UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 268

September Term, 2016

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EASTON GOLF, LLC

v.

CHETAN MEHTA

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Meredith,
Berger,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: April 4, 2017

This is an interlocutory appeal of the Circuit Court for Talbot County's denial of an emergency motion for injunctive relief filed by Easton Golf, LLC ("Easton"), appellant. Chetan Mehta ("Mehta"), appellee, placed the highest bid at an auction of a golf course owned by Easton. After the auction, Easton refused to transfer title, and Mehta sued for, *inter alia*, specific performance. Easton sought a permanent injunction barring a claim for specific performance filed by Mehta, appellee. Easton further sought to terminate the notice of *lis pendens* which had been created by the filing of Mehta's lawsuit.

Easton presents two issues[1] for our review on appeal, which we have consolidated and rephrased as a single issue:

> Whether the circuit court erred by denying Easton's request for injunctive relief.

For the reasons explained herein, we shall affirm.

## FACTS AND PROCEEDINGS

Easton is the owner of a parcel of real property ("the Property") in the Town of Easton, Talbot County, Maryland, which was used and operated as a golf course and known as the Easton Club. Easton sought to sell the Property and contracted with Atlantic Auctions, Inc. ("Atlantic") for the purpose of conducting a sale by auction of the Property.

[1] The issues, as presented by Easton, are:

> 1. Did the Court err by determining that evidence, not within the four corners of the contract, was necessary for resolution of the question, without a finding of ambiguity?
>
> 2. Did the Court err by refusing the grant relief pursuant to Rule 12-102(c)(1)?

Atlantic advertised the auction as an "absolute auction." No contract was attached to any of the auction advertisements. The advertisement did include "sale terms" specifying that a bidder's deposit of $100,000.00 in the form of a cashier's or certified check was required of all registered bidders at the time and place of sale.

The auction was held on February 26, 2016. Barry Mehta ("the Agent") attended the auction as Mehta's agent. Shortly before the auction, the Agent learned that the successful purchaser would be required to execute an Auction Purchase and Sale Agreement ("the Sale Agreement"). The Sale Agreement provided, in pertinent part:

> Default by Owner. In the event of Owner's default, the Buyer's sole remedy shall be to terminate this Auction Purchase and Sale Agreement and have the Deposit returned without interest thereon . . . In the event of Owner's default, the Buyer hereby acknowledges and agrees that a return of Buyer's Deposit is a reasonable and fair remedy for Buyer under such circumstances, and the Buyer hereby waives any and all rights and remedies that Buyer may otherwise have had at law or in equity or hereunder by reason thereof.

(hereinafter "the Default by Owner Clause".)

According to Mehta, the Agent asked the auctioneer about the meaning of the Sale Agreement Default by Owner Clause and the auctioneer responded that it was an "absolute auction." The auctioneer explained that the purpose of the Default by Owner Clause was to ensure the buyer would have their deposit returned in the event that Easton was unable to convey clear title to the Property. The Agent's conversation with the auctioneer was purportedly recorded, but no recording of the conversation was submitted to the circuit court nor is it part of the record on appeal. The Agent placed the high bid of $890,000.00 at the auction sale. Thereafter, the Agent executed the Sale Agreement. Easton's attorney

also signed the Sale Agreement and gave the Agent the keys to the Property. The required $100,000.00 deposit had been tendered prior to the auction, and accordingly, the Sale Agreement was fully executed.

Easton was unsatisfied with the price at auction and attempted to renegotiate the terms of the sale with Mehta, but the parties were unable to reach an agreement. Easton notified Mehta that Easton would not honor the Sale Agreement. On March 11, 2016, Mehta filed suit against Easton for specific performance, anticipatory breach of contract, breach of contract, and intentional misrepresentation. The filing of the lawsuit created a *lis pendens* on the Property.[2]

In response, Easton filed a pleading titled "Emergency Request for Relief Pursuant to Rule 12-102(c)(1), Temporary Restraining Order, Preliminary and Permanent Injunctive Relief and Emergency Request for Hearing Pursuant to Rule 15-501." Easton sought injunctive relief in the form of an order prohibiting Mehta from asserting specific performance. Easton further sought termination of the *lis pendens*.

[2] In *Havilah Real Prop. Servs., LLC v. Early*, 216 Md. App. 613, 618 n.3 (2014), we provided the following definition of *lis pendens*:

> *Lis pendens* "means a pending lawsuit, referring to the jurisdiction, power, or control which a court acquires over property involved in a lawsuit pending its continuance and final judgment." *DeShields v. Broadwater*, 338 Md. 422, 433, 659 A.2d 300 (1995). A notice of *lis pendens* "warn[s] all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." Black's Law Dictionary 950 (8th ed. 2004)."

A hearing was held on Easton's emergency motion on April 14, 2016. After considering argument from both parties, the circuit court denied Easton's request for injunctive relief. Easton noted an appeal to this Court.

At oral argument, the parties brought to this Court's attention that further proceedings, of which this Court was previously unaware, had occurred in the circuit court after the briefs in this appeal had been submitted. On December 22, 2016, following a hearing, the circuit court issued an order: (1) denying Mehta's motion for summary judgment as to the specific performance claim; (2) entering judgment in favor of Easton Golf as to the specific performance claim; and (3) ordering that the entry of judgment in favor of Easton Golf as to the specific performance claim "does not dispose of any other claim[s] that [Mehta] may have against [Easton Golf]." The parties suggested at oral argument that the issues raised in the present appeal are moot in light of the circuit court's December 22, 2016 order. Nonetheless, we exercise our discretion to entertain the merits of the issues raised in this interlocutory appeal. *See Cabrera v. Mercado*, 230 Md. App. 37, 87 (2016) (explaining that the Court has discretion to entertain moot issues that are "capable of repetition yet evading review").

## STANDARD OF REVIEW

In general, the grant or denial of a request for injunctive relief "is a matter resting within the sound discretion of the [circuit] court." *Eastside Vend Distributors, Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 240 (2006). We, therefore, review a circuit court's denial of a request for injunctive relief applying the abuse of discretion standard of review. *Id.* "[I]t is a rare instance in which a trial court's discretionary decision to grant or to deny a

preliminary injunction will be disturbed by [an appellate] Court." *State Dept. of Health & Mental Hygiene v. Baltimore County*, 281 Md. 548, 549 (1977). The abuse of discretion standard has been described as "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (internal quotation omitted). An abuse of discretion occurs when "no reasonable person would take the view adopted by the [circuit] court[.]" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (internal quotation omitted).

**DISCUSSION**

The narrow issue before this Court in this interlocutory appeal is the circuit court's denial of Easton's motion for injunctive relief.[3] Easton contends that the circuit court erred by denying its request for injunctive relief pursuant to Maryland Rule 12-102(c)(1), which provides:

> On motion of a person in interest and for good cause, the court in the county in which the action is pending may enter an order terminating the lis pendens in that county or any other county in which the lis pendens has been created.

Easton asserts that the Sale Agreement was plain and unambiguous in prohibiting a specific performance claim. Easton further asserts that good cause was shown for lifting the *lis pendens* pursuant to Rule 12-102(c)(1) because the contract allowed only for the return of Mehta's deposit in the event of a breach. Easton maintains that because the contract was

[3] An interlocutory appeal of an order refusing to grant an injunction is authorized by Md. Code (1974, 2013 Repl. Vol.), § 12-303(3)(iii) of the Courts and Judicial Proceedings Article.

"crystal clear," an order lifting the *lis pendens* and barring a specific performance claim was appropriate.

Mehta responds that the circuit court exercised sound discretion in denying Easton's emergency motion, and, further, that because no final judgment was rendered by the circuit court, issues concerning the appropriate interpretation of the Sale Agreement and applicability of Rule 12-102(c)(1) are not ripe for our review. As we shall explain, we agree with Mehta that the circuit court did not abuse its discretion by denying Easton's emergency motion for injunctive relief.

Maryland courts consider four factors when determining whether to grant or deny a motion for injunctive relief:

> As a general rule, the appropriateness of granting an interlocutory injunction is determined by examining four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.

*Eastside Vend Distributors, supra*, 396 Md. at 240. "[A]n interlocutory injunction should not be granted unless the party seeking it demonstrates a likelihood of success on the merits." *Id.* at 241. "The party seeking an injunction must prove the existence of all four of the factors . . . in order to be entitled to preliminary relief. The failure to prove the existence of even one of the four factors will preclude the grant of preliminary relief." *Id.* (quoting *Fogle v. H&G Restaurant, Inc.*, 337 Md. 441, 456 (1995)). With respect "to the 'likelihood of success factor,' a party seeking the interlocutory injunction 'must establish

that it has a real probability of prevailing on the merits, not merely a remote possibility of doing so.'" *Id.* (quoting *Fogle*, *supra*, 337 Md. at 456).

The circuit court clearly explained that it was "approaching this" motion filed by Easton "looking at the four factors under a preliminary injunctive type of hearing." The circuit court observed that there was a factual dispute between the parties as to the validity of the Sale Agreement and the Default by Owner Clause, explaining that "the real crux of this thing is at any time were the terms of the absolute auction in any way altered before that auction started . . . did [the Sale Agreement] in any way alter the advertisement that clearly said that this was an absolute auction. And I don't know."[4] The circuit court's expression of uncertainty regarding the ultimate merits of the specific performance claim indicates that the court was not persuaded as to the probability that Easton would prevail on the merits.

[4] The auction was advertised as an "absolute auction," a legal term of art which we have defined as follows:

> [I]n an absolute auction, or an auction held without reserve, mutual contingent assent is achieved when an offer is made. Each bid made is a mutual assent between the seller and the respective bidder, contingent only on no higher bid being received. As each high bid is made, the previous contract is extinguished and a new contract based on mutual contingent assent comes into being. At the point when no further bids are made, the contingency in the last bid made is extinguished and a final contract in the series of contingent contracts is established.

*Pyles v. Goller*, 109 Md. App. 71, 82 (1996).

With respect to whether the plaintiff would suffer irreparable injury if the injunction was not granted, the circuit court indicated that it was not persuaded that Easton would experience irreparable injury. Easton argued that the irreparable injury was the reduced marketability of the Property due to the *lis pendens* which had been placed on the Property. The court commented that it was "a fiction" that "[w]hen you lift the *lis pendens* the cloud on the title is lifted," explaining that "a title searcher is going to come in and" see that "there's a specific performance count." The court further observed that although the specific performance count created a *lis pendens*, it "doesn't prevent the sale of the property. It just tells anybody who's going to buy this property that there is a potential cloud on the title."

The circuit court articulated that Easton was not actually asking the court to grant injunctive relief, but, rather, was attempting to prematurely litigate a motion for summary judgment. The court explained:

> [W]hat you're really asking me to do today is really . . . akin to a Motion for Summary Judg[]ment before everybody has due process to adequately flush out the facts of this case which I'm, even after reading these affidavit[s] I think it's still somewhat murky especially since I now hear that there's a recording of what the auctioneer did, said and somebody's listened to it at the very least.

Accordingly, the circuit court denied Easton's motion for emergency relief and ordered that the case proceed in due course. The court recognized that there would be "some collateral consequences" of the court's ruling and offered to expedite the proceedings.

In our view, the circuit court considered the applicable legal standard, the limited evidence presented, and the arguments of counsel before determining that Easton was not

entitled to injunctive relief. Furthermore, we agree with the circuit court's characterization of Easton's motion as akin to a premature motion for summary judgment. We, therefore, hold that the circuit court did not abuse its discretion in denying Easton's emergency motion.

We comment briefly on two sub-issues raised by Easton in this appeal. First, Easton asserts that the circuit court inappropriately looked beyond the four corners of the Sale Agreement by considering the content of the advertisement and referring to the recording of a conversation with the auctioneer. Our review of the record indicates that the circuit court did not rely on improper parol evidence to arrive at any inappropriate conclusion. Rather, the circuit court suggested that there may be a dispute as to which contract -- the contract created under Maryland law via an absolute auction, or the contract terms in the Sale Agreement -- actually controlled the sale of the Property. The circuit court merely indicated that it may be proper at some future point in the litigation to consider facts beyond the four corners of the Sale Agreement. This was not an improper consideration for the circuit court as it determined the narrow issue of whether injunctive relief was warranted. Furthermore, in this appeal, we shall not address to what extent evidence beyond the four corners of the Sale Agreement may be considered in this case in the context of a motion for summary judgment.[5]

[5] The parties present various arguments as to which contract controls the sale and how any contract should be interpreted. These are all issues that could be considered by the circuit court when this case proceeds.

Second, we reject Easton's contention that it was entitled to the relief sought pursuant to Maryland Rule 12-102(c)(1). Easton observes that Rule 12-102(c)(1) provides that a court "may enter an order terminating" *lis pendens* for good cause shown. Easton further asserts that it was entitled to relief because the alleged lack of merit of Mehta's specific performance claim constituted good cause.[6] The language of Rule 12-102(c)(1) is clearly permissive rather than mandatory in that it provides that a circuit court "may enter an order terminating" *lis pendens*. In this case, after hearing argument from the parties and considering the limited evidence before it, the circuit court found that termination of the *lis pendens* was not appropriate. As discussed *supra*, the circuit court observed that enjoining Mehta's specific performance claim would essentially amount to a premature entry summary judgment in favor of Easton. The circuit court further observed that the termination of the *lis pendens* alone, absent dismissal of the specific performance claim, would not prevent any harm to Easton. Having found no good cause to grant the requested relief, the circuit court denied Easton's motion to terminate the *lis pendens*. Perceiving no error nor abuse of discretion on the part of the circuit court, we affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[6] Easton further asserts that this Court "should set out a clear standard that when a [c]ontract specifically eliminates [s]pecific performance as a remedy that any [*l*]*is* [*p*]*endens* effect of litigation should be lifted and enjoined."