

Circuit Court for Queen Anne's County  
Case No. C-17-CV-1600080

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 143

September Term, 2017

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TIMOTHY E. HORAN

v.

JESSICA L. MARKS

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Woodward, C.J.,  
Friedman,  
Salmon, James P.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Woodward, C.J.

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Filed: November 21, 2018

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In the Circuit Court for Queen Anne’s County, Valerie and Timothy Horan,<sup>1</sup> appellants, filed a one-count complaint against their daughter, Jessica Marks, appellee, seeking the imposition of a constructive trust over real property titled in Marks’s name. Marks moved to dismiss the complaint for failure to state a claim upon which relief could be granted or, in the alternative, for summary judgment. Following a hearing, the court granted summary judgment in favor of Marks and denied as moot the Horans’ motion for leave to amend their complaint.

On appeal, the Horans present five questions,<sup>2</sup> which we have condensed and rephrased as two:

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<sup>1</sup> For ease of discussion, we shall refer to the Horans by their first names when necessary to distinguish between them.

<sup>2</sup> The questions as posed by the Horans are:

1. Did the lower court err in its granting of a summary judgment to the Appellee, just as a matter of law, without any consideration of the overwhelming evidence against such a ruling?
2. Did a Confidential Relationship exist between Geraldine H Mink and the Appellee through the Appellants and did the Appellee violate that Confidential Relationship?
3. Whether the facts and actions of the parties surrounding the transfer of the deed from Geraldine H Mink to Geraldine H Mink and Jessica L Marks as joint tenants, including the existence of contradictory documents and writings demonstrate material doubt or mistake about the nature and effect of the transfer of the deed which requires resolution by a trial rather than by summary judgment?
4. Under what conditions/agreement did the Appellee receive title to the property?

I. Did the circuit court err by granting summary judgment in favor of Marks on the grounds that the Horans' claim was barred by the statute of frauds and/or that they were not entitled to a constructive trust as matter of law?

II. Did the circuit court err or abuse its discretion by denying the Horans' motion for leave to amend their complaint?

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

### **BACKGROUND**

On May 24, 1983, Geraldine and Gene Mink,<sup>3</sup> who are Valerie's parents and Marks's maternal grandparents, purchased a waterfront lot at 501 Prospect Bay Drive East, Grasonville ("the Property"), for \$30,000 ("the 1983 Deed"). The Minks built a house on the Property and held joint title to it for almost twenty years as tenants by the entireties.

On July 11, 2008, the Minks conveyed to Valerie, as a joint tenant, a one-third interest in the Property, while they retained an undivided two-thirds interest as tenants by the entireties ("July 2008 Deed"). Less than two months later, by deed dated September 2, 2008, Valerie and the Minks conveyed title to the Property back to the Minks, as tenants by the entireties ("September 2008 Deed").

A little over three years later, on February 6, 2012, Gene died, and title in the Property became vested in Geraldine, in fee simple.

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5. Should the lower court have granted the Appellant's Leave to Amend to correct any deficiencies in its original complaint?

<sup>3</sup> For ease of discussion, we shall refer to the Minks by their first names when necessary to distinguish between them.

On April 23, 2013, Geraldine executed the deed that is the focus of the instant appeal (“2013 Deed”). The 2013 Deed, which was made between Geraldine, as grantor, and Geraldine and Marks, as grantees, states in pertinent part:

**That for and in consideration** of love and affection and no other consideration, this conveyance by grandmother to grandmother and granddaughter being made for estate planning purposes only, the Grantor does hereby grant and convey to the Grantees their personal representatives, heirs, and assigns, in fee simple, [the Property]

\* \* \*

**To have and to hold** . . . unto and to the use of the Grantees Geraldine H. Mink and Jessica Lee Marks, as joint tenants with full rights of survivorship, their personal representatives, heirs, successors and assigns, in fee simple absolute;

\* \* \*

By execution of this deed the Grantor certifies and affirms under penalties of perjury that the actual amount of consideration paid or to be paid for this conveyance is none other than as hereinabove set forth, and that this property is transferred free and clear of all deed of trust liens, mortgages or monies owed to third parties in any manner whatsoever.

(Emphasis in original.) The 2013 Deed was recorded in the Land Records of Maryland for Queen Anne’s County on April 29, 2013. Valerie caused it to be recorded and paid the recording fees.

Less than three months later, on July 12, 2013, Geraldine died and title to the Property became vested in Marks, in fee simple.

Marks lives in Magnolia, Delaware, and the Horans live near the Property in Grasonville, Maryland. By agreement, the Horans took possession of the Property, made improvements to it, and, beginning on January 1, 2015, leased it for \$2,500 a month. The

rental income was deposited into a bank account jointly held by Valerie and Marks. The Horans were permitted to retain the rental income. The Horans paid the 2013 and 2014 real estate taxes on the Property, as well as community assessments and insurance costs.<sup>4</sup>

In February 2016, the tenants moved out of the Property. At the same time, a dispute arose between Valerie and Marks relative to the Horans' failure to pay the 2015 real estate taxes and their reletting of the Property. Marks travelled to the Property from her home in Delaware, caused the locks to be changed, and prevented the Horans from reentering the Property. Marks also hired a real estate agent to lease the Property and has retained possession of the rental income since that time.

On October 3, 2016, the Horans, acting *pro se*, filed their complaint in the circuit court. They stated one count for a "Constructive Trust" and made the following pertinent allegations. In 2007, the Minks executed separate wills designating Valerie as the beneficiary of the Property and naming her executor of their estates. Valerie briefly held a one-third interest in the Property by means of the July 2008 Deed, but on the "advi[c]e of her accountant, for tax purposes," conveyed her interest back to her parents by the September 2008 Deed. After Gene died, Geraldine executed the 2013 Deed transferring the Property to her and Marks as joint tenants. That deed was made on the "advice of [Geraldine's] accountant, temporarily and to hold in trust for [Valerie], and for monetary reason[.]"

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<sup>4</sup> While not entirely clear from the record, it appears that the Property was unencumbered when Geraldine died.

During the Minks' lifetime, the Horans took care of them, by, among other things, facilitating their medical care; visiting Gene at his nursing home daily; performing household chores, lawn care, and maintenance on the Property; and managing their finances. Upon Geraldine's death, the Horans continued to maintain the Property and spent considerable sums of money making repairs to it, prior to advertising it for rent. They did so with Marks's knowledge and consent. They alleged that it was the Minks' "wish and belief . . . that . . . Valerie . . . would receive the[] [P]roperty after their death and that . . . Marks . . . [would] hold the [P]roperty, temporarily, for the benefit of [Valerie] and to transfer the [P]roperty to [Valerie] upon [Valerie]'s request." Valerie made that request on December 1, 2015 (and on several subsequent occasions), but Marks refused to transfer title to Valerie.

The Horans alleged that Marks's actions had caused them "financial[] devastat[ion,]" resulting in their home being foreclosed upon, caused them great mental anguish, and had resulted in Marks being unjustly enriched. They requested the court to impose a constructive trust on the Property for the benefit of the Horans; to order Marks to convey the Property to the Horans; and to order Marks to deposit all the rental income earned from the Property beginning in February 2016 "in[to] an escrow account until such time as this court identifies the legal beneficiary."

On December 13, 2016, Marks moved to dismiss the complaint or, in the alternative, for summary judgment. She argued that the Horans' claim was barred by the Statute of Frauds because although they sought imposition of a constructive trust, they alleged the creation of "an express trust, made orally, by [Geraldine] that the [P]roperty was to be held

for their benefit.” Because the 2013 Deed did not include any language providing that Marks would hold title to the Property in trust for Valerie upon Geraldine’s death, Marks claimed that a trust could not be implied. Marks further asserted that the complaint did not allege facts supporting imposition of a constructive trust, because it did not allege that Marks engaged in fraud or other coercive behavior relative to the execution of the 2013 Deed. To the contrary, the complaint alleged that Geraldine executed the 2013 Deed after consulting with her accountant and for tax and estate planning purposes. Marks attached to her motion the 1983 Deed, the July 2008 Deed, the September 2008 Deed, and the 2013 Deed.

The Horans opposed the motion. They “stipulate[d] and acknowledge[d]” that it was upon their “recommendation” that the 2013 Deed was executed; and reiterated their allegation that it was Geraldine’s intention that Marks hold the Property in trust for Valerie, adding that Marks had admitted as much in an email dated January 5, 2016—a copy of which was attached as an exhibit. They further asserted that the attorney who prepared the 2013 Deed would testify that it was Geraldine’s intention that Valerie take title to the Property upon Geraldine’s death.

The Horans attached three exhibits to their opposition. Exhibit 1 was the January 5, 2016 email from Marks to Valerie, which stated in pertinent part:

I am going to try one more time to explain this and to ask you to cooperate with my attempt to help protect your property and retirement. I will not be signing over the deed before Dad has his surgery. That would be very irresponsible. Right now the property is protected from being attached to payment to a nursing home, home health care, assisted living, etc. if he (or you) needed any type of care. . . . Second, I will not let you sell the property at an extremely reduced price because he has put you in an emergency

situation. I have tried for years to help you with your finances. This is the only way I can do that now. . . . If I have to manage the property by myself and pay the bills and give you what is left over that is what I will do. . . .

Exhibit 2 was a “Durable Power of Attorney for Finance of Geraldine Mink” executed on May 18, 2007 naming Valerie as Geraldine’s attorney-in-fact and empowering her, *inter alia*, to sell or convey interests in real property owned by Geraldine. Exhibit 3 was a copy of Geraldine’s “Last Will and Testament[,]” executed on June 7, 2007, which stated at Article IV, governing specific gifts, that Geraldine bequeathed the Property to Valerie. Marks filed a reply to the Horans’ opposition, to which the Horans attempted to file a surreply with additional exhibits.<sup>5</sup>

On February 14, 2017, the court held a hearing on the motion to dismiss or for summary judgment. At the outset of the hearing, Marks’s attorney advised the court that he had just received a copy of the Horans’ surreply and the two exhibits attached thereto. He asked the court to admit the exhibits into evidence because the surreply had not been docketed, and they were so admitted.<sup>6</sup> The first exhibit was an affidavit made by John C. Gordon, Esq., the attorney who had drafted the 2013 Deed. Gordon averred that, at Geraldine’s request, he had prepared the 2013 Deed and a “second deed for the Property in which Jessica Marks was the grantor and Valerie J. Horan . . . was the grantee.” “The

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<sup>5</sup> We shall discuss the exhibits, *infra*.

<sup>6</sup> In their brief in this Court, the Horans argue that these exhibits never were entered into the record and that this was error. They are mistaken. The exhibits were admitted at the hearing on the motion for summary judgment and are a part of the electronic record in this case.



purpose of the second deed[,]” according to Gordon, “was to foreclose the possibility that Ms. Marks might thwart Mrs. Mink’s intention that Ms. Horan would be the eventual owner of the Property.”<sup>7</sup> The second exhibit was an affidavit made by Judith Guenter, Valerie’s older sister, averring that it was their mother’s intention that Valerie “receive, to have and to hold with complete control . . . [of the Property] . . . upon her death” and that “Marks was to only hold temporary title to the [P]roperty for the benefit of . . . Valerie . . . .” The surreply, however, was not admitted or filed below, and therefore is not a part of the record on appeal.

Marks argued that the trial court should grant summary judgment for three reasons. First, the Statute of Frauds barred the Horans’ claim because they alleged an orally created express trust in land. Second, there was no evidence supporting the imposition of a constructive trust because there was no allegation of wrongdoing relative to the 2013 Deed and no proof that Marks would be unjustly enriched. Third, the Horans’ claim was barred by limitations because they filed suit more than three years after Geraldine died and title passed to Marks.

The Horans argued in response that the 2013 Deed was executed for estate planning purposes only and did not reflect Geraldine’s intentions. According to the Horans, at the time of the 2013 deed, they were “having financial problems[,]” and there was a risk that, if they received an interest in the Property, their creditors might have a claim on the

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<sup>7</sup> Timothy stated that the second deed never was executed because he and Valerie trusted their daughter and believed that she would later reconvey the Property to them. A copy of the second deed was not entered into evidence.

Property. On the advice of Gordon and an accountant, Geraldine decided to convey an interest in the Property to Marks. The Horans maintained that everyone involved in the transaction, including Marks, knew that Marks was to hold the interest in trust for the Horans. The Horans argued, moreover, that Marks's January 5, 2016 email to them acknowledged that the Property belonged to the Horans. According to the Horans, the Property has a fair market value of \$700,000, and they represented at the hearing that they spent \$15,000 in repairs to the property and \$20,000 in real estate taxes for 2013 and 2014. They admitted that they did not pay the 2015 real estate taxes for the Property.

After hearing argument, the trial court took the matter under advisement.

On February 16, 2017, the Horans filed a motion for leave to amend their complaint. We shall discuss this motion in more detail, *infra*.

On March 3, 2017, the trial court entered a memorandum opinion and order granting judgment in favor of Marks. Based upon the arguments, pleadings, and exhibits, the court determined that there were “no issues of material fact that [were] in dispute that would preclude the granting of summary judgment.” It declined to “reach the limitations issue[,]” because the “[S]tatute of [F]rauds and the failure to state a claim of constructive trust provide sufficient bases to grant the motion.” The court denied the motion for leave to amend the complaint as moot because the new allegations all pertained to the limitations defense.

This timely appeal followed. We shall include additional facts as necessary to our discussion of the questions presented on appeal.

**DISCUSSION**

**I.**

When ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, a court may consider the well-pleaded allegations of the complaint and any incorporated exhibits. *D’Aoust v. Diamond*, 424 Md. 549, 572 (2012). If the court considers matters outside of the pleadings, as was the case here, the court must treat the motion to dismiss as a motion for summary judgment pursuant to Rule 2-501. Md. Rule 2-322(c). An appellate court assesses the propriety of the grant of summary judgment *de novo*. *Baltimore County v. Kelly*, 391 Md. 64, 73 (2006). In so doing, we evaluate “the evidence, including all inferences therefrom, . . . in the light most favorable to the nonmoving party.” *Jones v. Mid-Atlantic Funding Co.*, 362 Md. 661, 676 (2001).

In ruling on a motion for summary judgment, a court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(f). “[O]nce the moving party has provided the court with sufficient grounds for summary judgment, the nonmoving party must produce sufficient evidence to the trial court that a genuine dispute of a material fact exists.” *Jones*, 362 Md. at 676.

In their complaint, the Horans sought the imposition of a constructive trust. In *Wimmer v. Wimmer*, 287 Md. 663, 668 (1980), the Court of Appeals explained that

[a] constructive trust is the remedy employed by a court of equity to convert the holder of the legal title to property into a trustee for one who in good conscience should reap the benefits of the possession of said property. The

remedy is applied by operation of law where property has been acquired by fraud, misrepresentation, or other improper method, or where circumstances render it inequitable for the party holding the title to retain it.

Its “purpose . . . is to prevent the unjust enrichment of the holder of the property.” *Id.* A constructive trust “arise[s] purely by construction of equity, independently of any actual or presumed intention of the parties to create a trust, and are generally thrust on the trustees for the purpose of working out the remedy.” *Hartsock v. Strong*, 21 Md. App. 110, 116 (1974) (internal quotation marks and citation omitted). Before a court may impose a constructive trust, the plaintiff must prove by clear and convincing evidence that the legal title holder engaged in “wrongdoing” and/or that “the circumstances . . . render it inequitable for the holder of the legal title to retain the beneficial interest.” *Wimmer*, 287 Md. App. at 668; *Hartsock*, 21 Md. App. at 116 (“Constructive trusts may be divided into three classes: first, trusts that arise from actual fraud; second, trusts that arise from constructive fraud; third, trusts that arise from some equitable principle independent of the existence of any fraud.” (internal quotation marks and citation omitted)).

The Horans contend that, viewing the evidence and the inferences drawn therefrom in the light most favorable to them, there were material disputes of fact precluding the grant of summary judgment. Specifically, they assert that there was evidence that Geraldine intended the 2013 Deed to create a trust in favor of Valerie, that Marks breached her agreement to reconvey the Property to her parents upon their request, and that Marks would be unjustly enriched if she were permitted to retain title under the circumstances.

Marks responds that, although the Horans “ask[ed] the [c]ourt to declare ‘a constructive trust,’ . . . their allegations d[id] not make a factual or legal basis for the [c]ourt

to do so.” They emphasize that there is no allegation (or evidence) that Marks procured the 2013 Deed by fraud or misrepresentation. Moreover, Marks asserts that evidence that the Horans acted generously towards Geraldine during her lifetime and managed the Property (and retained the rental income) for a period of time after her death does not support a finding that it would be inequitable for Marks to retain title. We agree.

Although the Horans’ complaint did not set forth a claim for an express trust in the property, most of the evidence presented by the Horans pertained to a factual dispute over Geraldine’s intentions at the time that she executed the 2013 Deed. We agree with Marks that, even if Geraldine had intended for Marks to hold the Property in trust for Valerie (and Timothy), the Statute of Frauds requires that an express trust “respecting land” must be evidenced by a writing “or else it is void.” Md. Code (1974, 2010 Repl. Vol.), § 5-105 of the Real Property Article (“RP”); *see also Juliano v. Juliano*, 36 Md. App. 1, 5 (1977) (“Generally, the law of trusts in Maryland is that the Statute of Frauds does not require a writing except where the subject matter of the trust is an interest in land.”). The Horans adduced no evidence of a writing or series of writings showing an express trust by Geraldine regarding the Property.

RP § 5-107, however, provides an exception to that rule, stating that the Statute of Frauds does not operate to void a trust that “arises or results by implication or construction of law,” *i.e.*, a constructive trust. As a threshold matter regarding the Horans’ claim for constructive trust, we dispose of the Horans’ argument that Marks and Geraldine were in a confidential relationship when the 2013 Deed was executed. A confidential relationship arises “where one party is under the domination of another, or where, under the

circumstances, such party is justified in assuming that the other will not act in a manner inconsistent with his or her welfare.” *Bass v. Smith*, 189 Md. 461, 469 (1948); *see also Buxton v. Buxton*, 363 Md. 634, 654 (2001) (““A confidential relation exists between two persons when one has gained the confidence of the other and purports to act or advise with the other’s interest in mind.”” (quoting 1 Scott and Fratcher, *The Law of Trusts* § 2.5 (4th ed.1988))). There was no evidence in the record that Geraldine was ever under the domination of Marks, and there was evidence supporting a contrary inference. The Horans presented evidence that Valerie, not Marks, had the power to control Geraldine’s finances and property at all relevant times and that Geraldine entered into the subject transaction on the advice of her accountant and with independent legal counsel, *i.e.*, Gordon. Plainly, no genuine dispute of material fact regarding a confidential relationship between Geraldine and Marks was raised in the instant case.<sup>8</sup>

Absent a confidential relationship, the burden lies with the Horans to adduce clear and convincing evidence that Marks engaged in wrongdoing relative to the 2013 Deed and/or that it would be inequitable for her to retain title. There was no evidence that Marks engaged in fraud or wrongdoing of any kind to procure the 2013 Deed. To the contrary,

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<sup>8</sup> The Horans also suggest that a confidential relationship existed between them and their daughter. The fact that the Horans believed that their daughter would convey the Property to them upon their request does not amount to a confidential relationship. In any event, the existence of a confidential relationship between Marks and the Horans, *vel non*, is immaterial because the Horans seek an equitable remedy relative to the 2013 Deed, a transaction between Marks and Geraldine, not between Marks and the Horans.

the evidence showed that Geraldine entered into the subject conveyance without any consultation with Marks, much less any direction or influence by Marks.

The evidence, viewed in a light most favorable to the Horans, also does not support the imposition of a constructive trust on the ground of unjust enrichment. This Court's decision in *Porter v. Zuromski*, 195 Md. App. 361 (2010), is instructive. In that case, the parties were romantically involved for many years and decided to buy a house together. *Id.* at 364. The plaintiff, Ms. Zuromski, could not qualify for a mortgage, so the defendant, Mr. Porter, purchased the property in his name, promising to add her to the deed at a later time. *Id.* at 365. Ms. Zuromski contributed nearly one-half of the down payment and, for the next nine years, she paid one-half of the mortgage payments and one-half of all home expenses. *Id.* When the parties ultimately broke up, Mr. Porter ordered Ms. Zuromski to vacate the property and refused to divide the equity in the home with her. *Id.* at 366. She filed suit; and the circuit court concluded on these facts that Mr. Porter was the dominant party in a confidential relationship with Ms. Zuromski, that he breached the relationship, and that he would be unjustly enriched were he permitted to retain sole title in the property. *Id.* On appeal, this Court affirmed. *Id.* at 376. We held that a constructive trust may be imposed based purely on inequity, even if there is no evidence of fraud or wrongdoing by the legal title holder. *Id.* at 369. We further held that the court did not err by imposing a constructive trust based upon unjust enrichment, or upon the alternative ground that Mr. Porter abused a confidential relationship. *Id.* at 374-75.

The facts of our case are very dissimilar. The Minks purchased the Property in 1983. There was no evidence that Valerie or Timothy contributed to the purchase price,

paid the mortgage, or paid any other expenses for the Property prior to the execution of the 2013 Deed. At the February 14, 2017 hearing, Timothy asserted that he and Valerie spent around \$15,000 on repairs and \$20,000 for real estate taxes for the Property after Geraldine's death.<sup>9</sup> During that same time frame, the Horans were permitted to retain the rent proceeds of \$2,500 per month for twelve months, amounting to \$30,000. Assuming the truth of these facts, evidence of the Horans' investment in the Property for the purpose of leasing it and thereafter retaining the rent proceeds does not amount to the type of inequity that would support a finding, by clear and convincing evidence, that Marks would be unjustly enriched if she were permitted to retain title. Likewise, the evidence that the Horans cared for Geraldine and Gene during their lifetimes and helped them to care for and manage the Property, while laudable, does not give rise to an inference that it would be inequitable for Marks to retain title to the Property. Children caring for their aging parents does not create an expectancy interest in property.

Whatever Geraldine's intentions may have been, she conveyed an interest in the Property to Marks without any provision for Marks to hold the Property in trust for Valerie (or Timothy). Marks did not induce her to make that conveyance, and there are no circumstances shown by the record making it inequitable for her to retain the beneficial interest in the Property. For all these reasons, the court did not err by granting summary

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<sup>9</sup> In their reply brief before this Court, the Horans state that they spent \$93,000 to repair and renovate the Property. There is nothing in the record in support of this contention.



judgment in favor of Marks on the grounds that the Statute of Frauds barred any claim of an oral express trust in land and that a constructive trust did not arise by operation of law.

**II.**

In their motion for leave to amend the complaint, which was filed after the hearing on the motion for summary judgment but before the court ruled, the Horans alleged that a confidential relationship arose between them, Marks, and Geraldine as of April 13, 2013; that the confidential relationship continued between Marks and the Horans after Geraldine died; and that Marks violated that confidential relationship when Marks refused to convey the Property to the Horans in January 2016 and again in July 2016. As expressly stated in the Motion for Leave to Amend the Complaint and noted by the circuit court in its memorandum opinion and order, these allegations clearly were directed toward Marks's limitations defense and were moot in light of the court's ruling that summary judgment was appropriate on alternate grounds.

**JUDGMENT OF THE CIRCUIT COURT FOR  
QUEEN ANNE'S COUNTY AFFIRMED.  
APPELLANTS TO PAY COSTS.**