

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2471

September Term, 2015

RODNEY RYAN GRAVES

v.

JOHN PETERSON, *et al.*

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 20, 2017

Rodney Ryan Graves and his wife, Ladan Rahnema filed a complaint for declaratory judgment and specific performance in the Circuit Court for Montgomery County. They sought a declaration that a contract existed between themselves and John D. Peterson; Brenda L. Peterson; James J. Fitzgibbons, Esquire; Thomas H. Price, III, Esquire; and Thomas H. Price, P.A. (collectively, the appellees) and to enforce that contract. The circuit court granted the appellees’ motion to dismiss and Mr. Graves filed this appeal.¹ We affirm the dismissal of Mr. Graves’s claim for specific performance, vacate the dismissal of Mr. Graves’s claim for declaratory judgment, and remand with instructions to enter a declaratory judgment consistent with our resolution of the contract claim.

I. BACKGROUND

In 2015, Mr. Graves and Ms. Rahnema mailed a notarized letter to the appellees entitled “Notice of Fraud Through Lack of Disclosure of Material Information When Property Was Purchased and Stipulation Affidavit” (the Notice). The Notice, which was styled like a civil complaint, asserted that the appellees sold a home to Ms. Rahnema in 2011; that the appellees committed fraud by failing to disclose an encumbrance on the property; that Mr. Graves had subsequently obtained “a 50% ownership interest in [the] property by way of contract (deed);” and that Mr. Graves and Ms. Rahnema discovered the encumbrance in 2014 when they tried to refinance the property. The Notice further

¹ Because Ms. Rahnema did not sign the notice of appeal or file a separate notice of appeal she is not a proper party to this appeal. *See In re Nichole B.*, 410 Md. 33, 62-63 (2009) (wife was not a party to the appeal where she did not sign the notice of appeal). Consequently, we do not address any claims raised by Mr. Graves with respect to Ms. Rahnema.

indicated that the appellees “agreed” the allegations in the Notice were true and that, as a result of the fraud, they would pay Mr. Graves and Ms. Rahnema \$900,000. Finally, and most relevant to the issue before us, the Notice stated: “THIS IS A CONTRACT, your failure to answer and rebut this affidavit is acquiescence, you have 72 hours to answer, and then this contract is law.”

When the appellees did not respond to the Notice, Mr. Graves and Ms. Rahnema filed a complaint in the circuit court seeking a declaratory judgment that the Notice constituted a contract between the parties and that the appellees had breached that contract by not paying the demanded amount. Mr. Graves and Ms. Rahnema also sought specific performance.

The appellees filed a motion to dismiss the complaint arguing that (1) Mr. Graves lacked standing, because he was not a party to the 2011 real estate transaction; (2) the complaint did not state a cause of action for breach of contract; and (3) any claim for fraud was barred by the statute of limitations. At the hearing on that motion, Mr. Graves admitted that he had not been “on the deed that transferred the property from the defendants in 2011.” The circuit court then dismissed Mr. Graves from the lawsuit, finding that he lacked standing because the “basis of [the] suit is essentially a fraud allegation based on events in 2011.” The court offered Ms. Rahnema an opportunity to respond to the appellees remaining arguments for dismissal but, she declined to do so and walked out of the courtroom with Mr. Graves. The court then dismissed the complaint with prejudice on the ground that it did not allege the formation of a valid contract between the parties and that

any fraud claim, based on the 2011 transaction, was barred by the statute of limitations. This appeal followed.

II. DISCUSSION

A. Standard of Review

Where a circuit court has granted a motion to dismiss, an appellate court reviews the circuit court’s decision for legal correctness. *Bacon v. Arey*, 203 Md. App. 606, 651 (2012) (quoting *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 155–56 (2010)). In so doing,

a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may be reasonably drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action for which relief may be granted.

Bacon, 203 Md. App. at 651. We will uphold the dismissal if the facts alleged and permissible inferences would, if proven, fail to afford relief to the plaintiff. *Id.*

B. The Circuit Court Erred In Finding That Mr. Graves Lacked Standing

Before reaching the merits, such as they are, we must briefly address whether Mr. Graves had standing to bring the lawsuit in the first place. Mr. Graves contends, and the appellees do not dispute, that the trial court erred in finding that he lacked standing to bring the declaratory judgment action. We agree with Mr. Graves on this point, and this point only.

A party must be able to demonstrate “a real and justiciable interest that is capable of being resolved through litigation.” *Norman v. Borison*, 192 Md. App. 405, 420 (2010). This necessarily requires a showing of some kind of “injury-in-fact,” or “an actual legal stake” in the outcome of the litigation. *Id.* (citation omitted).

The circuit court determined that the basis of the lawsuit was “essentially a fraud allegation based on events in 2011,” and found that Mr. Graves lacked standing because he was not a party to the 2011 real estate transaction and did not have an ownership interest in the property at that time. But as the appellees now concede in their brief, the complaint did not raise a fraud or misrepresentation claim based on the 2011 transaction.² Instead, Mr. Graves sought relief based solely on the theory that the appellees had entered into a contract with him and Ms. Rahnema in 2015 when they failed to respond to the Notice. The appellees, on the other hand, denied that they had agreed to contract with Mr. Graves, thus creating a justiciable controversy.

Because of this asserted legal interest, we find that Mr. Graves had standing to seek a declaration from the court as to whether the Notice was, in fact, a valid contract and, to the extent that a contract existed, to seek specific performance. *See generally Comm. for Responsible Dev. on 25th St. v. Mayor & City Council of Baltimore*, 137 Md. App. 60, 72 (2001) (noting that standing can rest on “a legal interest such as one of property, one arising

² Based on its belief that the complaint raised a fraud claim, the circuit court also found that the case was barred by limitations because it was filed in 2015, four years after the 2011 real estate transaction. As the complaint, in fact, sought a declaratory judgment that a contract had been formed between the parties in 2015, the three-year statute of limitations did not bar Mr. Graves’s claim.

out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege” (internal quotation marks and citation omitted)). Consequently, the circuit court erred in dismissing Mr. Graves from the suit on the ground that he lacked standing.

C. The Circuit Court Did Not Err In Finding That Mr. Graves Had Not Entered Into A Contract With The Appellees And, Therefore, In Dismissing His Claim For Specific Performance

That threshold victory does not end our inquiry, though. The court found in the alternative that the complaint should be dismissed because it failed to allege the formation of a valid contract. “Creation of a contract requires an offer by one party and acceptance by the other party.” *Cochran v. Norkunas*, 398 Md. 1, 23 (2007). “Acceptance of an offer is requisite to contract formation, and common to all manifestations of acceptance is a demonstration that the parties had an actual meeting of the minds regarding contract formation.” *Id.* “[I]n other words, to establish a contract the minds of the parties must be in agreement as to its terms.” *Mitchell v. AARP Life Ins. Program, New York Life Ins. Co.*, 140 Md. App. 102, 117 (2001) (internal quotation marks and citation omitted). The court was right on this point.

After presuming the truth of the facts alleged in the complaint and viewing all reasonable inferences in a light most favorable to Mr. Graves, *see Pittway Corp. v. Collins*, 409 Md. 218, 234 (2009), we conclude that he failed to establish that the appellees had agreed to any of the terms contained in the Notice. Silence is not acquiescence – a contract requires an actual meeting of the minds, an offer *and* an acceptance. Silence is not an acceptance of an offer unless the parties have *agreed* previously that silence would be an

acceptance, the offeree has taken the benefit of the offer, or, based on previous dealings between the parties, it is reasonable that the offeree should notify the offeror if she does not intend to accept. *See Cochran*, 398 Md. at 23-24. None of those exceptions applied here. Mr. Graves did not allege the existence of any previous agreements regarding the manifestation of acceptance between the parties. The Notice did not convey a benefit to the appellees that they were able to retain as a result of their silence. And there was no course of dealing that would make it reasonable for the appellees to believe they would have to notify Mr. Graves if they intended not to accept his demand. To the contrary, this sort of unilaterally springing contract formation would circumvent the “acceptance” half of the contract formation process, and the court correctly dismissed Mr. Graves’s claim for specific performance.

D. Although The Circuit Court Properly Dismissed Mr. Graves’s Specific Performance Claim, The Complaint Plead Sufficient Facts To Entitle Him To A Declaratory Judgment

One more step remains. Although the court correctly determined that the complaint failed to establish a contract between Mr. Graves and the appellees, dismissal of a declaratory judgment complaint is rarely appropriate, and in most cases the trial court must declare the parties’ rights even if the decision would be unfavorable to the party seeking the declaration. *See, e.g., 120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City*, 413 Md. 309, 355–56 (2010). A court may dispose of a declaratory judgment action without declaring the parties’ rights only when there is no justiciable controversy. *Broadwater v. State*, 303 Md. 461, 467 (1985) (collecting authorities). And a justiciable controversy exists where “there are interested parties asserting adverse claims upon a state

of facts which must have accrued wherein a legal decision is sought or demanded.” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 591 (2014) (internal quotation marks and citation omitted).

To be sure, Mr. Graves and the appellees disagreed about whether the appellees silence constituted an acceptance of the Notice, and thus, whether a contract had been formed between them. But the complaint sufficiently alleged an actual controversy between the parties that was capable of being remedied by a declaratory judgment. *See* Md.Code Ann., Cts. & Jud. Proc. § 3-406 (“Any person . . . whose rights, status, or other legal relations are affected by . . . contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations under it.”). And the trial court’s dismissal of the specific performance claim did not render Graves’s request for declaratory judgment moot, as it is “not permissible for the court to avoid declaring the rights of the parties by entering judgment on another pending count.” *Post v. Bregman*, 349 Md. 142, 159 (1998). The circuit court should, therefore, have entered a written declaration setting forth the rights of the parties instead of dismissing the declaratory judgment claim.

Nevertheless, because the circuit court’s failure to enter a declaratory judgment was not a jurisdictional error, this Court may exercise its discretion to “review the merits of the controversy and remand for the entry of an appropriate declaratory judgment by the circuit court.” *See Bushey v. Northern Assurance Co. of Am.*, 362 Md. 626, 651 (2001). And because we determined that the complaint failed to establish the existence of a contract

between Mr. Graves and the appellees, we remand the case to the circuit court to enter a declaratory judgment consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED IN PART AND VACATED IN
PART. CASE REMANDED TO THE
CIRCUIT COURT FOR MONTGOMERY
COUNTY TO ENTER A DECLARATORY
JUDGMENT CONSISTENT WITH THIS
OPINION. COSTS TO BE PAID BY THE
APPELLANT.**