Circuit Court for Prince George's County
Case No. CAE20-16413

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1104

September Term, 2023

PATRICIA WATERS, ET AL.

v.

CITY OF LAUREL

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 4, 2025

*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 Rule 1-104(a)(2)(B).

Patricia Waters and Scott Novak (collectively "Appellants") filed, in the Circuit Court for Prince George's County, a "Complaint for Declaratory Relief, Injunctive Relief, and Damages" against the City of Laurel, Maryland (the "City") alleging, among other things, that the City had implemented certain regulations and taken certain actions that adversely affected Appellants' rights as property owners. The City thereafter filed a motion to dismiss Appellants' complaint. Before the court issued a ruling on that motion, Appellants filed an amended complaint. The City subsequently filed a motion to strike and/or dismiss Appellants' amended complaint. Ultimately, the court granted both of the City's motions, thereby dismissing Appellants' complaint and striking and dismissing Appellants' amended complaint. Appellants noted this appeal, raising three questions for our review. For clarity, we have rephrased and consolidated those questions as:

1. Did the circuit court err in dismissing Appellants' complaint?

2. Did the circuit court err or abuse its discretion in striking and dismissing Appellants' amended complaint?

Finding no error or abuse of discretion, we affirm.

BACKGROUND

In 2015, Appellants were the owners of commercial property located at 604 Main Street in Laurel (the "Property"), which Appellants rented for general commercial use. At the time, the Property was subject to certain regulations enforced by the City. Those regulations required prospective tenants to obtain preapproval from the City via a "special exception" process. That process required tenants to submit a statement of justification, an

existing site conditions plan, a proposed site plan, and an application fee. Tenants also had to satisfy the City's parking regulations or seek a waiver from the City.

In December 2015, Appellants evicted the Property's tenant, who had been operating the Property as a cigar lounge. In July 2016, Appellants entered into discussions with a prospective tenant, a pastor, who was interested in renting and operating the property on behalf of his church (the "Church"). Around that same time, the Church discussed its interest in the Property with Christian Pulley, the Assistant Director of Economic and Community Development for the City of Laurel. According to Appellants, Pulley informed the Church that "a church could not exist at [the] Property due to parking limitations" and that, were the Church to attempt to obtain a waiver from the City, Pulley would vote against it. Shortly thereafter, the Church's interest in renting the Property ceased. The Property remained unrented until February 2018, at which point Appellants entered into an agreement with the Property's current tenant.

Original Complaint

On June 10, 2019, Appellants sent an email to the City Administrator and the Deputy City Administrator stating their intent to sue the City. On September 24, 2020, Appellants filed a "Complaint for Declaratory Relief, Injunctive Relief, and Damages" in the circuit court. Appellants alleged that the City had been implementing "a de facto land use procedure using parking requirements as a basis for allowing personal scrutiny by city officials[.]" Appellants argued that the City's "de facto" procedure was evidenced by Pulley's statements to the Church in July 2016, in which Pulley indicated that the Church could not occupy the Property due to parking restrictions and that Pulley would fight any

attempt by the Church to obtain a waiver. Appellants alleged that Pulley's actions had "a chilling impact on the Church's further consideration of the Property for its use" and resulted in the loss of "a valuable tenant" and "rental income from August 1, 2016 through February 18, 2018 of approximately $3,000/per month or a total of $54,000."

Appellants set forth three counts. In Count I, Appellants sought a declaratory judgment stating that the City's parking regulations and special exception policies violated Maryland law and were therefore invalid. In Count II, Appellants sought a declaratory judgment stating that the City's parking requirements and special exception process violated Article 24 of the Maryland Declaration of Rights. In Count III, which was titled "Damages for Loss of Rental," Appellants alleged that, "as a result of the implementation of the parking regulations and special exception process, [Appellants] lost a valuable tenant and lost rental income from August 1, 2016 through February 18, 2018 of approximately $3,000/per month or a total of $54,000." Appellants alleged that the City's actions "also chilled a subsequent cigar lounge from opening in the relevant time period from August 1, 2016 through February 18, 2018 when the Property remained vacant thereby causing [Appellants'] damages." Appellants requested an award of money damages in the amount of $54,000.00.

Motion to Dismiss Original Complaint

The City thereafter filed a motion to dismiss Appellants' complaint. In July 2021, the court held a hearing on the City's motion. At that hearing, the City argued that Appellants lacked standing to seek declaratory relief. As to Appellants' claim for monetary damages pursuant to Count III, the City argued that Appellants had failed to comply with

the notice provision of the Local Government Tort Claims Act (the "LGTCA"). Under the LGTCA, an action for unliquidated damages cannot be brought against a local government unless notice is given, either in person or by certified mail, within one year after the injury. Md. Code, Cts. & Jud. Proc. ("C&J") § 5-304.

Appellants argued that they had the requisite standing to seek declaratory relief. Appellants also argued that their claim for monetary damages was an "inverse condemnation" claim and was therefore not subject to the notice requirements of the LGTCA. The circuit court ultimately held the matter *sub curia*.

Amended Complaint

In April 2022, while the circuit court's decision on the City's motion to dismiss was pending, Appellants filed an amended complaint. In their amended complaint, Appellants set forth a host of new factual allegations related to the City's enforcement of parking regulations and the special exception process around the time of Appellants' alleged injury. Aside from that, Appellants' causes of action and claims for relief remained largely unchanged.

Amended Complaint Stricken and Dismissed

The City thereafter filed a "Motion to Strike Amended Complaint or, in the Alternative, Motion to Dismiss Amended Complaint." In that motion, the City argued that Appellants' amended complaint should be stricken and/or dismissed because it did not cure the deficiencies inherent in Appellants' initial complaint. In July 2023, the circuit court entered an order granting the City's motion and striking and dismissing Appellants' amended complaint.

Original Complaint Dismissed

In August 2023, the circuit court entered a memorandum opinion and order dismissing Appellants' original complaint. Regarding Appellants' claims for declaratory relief, the court found that Appellants were not "aggrieved parties" and were therefore unable to obtain a declaratory judgment. Regarding Appellants' claim for monetary damages, the court found that the claim "appears to be a tort claim . . . rather than a diminution of land value or inverse condemnation claim." The court found that Appellants were therefore required, under the LGTCA, to notify the City, either in person or by certified mail, within one year of February 2018, which is when Appellants' injury concluded. The court found that Appellants' email notification, which was sent to the City in June 2019, failed to satisfy the LGTCA's notification requirements. The court found that there was "no substantial compliance" and that Appellants had offered "no good cause for the delay." The court concluded that waiving the LGTCA's notice requirements would be prejudicial to the City.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Parties' Contentions

Appellants contend that the circuit court erred in dismissing Count III of their complaint on the grounds that they had failed to comply with the LGTCA.[1] Appellants argue that their claim for compensation under Count III was for inverse condemnation, which is not subject to the LGTCA.[2] Appellants further argue that, even if their claim sounded in tort, they substantially complied with the LGTCA's notice provisions such that dismissal was unwarranted.

The City contends that Appellants failed to state a claim for inverse condemnation because they did not allege facts sufficient to show the requisite "taking." The City argues that the court was correct in qualifying Count III as a tort claim subject to the LGTCA's notice provisions. The City asserts that the court did not err or abuse its discretion in finding that Appellants had failed to substantially comply with the LGTCA. The City further asserts that, even if Appellants' claim were to qualify as an inverse condemnation claim, the claim was properly dismissed because Appellants did not exhaust their administrative remedies prior to bringing the claim.

[1] At the outset of this appeal, Appellants also challenged the court's decision to dismiss their requests for declaratory relief set forth in Counts I and II of their complaint. While the appeal was pending, however, Appellants sold the subject Property, which rendered their claims for declaratory relief moot. Appellants have since abandoned those claims.

[2] *See Litz v. Maryland Dep't of Env't*, 446 Md. 254, 273-76 (2016).

Standard of Review

"We review the grant or denial of a motion to dismiss to determine 'whether the trial court was legally correct' after accepting 'all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.'" *Adventist Healthcare, Inc. v. Behram*, 488 Md. 410, 431 (2024) (quoting *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018)). In so doing, we apply a *de novo* standard of review. *Cain v. Midland Funding, LLC*, 475 Md. 4, 33-34 (2021).

Analysis

A.

We begin our analysis with Appellants' assertion that Count III of their complaint constituted a claim for inverse condemnation. Inverse condemnation is "'a shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted.'" *Coll. Bowl, Inc. v. Mayor & City Council of Baltimore*, 394 Md. 482, 489 (2006) (quoting *United States v. Clarke*, 445 U.S. 253, 257 (1980)). "Essentially, a plaintiff may 'recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.'" *Litz v. Maryland Dep't of Env't*, 446 Md. 254, 266 (2016) (quoting *Coll. Bowl*, 394 Md. at 489). "To state a claim for inverse condemnation, a plaintiff must allege facts showing ordinarily that the government action constituted a taking." *Id.* at 267. A taking may be found where a regulatory action effectively denies an owner '"the physical or economically viable use of the property[.]"' *Id.* (quoting *Coll. Bowl*, 394 Md. at 489).

That said, "a plaintiff seeking to state a claim for inverse condemnation 'bears a substantial burden' and must be able to show that 'justice and fairness' entitle him or her to compensation." *Id.* (quoting *E. Enters. v. Apfel*, 524 U.S. 498, 523 (1998)). At a minimum, a plaintiff must allege facts showing '"a high degree of interference with the use of the property."' *Coll. Bowl*, 394 Md. at 490 (quoting *Maryland Port Admin. v. QC Corp.*, 310 Md. 379, 402 (1987)). In *Ungar v. State*, 63 Md. App. 472 (1985), for instance, we held that the plaintiff failed to establish that a "taking" had occurred where there was "no allegation that [the plaintiff] was denied all, or essentially all, beneficial use of his property." *Id.* at 483.

Against that backdrop, we hold that Appellants failed to state a claim for inverse condemnation. The facts supporting that claim were: that, between August 2016 and February 2018, the City required businesses operating at the Property to conform to the City's parking restrictions and special exception process; that the City implemented those requirements in an arbitrary and unfair manner; that, in July 2016, Pulley, a City official, informed a prospective tenant that she would not permit the tenant to occupy the Property due to inadequate parking; and, that the City's regulations and Pulley's actions caused the prospective tenant to lose interest in renting the Property, which caused Appellants to lose "a valuable tenant" and "rental income from August 1, 2016 through February 18, 2018." We fail to see how those facts constitute a "taking." Even when viewed in a light most favorable to Appellants, those facts do not establish that the City engaged in a "high degree of interference" such that Appellants were denied all, or essentially all, of the beneficial

use of the Property. Given Appellants' "substantial burden," the circuit court was correct in finding that Appellants had failed to plead an inverse condemnation claim.

Assuming, *arguendo*, that Appellants had successfully pled an inverse condemnation claim, the City is correct that such a claim was premature given that Appellants did not seek an administrative remedy.[3] "To bring a takings claim, a plaintiff must exhaust its available administrative remedies." *King v. Helfrich*, 263 Md. App. 174, 213 (2024). "Indeed, [the Supreme Court of Maryland] 'has held on many occasions, when faced with a claim of an agency's unconstitutional taking of property, that such issues must still go through the administrative process, particularly when judicial review is provided.'" *Harford Cnty. v. Maryland Reclamation Assocs., Inc.*, 242 Md. App. 123, 143-44 (2019) (quoting *Prince George's Cnty. v. Blumberg*, 288 Md. 275, 293 (1980)). "Our jurisprudence carves out no exception from this requirement for takings claims." *Maryland Reclamation Assocs., Inc. v. Harford Cnty.*, 468 Md. 339, 409 (2020). "To the contrary, our case law requires that takings claims be raised in the administrative proceeding." *Id.* (citing *Blumberg*, 288 Md. at 293).[4] Thus, because Appellants did not exhaust their administrative remedies, their claim for inverse condemnation was properly dismissed.

[3] Although not raised below, the exhaustion issue is properly before this Court. *See King v. Helfrich*, 263 Md. App. 174, 213 (2024) ("The exhaustion issue is a jurisdictional question that a court may bring up *sua sponte*.").

[4] The agency is also charged with making "the initial factual determination of whether a property owner can use its property for any other beneficial use[.]" *Maryland Reclamation*, 468 Md. at 399.

Appellants do not dispute that they failed to seek the requisite administrative remedies before bringing their inverse condemnation claim in the circuit court. Appellants note, rather, that their claim for inverse condemnation was based on Pulley's "dissuad[ing] the [C]hurch from engaging in the [special exception] process by forecasting that the exception would be denied." Appellants further note that "[a]dministrative remedies need not be exhausted or undertaken if the action is futile."

We are not persuaded by Appellants' claim. Appellants do not explain, and we cannot discern, how Pulley's alleged statements would have rendered the administrative process futile or absolved Appellants of the obligation to exhaust their administrative remedies. That is, even if Pulley had suggested that the Church's special exception would be denied, Appellants were still required to employ the requisite administrative process before filing their inverse condemnation claim in the circuit court. *See Casey v. Mayor & City Council of Rockville*, 400 Md. 259, 308 (2007) ("Essential to the successful assertion of any regulatory takings claim is a *final and authoritative determination* of the permitted and prohibited uses of a particular piece of property." (emphasis added)).

B.

We now turn to Appellants' argument that, were Count III of the complaint considered a tort claim rather than a claim for inverse condemnation, the claim should not have been dismissed for failure to comply with the LGTCA's notice requirement. The LGTCA states that "an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 1 year after the injury." C&J § 5-304(b)(1). An injury is said to have occurred

when the legally operative facts permitting the filing of a claim come into existence. *Heron v. Strader*, 361 Md. 258, 264 (2000). In addition, notice "shall be given in person or by certified mail[.]" C&J § 5-304(c)(1). "Filing notice is a 'condition precedent' to suit so that failure to comply with notice bars the subsequent action." *Dehn Motor Sales, LLC v. Schultz*, 439 Md. 460, 480 (2014).

A plaintiff may overcome the LGTCA's strict notice requirement by pleading substantive or substantial compliance. *Wilkinson v. Bd. of Cnty. Comm'rs of St. Mary's Cnty.*, 255 Md. App. 213, 267 (2022), *aff'd*, 483 Md. 590 (2023). A plaintiff may demonstrate substantial compliance by fulfilling the following four-part test:

> (1) the plaintiff makes "some effort to provide the requisite notice"; (2) the plaintiff does "in fact" give some kind of notice; (3) the notice "provides requisite and timely notice of facts and circumstances giving rise to the claim"; and (4) the notice fulfills the LGTCA notice requirement's purpose, which is "to apprise the local government of its possible liability at a time when the local government could conduct its own investigation, i.e., while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and the local government's responsibility in connection with it."

Harris v. Hous. Auth. of Baltimore City, 227 Md. App. 617, 632 (2016) (cleaned up) (quoting *Ellis v. Hous. Auth. of Baltimore City*, 436 Md. 331, 342-43 (2013)).

"Absent strict or substantial compliance, a claim may still proceed if the claimant demonstrates 'good cause.'" *Wilkinson*, 255 Md. App. at 267. Under the LGTCA, "unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given." C&J § 5-304(d).

With those principles in mind, we hold that the circuit court properly dismissed Appellants' claim for failure to comply with the LGTCA's notice requirement. First, it is beyond dispute that Appellants did not strictly comply with the LGTCA's notice requirement. Appellants' injury occurred, at the latest, on February 18, 2018, when the period of "lost rent" ended. Appellants were therefore required to notify the City of their claim, either in person or by certified mail, within one year of that date. According to the record, however, Appellants did not provide notice of their claim until June 10, 2019. That notice, which was sent via email, was both untimely and insufficient to meet the LGTCA's strict notice requirements.

Appellants' email did not establish substantial compliance, either. Regardless of form, notice of a claim must still be "timely." *Harris*, 227 Md. App. at 632; *see also Ransom v. Leopold*, 183 Md. App. 570, 584 (2008) ("[S]ubstantial compliance exists when *timely* notice has been given in a manner that, although not technically correct, nevertheless has afforded actual notice of the tort claim or claims to the local government." (emphasis added)). Because Appellants did not send their email until several months after the one-year period had expired, Appellants did not substantially comply with the LGTCA's notice claim.[5]

[5] Appellants' claim that their email was timely because "notice of the adverse action was not had until February 2019[.]" That claim is belied by the facts alleged in Appellants' original complaint, in which Appellants indicated that Pulley's statements to the Church, which caused the alleged injury, were "reported to Plaintiff Patricia Waters . . . on July 6, 2016[.]"

Finally, we cannot say that the court abused its discretion in refusing to find "good cause" for Appellants' failure to comply with the LGTCA's notice requirement. *See generally Mitchell v. Hous. Auth. of Baltimore City*, 200 Md. App. 176, 205-13 (2011) (reviewing a court's "good cause" determination for abuse of discretion). Appellants offered no explanation as to why they failed to provide timely notice of their claim. As such, the court was within its discretion in refusing to excuse Appellants' non-compliance. *See Prince George's Cnty. v. Longtin*, 419 Md. 450, 467 (2011) ("By the language of the statute, the burden is on the claimant first to show 'good cause.' Then, if the local government cannot 'affirmatively show that its defense has been prejudiced by lack of required notice,' the court 'may' hear the case despite the faulty notice.").

II.

Parties' Contentions

Appellants next claim that the circuit court abused its discretion in striking their amended complaint. Appellants contend that such a motion "should be granted only if the pleading would cause a delay that prejudices the defendant." Appellants argue that the court should not have stricken the amended complaint because it did not prejudice the City and because "it sought to amend the allegations contained in the complaint that were the subject of a hearing on [the City's] motion to dismiss and the court had not yet ruled on that motion[.]"

The City contends that the circuit court did not abuse its discretion in striking and dismissing Appellants' amended complaint. The City argues that all of the claims asserted in Appellants' complaint and amended complaint were "irreparably flawed."

Analysis

The decision to permit or disallow amendments to pleadings is generally within the discretion of the court. *Nouri v. Dadgar*, 245 Md. App. 324, 365 (2020). Ordinarily, amendments to pleadings should be allowed liberally. *Id.* That said, "an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673-74 (2010).

We hold that the circuit court did not abuse its discretion in striking and dismissing Appellants' amended complaint. All of Appellants' claims were irreparably flawed. As discussed, Appellants' inverse condemnation claim was irreparably flawed, and properly dismissed, because Appellants did not exhaust their administrative remedies. Likewise, Appellants' tort claim was irreparably flawed, and properly dismissed, because Appellants did not comply with the LGTCA's notice requirements. Thus, permitting Appellants to amend their complaint would have been futile, as that amendment would not have cured the deficiencies that warranted dismissal of Appellants' claims.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.