Charges with a copy of the Declaration of Deferred Water and Sewer Charges.

The signed Purchase Agreement contained an acknowledgement that the buyer "HAS READ AND UNDERSTANDS EACH AND EVERY PORTION [OF THE AGREEMENT]" and "HAS BEEN GIVEN THE OPPORTUNITY TO CONSULT AN ATTORNEY AT LAW REGARDING THE LEGAL EFFECT OF THIS CONTRACT" (all caps in originals).

For the first-time home buyers, Sanders and James, as part of the consideration for the purchase of their new homes, the Purchase Agreements included the First-Time Maryland Home Buyer Transfer and Recordation Tax Addendum in which they each

"EXPRESSLY AGREE[D] THAT THE COST OF THE RECORDATION TAX AND LOCAL TRANSFER TAX SHALL BE PAID BY BUYER." (all caps in originals); *see also* RP § 14-104(c)(1) (requiring the entire amount of recordation tax and local transfer tax be paid by seller "unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller."). Sanders and James paid the recordation tax and local transfer tax to Prince George's County on their new homes at settlement.

On December 7, 2021, the Circuit Court held a hearing on the Omnibus Motion to Dismiss filed by Appellees. The court granted Appellee's Omnibus Motion to Dismiss, or in the alternative, for summary judgement, finding that: 1) the home sellers, Appellees SM Waterford Estates, SM Landover, and SM Parkside, could enforce the "one (1) year statute of limitations" provision contained in each Purchase Agreement and were not required to register as home builders under the Act because the home builder, Stanley Martin Companies, was a registered home builder as a party to each Purchase Agreement; 2) the Water and Sewer claims accrued at the time the Purchase Agreements were signed and are "all barred by the statute of limitations" contained in the Purchase Agreements; and 3) Sanders and James "got the benefits of their bargains" and "have no right to a rebate of any taxes or share of taxes that were paid" and have no claim for money had and received or under the MCPA.

Appellants timely filed this appeal. Appellants request that this Court vacate the Circuit Court's order granting the Omnibus Motion to Dismiss, or in the alternative, the Motion for Summary Judgment, and remand the cases for further proceedings.

STANDARD OF REVIEW

Ordinarily, when a trial court purports to grant a motion to dismiss, the appellate court reviews the action based solely on the allegations contained within the four corners of the complaint. *Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004). However, "when a trial judge is presented with factual allegations beyond those contained in the complaint to support or oppose a motion to dismiss and the trial judge does not exclude such matters, then the motion shall be treated as one for summary judgment." *Okwa v. Harper*, 360 Md. 161, 177 (2000).

The proper standard for reviewing the entry of summary judgment is whether it is "legally correct." *Eng'g Mgmt. Servs. v. Md. State Highway Admin*., 375 Md. 211, 229 (2003). The appellate court "accept[s] all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Sprenger v. Public Serv. Comm'n.*, 400 Md. 1, 21 (2007). The Circuit Court's interpretation of legal standards, the Maryland Rules, statutory law, and case law are all reviewed *de novo*. *Walter v. Gunter*, 367 Md. 386, 392 (2002) (stating that when a trial court's order "involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review."). Thus, the appellate court reviews *de novo* the Circuit Court's conclusions of law. *Reiter v. Pneumo Abex*, 417 Md. 57, 67 (2010).

DISCUSSION

I. The Circuit Court erred in dismissing Appellants' disclosure claims under RP § 14-117(a)(3)(i) as time-barred pursuant to the one-year contractual statute of limitations provision in the Purchase Agreements.

Sanders and Lindsey's claims under RP § 14-117(a)(3)(i) challenge certain disclosures related to deferred water and sewer charges included in their Purchase Agreements. They assert that Appellees as sellers were required to register as home builders prior to entering into the Purchase Agreements and that their claims began to accrue at the time of settlement. Appellees argue that when Sanders and Lindsey entered into their Purchase Agreements, they agreed that a one-year statute of limitations would govern, and that Sanders and Lindsey had one year after receiving the allegedly non-compliant disclosures to assert their disclosure claims.

Statute of Limitations

Appellants argue that it is impossible to know when a claim accrues under the Purchase Agreement "one (1) year statute of limitations" without reference to the specific language of Maryland's three-year "statute of limitations." Appellants claim the court erred by imposing a one-year contractual limitation period on them and that their complaints were filed within the time limitation set forth in Maryland's catch-all three-year statute of limitations, thus, the Water and Sewer Claims are not time barred.

Generally, parties may limit the time for bringing an action "to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period." *Ord. of U. Com. Travelers of Am. v. Wolfe*, 331 U.S. 586, 608 (1947). The U.S. Supreme Court has long recognized that parties' freedom to contract should be given effect absent clear policy consideration to the contrary. *See Missouri, Kan. & Tex. Ry. Co. v. Harriman Bros.*, 227 U.S. 657, 672 (1913).

The Supreme Court of Maryland[2] has also recognized the freedom of parties to contract:

> Maryland courts have been hesitant to strike down voluntary bargains on public policy grounds, doing so only in those cases where the challenged agreement is patently offensive to the public good, that is, where 'the common sense of the entire community would . . . pronounce it' invalid. This reluctance on the part of the judiciary to nullify contractual arrangements on public policy grounds also serves to protect the public interest in having individuals exercise broad powers to structure their own affairs by making legally enforceable promises, a concept which lies at the heart of the freedom of contract principle.

Md.-Nat'l Cap. Park & Plan. Comm'n. v. Washington Nat'l Arena, 282 Md. 588, 606 (1978) (alterations in original) (citations omitted).

This Court summarized the Maryland approach: "[P]arties may agree to a provision that modifies the limitations result that would otherwise pertain provided (1) there is no controlling statute to the contrary, (2) it is reasonable, and (3) it is not subject to other defenses such as fraud, duress, or misrepresentation." *Coll. of Notre Dame of Md., Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 174 (2000). "[T]he validity of a contractual provision that purports to shorten a statutory limitations period is measured by its reasonableness and by whether certain defenses to contract formation can be established." *Ceccone v. Carroll Home Servs., LLC*, 454 Md. 680, 694 (2017). Contractual modifications setting a time for accrual of a cause of action or modifying a limitations period are generally not disfavored in the law. *Morabito*, 132 Md. App. at 169. "Unlike some other states, the

[2] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

Maryland general statute of limitations does not expressly prohibit its modification." *Id.* at 173.

Md. Code, CJ § 5-101 states, "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." The Maryland general statute of limitations, § 5-101, is not similar to a "specific statute of limitations governing insurance and surety contracts, which cannot modify the statute of limitations." *Daniels v. NVR, Inc*., 56 F.Supp.3d 737, 743 (D. Md. 2014).

In the present case, the agreements signed by Sanders and Lindsey both contain paragraph 21(j), which reads:

> Any and all disputes and/or claims between the parties relating to this Contract or the Property, irrespective of whether the dispute is submitted to arbitration or to a court, shall be governed by a one (1) year statute of limitations, notwithstanding the period of limitations that would otherwise be applicable.

We observe the language is unambiguous and specified that any claims "relating to this Contract or the Property" shall be brought within one year. The contract contains no language suggesting that the parties agreed that its terms would apply at a later date, i.e., settlement, and the document warns that the parties are agreeing to the one-year limitations period "notwithstanding" the applicability of alternative periods. The document also contains language acknowledging that the parties had both read the agreement and had the opportunity to consult with legal counsel. Their signatures attest that they agreed to the terms of the purchase agreement, and that any claims arising under the Agreement must be brought within one year.

Sanders and Lindsey's reliance on the United States District Court for the District of Maryland case *Daniels v. NVR, Inc.* is misplaced. In *Daniels*, the Plaintiff and Defendant entered into a purchase agreement for a new home to be built by Defendant with settlement occurring in August 2011. The parties entered into a separate agreement titled "Agreement Tolling Statute of Limitations," which tolled applicable statutes of limitation or repose for a one (1) year period following settlement. Plaintiff filed a complaint against Defendant in September 2013, alleging factual inaccuracies in the building permit application, resulting in a higher tax burden and other expenses and damage. Defendant argued that all of the claims were subject to the contract-based one-year limitations period and were time-barred before Plaintiff commenced the action. The Court agreed, finding that the parties validly contracted to a one-year statute of limitations, thus Plaintiff's claims more than a year after settlement were time-barred. The *Daniels* court found "the parties validly contracted to establish a private, contractually limited period of time for [Plaintiff] to sue [the builder]." 56 F.Supp.3d at 744.

The purchase agreements in both *Daniels* and the present case are similar as they contain a one-year statute of limitations for all applicable claims. As *Daniels* held, the Maryland general statute of limitations, CJ § 5-101, does not prohibit contract modification of the limitations period, and there is no statute to the contrary. We hold the Agreement here was not required to conform with the general statute of limitations in order to be operative. Consistent here and in *Daniels*, the one-year statute of limitations is reasonable, "not void as against public policy[,]" and "no basis exists to find that [the parties] entered into the contract based upon fraud, duress, or any other unconscionable conduct." *Id.* at

743-44. As a result, Sanders and Lindsey's disclosure claims are limited to being brought within one year after the operative date of accrual.

Accrual

Appellants argue that even if the "one (1) year statute of limitation" provision is enforceable, it is of no effect because Sanders and Lindsey filed their Complaint within one year of when their claims accrued, which started on the settlement date. Appellees contend the operative date of accrual began at the time of contract. Sanders and Lindsey argue that the disclosure claim under RP § 14-117(a)(3)(i) accrues at two different times depending on the remedy sought. Specifically, Sanders and Lindsey contend that because they are seeking monetary damages under RP § 14-117(b)(2)(i), instead of recission pursuant to RP § 14-117(b)(2)(iii), their claims for damages accrue, at the earliest, the date of settlement, when they became obligated to pay deferred water and sewer charges.

Within the context of the statute of limitations, the Supreme Court of Maryland has stated, "[t]he law is concerned with accrual in the sense of testing whether all of the elements of a cause of action have occurred so that it is complete." *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 195 (2012). This Court has held that "[a] cause of action does not accrue . . . until all elements are present, including damages." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 716 (2003).

Appellants assert that Appellees violated RP § 14-117(a)(3)(i), which states:

> In Prince George's County, a contract for the initial sale of residential real property for which there are deferred private water and sewer assessments recorded by a covenant or declaration deferring costs for water and sewer improvements for which the purchaser may be liable shall contain a disclosure that includes:

1. The existence of the deferred private water and sewer assessments;
2. The amount of the annual assessment;
3. The approximate number of payments remaining on the assessment;
4. The amount remaining on the assessment, including interest;
5. The name and address of the person or entity most recently responsible for collection of the assessment;
6. The interest rate of the assessment;
7. The estimated payoff amount of the assessment; and
8. A statement that payoff of the assessment is allowed without prepayment penalty.

Md. Code Ann., Real Prop. § 14-117(a)(3)(i) (2015 Repl. & Supp. 2020). Further, under the damages section, RP § 14-117(b)(2)(i-iii) provides the remedies available to the purchaser:

> (2) Violation of subsection (a)(3) of this section entitles the purchaser to:
>
> > (i) Recover from the seller the total amount of deferred charges the purchaser will be obligated to pay following the sale;
> >
> > (ii) Recover from the seller any money actually paid by the purchaser on the deferred charge that was lost as a result of a violation of subsection (a)(3) of this section; or
> >
> > (iii) If the violation is discovered before settlement, rescind the real estate contract without penalty.

As alleged in their Complaints, Sanders and Lindsey are seeking damages under RP § 14-117(b)(2)(i), recovery from the seller of "the total amount of deferred charges the purchaser will be obligated to pay following the sale[.]" Accordingly, this Court must examine when the elements of the cause of action occurred in order to determine when Appellants' claims for damages under RP § 14-117(b)(2)(i) accrued.

The first element for a cause of action under RP § 14-117(b)(2)(i) requires a violation of subsection (a)(3) regarding deferred water and sewer assessments. A violation of subsection (a)(3) then entitles the purchaser to recover from the seller the total amount of deferred charges the purchaser will be obligated to pay following the sale. The statutory language "following the sale" makes clear that the purchaser must complete the sale of the home before the water and sewer charges become an obligation of the purchaser to pay. Prior to settlement, the purchaser has not taken possession of the home and has incurred no obligation to pay the water and sewer charges. Therefore, a cause of action under RP § 14-117(b)(2)(i) can only accrue, at the earliest, following settlement when the sale is completed, and the purchaser takes possession of the house along with the responsibility for water and sewer charges.

It is worth noting the differences in remedies available under RP § 14-117(b)(2). RP § 14-117(b)(2)(ii) allows the purchaser to "[r]ecover from the seller any money actually paid by the purchaser on the deferred charge[.]" A purchaser cannot actually pay any money on the water and sewer charges until after they take possession of the home and incur the obligation to pay those charges. As a result, the earliest a cause of action can accrue under RP § 14-117(b)(2)(ii) is following the date of settlement.

Assuming *arguendo* that the time of contract is the date of accrual for a claim under RP § 14-117(a)(3)(i), the outcome would lead to a purchaser not having a remedy if the action was brought in court because there are no actual damages until the date of settlement and obligation to pay the charges. Also, if the construction of the home took longer than the applicable statute of limitations and the date of accrual was running from the time of

contract, the purchaser would be barred from filing a claim under the post-settlement remedies through no fault of their own. A misrepresentation by a seller regarding sewer and water charge disclosures is a breach of § 14-117(a)(3)(i), however the cause of action under § 14-117(b)(2)(i) or (ii) does not actually accrue until there are damages attendant to those misrepresentations.

RP § 14-117(b)(2)(iii) is a distinctly separate remedy in that it is a pre-settlement equitable remedy that allows the purchaser to unilaterally "rescind the real estate contract without penalty" if the violation is discovered before settlement. Additionally, RP § 14-117(b)(2)(iii) is not governed by the general statute of limitations under Cts. & Jud. Proc. § 5-101 because the date of settlement after the house is built may exceed the statute of limitations. Therefore, both RP § 14-117(b)(2)(i) and RP § 14-117(b)(2)(ii) are post-settlement remedies that only accrue following the sale of the house at settlement.

The legislative history surrounding the adoption of RP § 14-117(a)(3)(i) further confirms the plain language of the statute and the legislative intent. This Court in *Sullivan* explained:

> In 2012, the General Assembly established the Task Force to Study Rates and Charges in the Washington Suburban Sanitary District in response to growing concerns from policymakers regarding deferred water and sewer connection fees assessed on new homeowners by private developers. *See* Washington Suburban Sanitary District Transparency and Rate Relief Act of 2012, 2012 Md. Laws Ch. 685.

Sullivan v. Caruso Builder Belle Oak, LLC, 251 Md. App. 304, 327-28 (2021). The Task force issued 13 recommendations based on its findings, two of which are relevant:

> Recommendation 7: Require a contract for the sale of new residential real property in Prince George's County to contain a disclosure statement

> regarding the estimated cost of any deferred water and sewer charges for which the purchaser may become liable. The disclosure statement must include the amount of the annual assessment; the number of years of the assessment; the amount of the full assessment, including interest; the name and address of the person/entity responsible for collection of the assessment; the interest rate on the assessment; the payoff amount of the assessment; and a statement that payoff of the assessment is allowed without penalty.
>
> Recommendation 8: If the information for the sale contract of residential real property is not included, the purchaser is entitled to recover from the seller the total amount of deferred charges the purchaser will be obligated to pay following the sale and any money actually paid by the purchaser on the deferred charge that was lost as a result of the violation. If the violation is discovered before settlement, the buyer may rescind the real estate contract without penalty.

As a result, in 2014, the General Assembly enacted House Bill 1043, which codified Recommendations 7 and 8 almost verbatim as § 14-117(a)(3)(i) and § 14-117(b)(2), respectively. Recommendation 8 specifically distinguished the available remedies for purchasers claiming a violation of RP § 14-117(a)(3)(i) as either pre-settlement or post-settlement based on the specific timing of the cause of action. The purpose of the Bill was to provide a remedy when developers violate the disclosure requirements and give purchasers in Prince George's County "the opportunity to save money by prepaying the assessment in full and avoiding interest payments." *Sullivan*, 251 Md. App. at 332. Based on the plain language of the statute and legislative history, a cause of action under § 14-117(b)(2)(i) cannot accrue at the time of contract.

In the present case, Sanders settled on his new home on November 15, 2018, while Lindsey settled on her new home on December 17, 2018. The parties filed a class action complaint alleging various violations of RP § 14-117(a)(3)(i) and (ii) on May 21, 2019. Because the cause of the action accrues on the date of the settlement, the Appellants timely

filed their complaint under RP § 14-117(b)(2)(i) within the one-year contractual statute of limitations provision in the Purchase Agreements. The Circuit Court erred in dismissing both Sanders and Lindsey's claims.

Registered Home Builder

Appellants assert that because Appellees were not registered "home builders" under Md. Code, Bus. Reg. § 4.5-605 at the time they entered into their Purchase Agreements, the Purchase Agreements, including the "one (1) year statute of limitations" provision therein, are unenforceable. Appellees argue the Purchase Agreements are valid and enforceable because Stanley Martin Companies was the "builder" and was a party to both agreements, thus satisfying the registered "home builder" requirement.

The statute in question, BR § 4.5-605, states, "[a] contract for the performance of any act for which a home builder registration number is required is not enforceable unless the home builder was registered at the time that the contract was signed by the owner." Further, pursuant to BR § 4.5-101(g)(2)(ii), "'Home builder' includes: a new home builder subject to § 10-301 of the Real Property Article. RP § 10-301 provides, in relevant part:

> (a) When required. – If, in connection with the sale and purchase of a new single-family residential unit, the construction of which has not begun or, if begun, is not completed at the time of contracting the sale, the vendor or builder obligates the purchaser to pay and the vendor or builder receives any sum of money before completion of the unit and grant of the realty to the purchaser, the builder or vendor shall:
>
> > (1) Deposit or hold the sum in an escrow account segregated from all other funds of the vendor or builder to assure the return of the sum to the purchaser in the event the purchaser becomes entitled to a return of the sum;

> (2) Obtain and maintain a corporate surety bond in the form and in the amount set forth in § 10-302 of this subtitle, conditioned on the return of the sum to the purchaser in the event the purchaser becomes entitled to the return of the money; or
>
> (3) Obtain and maintain an irrevocable letter of credit issued by a Maryland bank in the form and in the amounts set forth in § 10-303 of this subtitle.

In accordance with the "Earnest Money Deposit Agreement," each Appellant signed a "Promissory Note" to pay to the Sellers the deposit amount specified. The statute cited in the Purchase Agreement specifies that the deposits "shall be held under the Contract in accordance with the provisions of the Real Property Article, Title 10, Subtitle 3, of the Annotated Code of Maryland." As such, the Appellees fall under the purview of RP § 10-301, thereby making Appellees "home builders" pursuant to BR 4.5-101(g)(2)(ii).

According to Sanders and Lindsey, their fully-performed Purchase Agreements are not enforceable because the sellers of their new homes were not registered "home builders." Appellant Sanders' Purchase Agreement states, "THIS NEW HOME SALES CONTRACT (this "Contract"), dated as of 04/08/2018 is made by and among SM Landover, LLC ("Seller"), Stanley Martin Companies, LLC ("Builder"), and Wyman Sanders ("Purchaser")[.]" Appellant Lindsey's Purchase Agreement states, "THIS NEW HOME SALES CONTRACT (this "Contract"), dated as of 04/29/2018 is made by and among SM Parkside, LLC ("Seller"), Stanley Martin Companies, LLC ("Builder"), and Tosha M. Lindsey ("Purchaser")[.]"

Both Purchase Agreements make clear that Stanley Martin Companies is the "builder" as well as a party to the agreements with Sanders and Lindsey. Specifically,

Stanley Martin is in direct privity with Sanders and Lindsey as the party contractually responsible for constructing their new homes, solely liable "for the repair of any defects in the land development or construction of the improvements," and "solely responsible for any valid claims arising from, related to, or in connection with the development of the real estate or construction of the home and other improvements."

BR § 4.5-605 does not require a builder and a seller of a new home to be registered "home builders" when they are both parties to the same contract with the same consumer for the construction and sale of the same new home. BR § 4.5-605 renders unenforceable only contracts with unregistered home builders. In other words, only when the consumer enters into a contract for the sale of a new home in which **no registered home builder is a party** does the law allow him to avoid the contract and for good reason.

Ignoring that Stanley Martin was a party to their Purchase Agreements and a registered "home builder" at all relevant times, Sanders and Lindsey focus on the fact that SM Landover and SM Parkside allegedly were not registered "home builders." Because Stanley Martin was a party to their Purchase Agreements as a registered "home builder," BR § 4.5-605 does not provide the Appellants with the relief they seek.

II. The Circuit Court did not err in finding that Appellees could enforce the "First-Time Maryland Home Buyer Transfer and Recordation Tax Addendum" requiring payment of the entire amount of recordation tax and local transfer tax at settlement.

Appellants assert that Appellees cannot enforce the "First-Time Home Buyer Tax Addendum" they entered into with James and Sanders because Appellees were not registered as home builders. Appellants argue, since Appellees cannot enforce the "First-

Time Home Buyer Tax Addendum[,]" the tax allocations of the parties should have defaulted to RP § 14-104(c)(1), which means that the Appellees, and not the first-time Maryland home buyer Appellants, were required to pay the entire amount of recordation tax and local transfer tax at their respective settlements. As a result, James and Sanders assert a claim for money had and received as well as a claim for violation of the Maryland Consumer Protection Act based on the recordation tax and local transfer tax they paid pursuant to the terms of the First-Year Home Buyer Addendum.

Appellants' arguments are predicated on the notion that Appellees failed to properly register as home builders under the Maryland Home Builder Registration Act, and therefore the Appellees could not enforce the Purchase Agreements which contractually altered the default tax allocations proscribed by the General Assembly. RP § 14-104(c)(1), provides:

> The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.

As discussed *supra,* Stanley Martin Companies is a registered home builder that was a party to each agreement with Appellants. As a result of satisfying the registered home builder requirement under the Act, the Purchase Agreement in question is enforceable. The default tax allocations in RP §14-104(c)(1) do not apply because of the express agreement in the Purchase Agreement, and it was proper for Appellants to pay their respective recordation tax and local transfer tax at settlement.

Even if Appellees were not registered home builders, Maryland law does not allow Sanders and James to recover on a fully performed contract where they received full value. Money had and received is a common law count that "lies whenever the defendant has obtained possession of money which, in equity and good conscience, he ought not be allowed to retain." *Bourgeois v. Live Nation Ent., Inc.*, 430 Md. 14, 46 (2013) (quoting *Benson v. State*, 389 Md. 615, 652-53 (2005)). As this Court noted, "[a]lthough money had and received is an action at law, our courts have long held that it is governed by equitable considerations." *Aleti v. Metro. Balt., LLC*, 251 Md. App. 482, 515 (2021) (citing *State to Use of Emp. Sec. Bd. v. Rucker*, 211 Md. 153, 157-58 (1956)). "Because of its origins in quasi-contract, a claim for money had and received generally 'allows the recovery of money paid under a contract still executory in nature,' and is 'generally not to recover money paid under a fully executed contract.'" *Aleti*, 251 Md. App. at 515 (quoting *Bourgeois*, 430 Md. at 49).

In *Bourgeois*, the Supreme Court of Maryland discussed the common law action for money had and received at length. The "branch of the action" most applicable to the plaintiffs' claim was recovery of amount paid "pursuant to an illegal, and thus allegedly void, agreement." *Id*. at 49. "[R]ecovery in such a case was ordinarily limited to recover money paid under an executory illegal contract, one not yet fully consummated, but generally not to recover money paid under a fully executed contract." *Id*. The reason for this "distinction is that the courts will treat an illegal executory contract as a nullity and order restitution independent of the contract." *Aleti*, 251 Md. App. at 516. "When the contract is fully executed, however, the situation is different, for in that setting, the parties

ordinarily are in *pari delicto* and neither should be able to take advantage of the illegality." *Id*.

In the present case, both Appellants and Appellees fully performed under the Purchase Agreements. Stanley Martin constructed new homes for Sanders and James. SM Landover delivered the improved real property to Sanders, SM Waterford delivered the improved real property to James, and Sanders and James paid all amounts due under their Purchase Agreements. Unlike the case in *Bourgeois*, there is nothing illegal about Sanders and James' payment of the recordation tax and local transfer tax pursuant to the terms of their Purchase Agreements. To the contrary, Sanders and James paid the taxes because that is what they agreed to do when they entered into their Purchase Agreements and signed the First-Time Home Buyer Tax Addendum. Under these circumstances, Maryland law simply does not allow Sanders and James to prevail on a claim for reimbursement of the recordation and local transfer taxes they paid by agreement as part of the consideration for their new homes.

Lastly, James and Sanders argue the court erred in concluding that they failed to state a claim for violation of the Maryland Consumer Protection Act. Sanders and James only allege that they paid all of the recordation tax and local transfer tax in accordance with the terms of their Purchase Agreements. Under Maryland law, this is insufficient to state a private cause of action under the MCPA.

In *CitaraManis*, the Supreme Court of Maryland expressly rejected a tenant's claim for common law restitution to recover rent paid to an unlicensed landlord in the absence of actual damages, because "the tenants have received everything that they bargained for, and

a necessary element justifying the remedy of restitution, *i.e*., unjust enrichment, is lacking." *CitaraManis v. Hallowell*, 328 Md. 142, 158-59 (1992). "In other words, where a landlord has provided all that was bargained for, we have held that there is no injustice in permitting the landlord to keep rent and other fees paid under the lease where the tenant's claim is based solely upon the landlord's lack of licensure." *Aleti*, 479 Md. at 740. As the Supreme Court explained, "the General Assembly intended that a plaintiff pursuing a private cause of action under the CPA prove actual 'injury or loss sustained.'" *CitaraManis*, 328 Md. at 151. Actual damages resulting from an alleged violation is a prerequisite to stating a claim under the MCPA. *Id*. at 154.

Here, Sanders and James do not allege any defect in the construction of their new homes; they do not allege any non-performance of their Purchase Agreements; and they do not allege that SM Waterford's or SM Landover's alleged status as an unregistered "home builder" impaired or prejudiced any of their rights under the Act. Rather, the "damage" they allege is the recordation tax and local transfer tax they paid as part of the consideration for the purchase of their new homes. The recordation tax and local transfer tax are not "damages" but rather part of the consideration they paid for their new homes. Accordingly, the Appellants got the benefits of their bargains, and the Circuit Court correctly dismissed the MCPA claims.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART AND REVERSED IN PART; COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.