Circuit Court for Baltimore City
Case No. 24-C-21-003263

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0860

September Term, 2021

MARYLAND MULTI-HOUSING ASSOCIATION, INC., ET AL.

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Fader, C.J.,
Wells,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: February 8, 2022

We consider whether the Circuit Court for Baltimore City abused its discretion when it declined to preliminarily enjoin the appellee, the Mayor and City Council of Baltimore (the "City"), from enforcing Baltimore City Ordinance 21-037, which is codified as Article 13, §§ 8C-1 through 8C-9 of the Baltimore City Code ("Subtitle 8C"). As most relevant here, for a period extending into February 2022, Subtitle 8C makes it a misdemeanor criminal offense for a City landlord to decline to renew an expiring lease on the ground of the tenant's failure to pay rent. All parties to this appeal appear to agree that at least that aspect of Subtitle 8C is not lawful because it conflicts with acts of the General Assembly.

The appellants, The Cedlair Corporation ("Cedlair") and Maryland Multi-Housing Association, Inc. ("MMHA") (collectively, the "Landlords"), brought this action for declaratory and injunctive relief to challenge the validity of Subtitle 8C. Simultaneously with filing the complaint, the Landlords filed a motion for preliminary injunctive relief in which they sought to enjoin the City from enforcing Subtitle 8C. In opposing that motion, the City argued that preliminary injunctive relief against it was unwarranted because: (1) the City has no role in enforcing Subtitle 8C, so an injunction against it doing so would serve no purpose; (2) the Landlords' claims are not ripe because there has been no credible threat to enforce Subtitle 8C against them; and (3) Subtitle 8C does not prevent landlords from evicting tenants for failure to pay rent.

The circuit court agreed that the action was not ripe, determined that the Landlords were therefore unlikely to succeed on the merits of their claim, and so denied the motion for preliminary injunctive relief. We are less certain that the declaratory judgment aspects

of the Landlords' complaint are not ripe, in light of the Court of Appeals' recent decision in *Pizza di Joey, LLC v. Mayor and City Council of Baltimore*, 470 Md. 308 (2020). However, we agree with the City that entry of preliminary injunctive relief against it would have been inappropriate because the City has no role in enforcing Subtitle 8C. There is, in effect, nothing to enjoin with respect to the only defendant in the case. Accordingly, we will affirm the circuit court's order denying the motion for preliminary injunctive relief and remand for further proceedings.

BACKGROUND

Subtitle 8C

Governor Lawrence J. Hogan, Jr. declared a state of emergency on March 5, 2020, in response to the COVID-19 pandemic. In connection with that state of emergency, the Governor issued orders that, as relevant here, suspended the provisions of §§ 8-401 (authorizing actions to repossess property for failure to pay rent) and 8-402.1 (authorizing actions to repossess property for breach of lease) of the Real Property Article (Repl. 2015; Supp. 2021), when a tenant was able to demonstrate a substantial loss of income resulting from the COVID-19 pandemic and the associated state of emergency. The state of emergency, and with it the orders suspending §§ 8-401 and 8-402.1, expired on August 15, 2021. The same order that provided for the expiration of those orders also "suspended to the extent of the inconsistency" "[t]he effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with th[e] Order."

On June 8, 2021, the Baltimore City Council passed Council Bill 21-0031. According to its recitals, the City Council passed the bill to respond to the City's "housing crisis related to the devastating impact of COVID-19," to alleviate a disparate impact of that crisis "on the City's Black and Latinx families," and to "keep[] families in their housing," which the City Council determined "serves a critical public health purpose both during the current pandemic and after." As relevant here, Council Bill 21-0031, as ultimately enacted and codified as Subtitle 8C, provides:

> § 8C-2. Lease renewal required.
>
> (a) In general.—Except for good cause described in subsection (b) of this section, at least 75 days but no more than 100 days prior to the end of a term lease or periodic tenancy, a landlord shall offer a tenant a reasonable opportunity to renew the lease subject to a reasonable, non-retaliatory increase in the rent or change in lease terms.
>
> (b) Good cause exceptions.
>
> (1) Substantial breach.—In this subsection, "substantial breach of the lease" does not include failure to pay rent or other charges.
>
> (2) In general.—The requirement set forth in subsection (a) of this section does not apply if:
>
> > (i) the tenant has caused a substantial breach of the lease that warrants non-renewal, and after receiving written notice to cure or correct the breach, the tenant has failed to comply within 45 days;
> >
> > (ii) the landlord seeks to recover possession of the leased premises for use by the landlord or the landlord's spouse, child, parent, or grandparent as their primary residence;
> >
> > (iii) the landlord seeks to permanently remove the leased premises from the rental market;
> >
> > (iv) the landlord, after having obtained all necessary permits, seeks to undertake substantial repairs or renovations that cannot be completed while the lease premises is occupied; or

(v) the leased premises are owner-occupied and the landlord leases out a single rental unit on the premises.

(3) Notice to tenant.—If a landlord declines to offer to renew the lease for good cause as described in paragraph (2) of this subsection, the landlord shall send a notice at least 75 days but no more than 100 days prior to the end of the lease term to the tenant advising the tenant that the landlord is declining to offer a renewal and stating with specificity the facts related to the good cause for declining to offer a renewal, including, if a substantial breach of the lease is alleged, the specific facts related to the breach.

. . .

§ 8C-6. Penalties.

Any person who violates any provision of this subtitle or any provision of a rule, regulation, or order adopted or issued under this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than $1,000 for each offense.

. . .

§ 8C-8. Termination of subtitle.

This subtitle shall automatically expire on the 181st day following the expiration of the catastrophic health emergency declared by the Governor of Maryland on March 5, 2020, as amended or extended by the Governor.

§ 8C-9. Enforcement.

Nothing in this subtitle precludes a tenant from pursuing any other civil or criminal remedy or enforcement action authorized by law.

While Council Bill 21-0031 was under consideration, the City Law Department reviewed it for form and legal sufficiency. In February 2021, the Law Department wrote a letter declining to provide its approval. The Law Department concluded that the bill was "in conflict with state law," specifically with public local laws enacted by the General Assembly that permit landlords "the right to terminate a year-long tenancy with 90 days' notice and a shorter time period for other types of tenancies. Any City law that would

mandate lease renewals would be in direct conflict with this state law and therefore be invalid."

Notwithstanding the Law Department's concerns, the City Council passed Council Bill 21-0031 on June 8, 2021. On July 19, 2021, Mayor Brandon Scott wrote a letter to the City Council President explaining that, in light of the concerns expressed by the Law Department, he had decided to permit the law to go into effect without his signature. The law became effective that day.[1]

Notably for our purposes, although an earlier version of the law would have provided for enforcement by issuance of an environmental citation by the City's Environmental Control Board, the version ultimately enacted did not contain that provision, leaving the possibility of criminal prosecution as the only enforcement provision.

As noted, the state of emergency enacted on March 5, 2020 expired on August 15, 2021. As a result, pursuant to § 8C-8, Subtitle 8C will terminate on February 12, 2022.[2]

[1] Article IV, § 5(c) of the Baltimore City Charter provides: "If an ordinance or resolution duly passed by the City Council shall not be returned by the Mayor to the City Council within three actual regular meetings, no more than one of which shall occur in any one calendar week, after it shall have been delivered to the Mayor, it shall become an ordinance or resolution of the City in the same manner as if the Mayor had approved it" absent certain circumstances not relevant here.

[2] In response to the spread of the Omicron variant of COVID-19, Governor Hogan declared a new state of emergency on January 4, 2022. That declaration did not purport to revive or renew the state of emergency proclaimed on March 5, 2020. *See* Proclamation (Jan. 4, 2022), https://governor.maryland.gov/wp-content/uploads/2022/01/Proclamation-Jan-4-2022-corrected-date.pdf (last accessed Feb. 1, 2022).

The Parties, the Lawsuit, and the Motion for Preliminary Injunctive Relief

The Landlords initiated this litigation on July 23, 2021, four days after Subtitle 8C became effective, by filing a five-count complaint for declaratory and injunctive relief and an accompanying motion for preliminary injunctive relief.[3] According to an affidavit in support of the motion submitted by Adam Skolnik, MMHA's Executive Director, MMHA represents the interests of "75 owners and managers of 50,697 rental housing units in 276 apartment communities that house more than 132,000 residents in Baltimore City." Mr. Skolnik averred that "[t]here are an estimated 127,170 renter-occupied units in Baltimore City" and that "[b]etween January 1, 2021 and May 31, 2021, there were 618 Complaints and Summons[es] Against Tenant Holding Over . . . filed" in Baltimore City. On that basis, Mr. Skolnik averred that if Subtitle 8C were applied to pending tenant holding over actions or pending notices to vacate, hundreds, if not thousands, of its members "will suffer imminent harm."

According to an affidavit submitted by Don Martin, Cedlair's Assistant Secretary, Cedlair owns a 46-unit rental housing property on Sinclair Lane in Baltimore City. Of those, based on Cedlair's records, tenants in at least 17 units were delinquent in payment of rent, at least four of those were delinquent by at least a year, and ten of the 17 had not applied for any rental assistance programs. Mr. Martin claimed that as of May 31, 2021,

[3] The Landlords' motion sought a temporary protective order and a preliminary injunction. Because the difference between the two is not relevant to our consideration in this appeal, we will refer to the Landlords' request generically as one for preliminary injunctive relief, which should be understood to encompass their requests for both a temporary protective order and a preliminary injunction.

the total amount of delinquent rent attributable to those 17 units was $99,807.00. Cedlair projected that that amount would nearly double by the end of the year if the tenants did not make any payments toward rent during that time. Cedlair further claimed that because of the backlog of cases in the District Court of Maryland, it would be "unable to obtain hearing dates for newly filed failure to pay rent cases until 2022," thus leaving it without an effective remedy for the nonpayment of rent. For that reason, Cedlair had "intended not to renew . . . the leases of the tenants who have failed to pay rent and have failed to apply for rental assistance or make suitable arrangements to catch up on their rental obligation."[4] Mr. Martin averred that Cedlair was "unable to reclaim possession" of its property from tenants of the delinquent units.

Count I of the complaint sought a declaration that Subtitle 8C violates Article 11-A, § 3 of the Maryland Constitution, which provides that "in case of any conflict between [a] local law and any Public General Law now or hereafter enacted the Public General Law shall control." Counts II and III sought declarations that Subtitle 8C violates the Contracts Clause and the Takings Clause, respectively, of the United States Constitution. Count IV sought declaratory relief that Subtitle 8C is preempted, invalid, and unconstitutional. In Count V, the Landlords requested preliminary and permanent injunctive relief "enjoining

[4] Mr. Martin's affidavit also stated that Cedlair rented units to "tenants who disrupt the ability of neighbors to quietly enjoy their property and/or endanger the lives of employees," including at least one such tenant to whom Cedlair had already provided notice of non-renewal. Mr. Martin asserted that Cedlair was unable to reclaim its property from that tenant as a result of Subtitle 8C.

Defendant Mayor and City Council of Baltimore from implementing and/or enforcing Subtitle 8C."

On the same day they filed their complaint, the Landlords filed a motion for a temporary restraining order and a preliminary injunction. In the motion, the Landlords sought preliminary injunctive relief "to preserve the *status quo*, to allow for meaningful review, and to prevent irreparable harm." In an accompanying memorandum, the Landlords argued that they satisfied all four factors the court was required to consider in reviewing a request for preliminary injunctive relief, including likelihood of success on the merits, the balance of harms, irreparable injury, and the public interest. In a proposed order submitted with the motion, the Landlords identified the relief they were seeking as: (1) enjoining the City "from taking any action to enforce [Section 8C]"; and (2) ordering the City to "take all necessary steps to ensure that the officers, employees, and agents of the City of Baltimore within their direction and control take or refrain from taking action as necessary for Defendant to comply with this Temporary Restraining Order."

In responding to the motion for preliminary injunctive relief, the City argued that the plaintiffs were unlikely to prevail on the merits of their claims both because: (1) Subtitle 8C "cannot be enforced by the City, so there is nothing for this Court to enjoin"; and (2) "even if the City were the proper enforcement authority, there has been no enforcement attempted (or even threatened to be attempted), which means the matter is not ripe for justiciability."[5] In an accompanying memorandum, the City also argued that

[5] The City also argued, somewhat confusingly, that because Subtitle 8C applies only "to tenants who hold over after their lease expires," and does not preclude landlords from

Subtitle 8C did not violate the United States Constitution's Contracts or Takings Clauses, but it did not defend Subtitle 8C on the merits of the Landlords' contention that the ordinance was invalid because it conflicted with laws enacted by the General Assembly. The City also argued that the Landlords were not likely to suffer irreparable harm and that neither the balance of harms nor the public interest weighed in favor of injunctive relief.

After a hearing, the circuit court denied the Landlords' motion. In reviewing the four preliminary injunctive relief factors, the court first concluded that the Landlords had demonstrated a likelihood of irreparable harm because, although Subtitle 8C did not prevent them from filing failure to pay rent actions pursuant to § 8-401 of the Real Property Article, it did prevent them from filing tenant holdover actions pursuant to § 8-402 of the Real Property Article. As a result, the plaintiffs "can't redeem possession of their property." With respect to the balance of convenience, the court concluded that the City "wouldn't suffer any harm" from the grant of injunctive relief while "the [Landlords] would suffer greater harm than would the City should the injunction not be granted." The court determined that the public interest factor was in equipoise because, although the court believed the law was likely to be held invalid, it also concluded that the challenge was not yet ripe.

Turning to "the most difficult factor" of likelihood of success on the merits, the court concluded that the plaintiffs were not likely to prevail on the merits because their

filing tenant holding over actions (even though it imposed criminal penalties for doing so), "any hypothetical harm to [Landlords]" was mitigated. Although we struggle to understand the City's argument, because the City does not renew it on appeal, we do not consider it further here.

request for declaratory relief was not ripe. Relying on the Court of Appeals' decision in *State v. G & C Gulf, Inc.*, 442 Md. 716 (2015), the court concluded that the Landlords' challenge was not ripe because they could not demonstrate a credible threat of prosecution under Subtitle 8C. Accordingly, the court denied the Landlords' motion. The Landlords filed a motion to alter or amend the judgment, which the circuit court also denied. This timely appeal followed.

DISCUSSION

I. THE CIRCUIT COURT CORRECTLY DENIED PRELIMINARY INJUNCTIVE RELIEF BECAUSE THE CITY HAS NO ROLE IN ENFORCING SUBTITLE 8C.

"It is well established that the granting or denial of an interlocutory injunction is a matter resting in the sound discretion of the court." *Eastside Vend Distribs., Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 240 (2006). This Court's "scope of review in this case is limited to determining whether the [c]ircuit [c]ourt abused its discretion in denying [the Landlords'] motion for preliminary injunction." *Id.* at 239 (citing *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 354 (2001)). "[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Eastside Vend Distribs.*, 396 Md. at 239 (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005)) (alteration in *Eastside Vend Distribs.*). "[E]ven with respect to a discretionary matter, [however,] a trial court must exercise its discretion in accordance with correct legal standards." *State v. Falcon*, 451 Md. 138, 157 (2017) (quoting *Ehrlich v. Perez*, 394 Md. 691, 708 (2006)) (alterations in *Falcon*).

A court must examine four factors before it issues injunctive relief:

> (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.

Dep't of Transp. v. Armacost, 299 Md. 392, 404-05 (1984) (citing *State Dep't v. Balt. County*, 281 Md. 548, 554-57 (1977)). The factor involving likelihood of success on the merits is a question of law, which we will review under the de novo standard. *Perez*, 394 Md. at 708. The remaining factors are afforded "the more deferential abuse of discretion standard[.]" *Id.* "The burden of producing evidence to show the existence of these four factors is on the moving party and 'failure to prove the existence of even one of the four factors will preclude the grant of preliminary injunction relief.'" *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 36 (2007) (quoting *Perez*, 394 Md. at 708); *see also Fogle v. H & G Rest., Inc.*, 337 Md. 441, 456 (1995) ("[T]he party seeking the injunction must prove the existence of *all four* of the factors . . . in order to be entitled to preliminary relief.").

The circuit court concluded that the Landlords demonstrated that the balance of convenience and irreparable harm factors weighed in favor of a preliminary injunction. It determined that the public interest factor was in equipoise, although it appears that the only reason it determined that factor did not favor injunctive relief was because of its conclusion that the dispute was not ripe. The only factor the court concluded weighed against preliminary injunctive relief is the likelihood of success on the merits, based on the court's conclusion that the Landlords' challenge was not ripe because of the absence of a credible

threat of enforcement. Because our analysis of that factor is dispositive, we will limit our analysis to it.

"The declaratory judgment act provides that 'a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty giving rise to the proceedings, and if . . . [a]n actual controversy exists between contending parties." *Pizza di Joey, LLC v. Mayor & City Council of Balt.*, 470 Md. 308, 340 (2020) (quoting Md. Code. Ann., Cts. & Jud. Proc. § 3-409(a)(1) (2013 Repl.)). "[T]he existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." *Boyds Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 689 (1987) (quoting *Hatt v. Anderson*, 297 Md. 42, 45 (1983)). "It follows, therefore, that in the absence of a justiciable controversy a court should not entertain an action for declaratory judgment." *Boyds Civic Ass'n*, 309 Md. at 690. To do otherwise "would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 591 (2014) (quoting *Boyds Civic Ass'n*, 309 Md. at 690).

Ripeness, a facet of justiciability, serves "to ensure that adjudication will dispose of an actual controversy in a conclusive and binding manner." *State Ctr.*, 438 Md. at 591-92 (quoting *Boyds Civic Ass'n*, 309 Md. at 691). "A claim for declaratory relief 'lacks ripeness if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen, or upon a matter which is future, contingent[,] and uncertain.'" *Pizza di Joey*, 470 Md. at 340 (quoting *State Ctr.*, 438 Md. at 591). "But because one of the primary

purposes of the declaratory judgment act is to 'relieve litigants of the rule of the common law that no declaration of rights may be judicially adjudged unless a right has been violated,' ripeness in this context 'can become an elusive concept.'" *Pizza di Joey, LLC v. Mayor & City Council of Balt.*, 241 Md. App. 139, 161 (quoting *Boyds Civic Ass'n*, 309 Md. at 691), *aff'd*, 470 Md. 308. Thus, in conducting our ripeness review, "[t]he only safe guide is an analysis of the precedents in which declaratory judgments have been granted and declined." *Boyds Civic Ass'n*, 309 Md. at 691 (quoting E. Borchard, *Declaratory Judgments* 56 (2d ed. 1941)).

The City contends that the circuit court's conclusion that the Landlords' challenge is not ripe was correct based on the Court of Appeals' decision in *G & C Gulf, Inc.*, 442 Md. at 731, and earlier decisions on which it was based. In *G & C Gulf*, a towing company challenged the constitutionality of an ordinance that, among other things, imposed certain notice obligations on towing companies and made violation of those obligations a criminal offense. *Id.* at 719-20. The Court of Appeals held that the circuit court had erred in reaching the merits of the dispute because, in the absence of any credible threat of criminal prosecution, the challenge was not ripe. *Id.* at 731-33. "A litigant must allege and prove that they have been prosecuted for a crime or that there is a credible threat of prosecution under a contested statute in order for the issue to constitute a justiciable controversy." *Id.* at 731. Moreover, "[t]he mere existence of a criminal statute is not such a threat as to present a justiciable controversy." *Id.* at 732 (quoting *Hammond v. Lancaster*, 194 Md. 462, 469 (1950)). The record in that case reflected that no State or County official had

threatened the towing company with prosecution and that the company had been continuing to do business without being prosecuted. *Id.* at 734. Thus, even though the Assistant County Attorney had stated at the trial that the County was prepared to enforce the ordinance, the Court concluded that there had not yet been a credible threat of prosecution against the plaintiff. *Id.* at 733.

The Landlords rely primarily on the Court of Appeals' even more recent opinion in *Pizza di Joey v. Mayor and City Council of Baltimore*, which they contend carves out an exception to the rule in *G & C Gulf* when a challenged law deprives the challengers of "their right to pursue a business opportunity in their chosen profession." 470 Md. at 338. In *Pizza di Joey*, the owners of food trucks challenged an ordinance that prohibited food trucks from being parked within 300 feet of a brick and mortar restaurant serving the same type of food, and imposed criminal penalties for violation of the ordinance. *Id.* at 326-27. The Court of Appeals was asked to determine whether the challenge was ripe even though neither of the plaintiffs had received a citation or been prosecuted for violation of the ordinance. *Id.* In deciding that issue, in spite of the ordinance's criminal penalties, the Court did not treat it as exclusively criminal. Instead, the Court looked to the "substance and application" of the ordinance, and determined, as this Court had, that the ordinance was really a "local economic regulation." *Id.* at 341 (adopting the reasoning of this Court in *Pizza di Joey*, 241 Md. App. at 162). The Court then determined that the food truck owners' challenge was ripe, not because of any credible fear of prosecution, but because of "the loss of [the food truck owners'] right to pursue a business opportunity in their

chosen profession." *Id.* The Court of Appeals agreed with this Court that the ordinance "indisputably limited [the owners of the food trucks] in their business" and was sufficiently concrete and specific to generate a ripe controversy. *Id.* at 342.

The City argues that in deciding *Pizza di Joey*, the Court of Appeals did not abandon the requirement of a credible threat of enforcement for a challenge to be justiciable. The City points to footnote 8 in the Court's opinion, *id.* at 342 n.8, in which the Court responded to a dissenting judge's assertion that it had done just that by creating an "independent" basis for challenging a criminal statute that does not require a credible threat of prosecution, *see id.* at 377-78 (Raker, J., dissenting) ("The majority seems to agree with the intermediate court that the loss of the Food Trucks' right to pursue a business opportunity in their chosen profession constitutes an alternative, independent basis for their declaratory judgment action and that the basis has been met. . . . Ordinarily, the loss of one's right to pursue a business opportunity (changing a business plan) in one's chosen profession is *not* an alternative, independent basis for ripeness and justiciability of a declaratory judgment action challenging a *criminal* statute."). In the footnote, the Court responded that it "continue[d] to require that courts decide actual cases and controversies" and observed that although the City had not issued any citations for violations of the food truck ordinance, it "enforce[d] compliance with the Rule by asking mobile vendors to move after a nearby restaurant complains. The City may not insulate the 300-foot rule from constitutional challenge by pointing to a criminal penalty that it chooses not to use, while simultaneously enforcing compliance with the Rule through other means." *Id.* at 342 n.8. The City argues

that this explanation demonstrates that the Court of Appeals still requires evidence of some enforcement activity, even if it falls short of criminal prosecution, before a challenge to a criminal statute can be considered ripe for adjudication in a declaratory judgment action.

Based on the Court's rationale in *Pizza di Joey*, we are skeptical that the Landlords' declaratory judgment action is not ripe. Like the food truck ordinance, the "substance and application" of Subtitle 8C appears to be that of a "local economic regulation," *id.* at 341, which the Landlords contend is interfering with their right to carry on their business in accord with State law. However, the City is also correct in pointing out that: (1) the ordinance at issue in *G & C Gulf* also shared similar characteristics of a local economic regulation, but the Court still required a credible threat of enforcement for justiciability; and (2) footnote 8 in *Pizza di Joey* suggests that, even for what is in essence a local economic regulation, the Court believed that *some* enforcement activity is required for a challenge to be ripe. Here, the Landlords did not present evidence of a threat of enforcement of any kind. Nevertheless, we need not resolve here whether the Landlords' underlying declaratory judgment challenge is ripe. The only matter that is presently before this Court is the circuit court's denial of the Landlords' request for preliminary injunctive relief, which we conclude was correct for a different reason, which we turn to next.

The City argues that preliminary injunctive relief to preclude it from enforcing Subtitle 8C was not available because the City has no role in the enforcement of Subtitle 8C and, therefore, there was nothing for the court to enjoin. We agree. As discussed above, although an early draft of what became Subtitle 8C would have permitted the City to

enforce its provisions through an environmental citation, that provision was removed. The sole enforcement mechanism remaining in the statute is through criminal prosecution, which is the province of the Baltimore City State's Attorney's Office, not the City.[6] *See, e.g.*, Md. Code Ann., Crim. Proc. § 15-102 (2018 Repl.) (other than cases handled by the State Prosecutor, "a State's Attorney shall, in the county served by the State's Attorney, prosecute and defend on the part of the State all cases in which the State may be interested"); *see also McNeil v. State*, 112 Md. App. 434, 458 (1996) ("[T]he current Constitution, adopted in 1867, gives the State's Attorney the 'constitutional powers and duties relating to criminal prosecutions at the trial level[.]'" (quoting *Murphy v. Yates*, 276 Md. 475, 488 (1975))). In the absence of any role for the City in the enforcement of Subtitle 8C, issuance of an injunction precluding the City from enforcing Subtitle 8C would be an act of futility.[7] *Cf. Bishop v. Governor of Maryland*, 281 Md. 521, 525 (1977) (dismissing

[6] At oral argument, the Landlords asserted that attorneys employed by the City had been tasked with prosecuting criminal violations of the City's housing code and could also enforce the requirements of Subtitle 8C. In response to the Court's request for supplemental briefing from the parties, the Landlords provided information demonstrating that attorneys working for the City's Department of Housing and Community Development had been delegated prosecutorial power by the Baltimore City State's Attorneys' Office authorizing them to prosecute certain, specific housing code violations. The violations those attorneys are authorized to prosecute, however, do not include violations of Subtitle 8C. The Landlords' suggestion that this arrangement could be altered to include violations of Subtitle 8C is speculation. The record is therefore devoid of any evidence that the City has any role in the enforcement of Subtitle 8C.

[7] The Landlords argue that § 8C-9 creates a private right of enforcement in addition to the criminal enforcement penalty. Section 8C-9 states: "Nothing in this Subtitle precludes a tenant from pursuing any other civil or criminal remedy or enforcement action authorized by law." Contrary to the Landlords' argument, that provision does not appear to create any new rights or remedies for tenants; it merely preserves any otherwise-extant rights or remedies from an argument that Subtitle 8C preempts them. Moreover, even if it

appeal on the ground that "[i]n these circumstances, no useful declaration could be made; indeed, it would be an act of futility, a useless gesture of no effect whatsoever, to consider the appeal"). Moreover, because issuance of such a preliminary injunction would neither invalidate the ordinance nor preclude enforcement by any entity responsible for it, it would not alleviate any irreparable harm, adjust the balance of convenience, or promote the public interest. In sum, because the City lacks any role in the enforcement of Subtitle 8C, the circuit court did not abuse its discretion in denying the Landlords' motion for preliminary injunctive relief enjoining the City from enforcing Subtitle 8C.

The procedural posture of this lawsuit requires one further comment, which is that our conclusion that the City lacks a role in enforcing Subtitle 8C is not dispositive of the Landlords' underlying complaint seeking a declaratory judgment against the City that the ordinance is invalid, unconstitutional, and unenforceable. That the City Council did not provide the City with a role in enforcing the ordinance does not mean that the City lacks a sufficiently concrete interest in the validity of the ordinance to be a proper defendant with respect to the Landlords' requests for declaratory relief. Any such challenge would, of course, require a court to resolve the ripeness question that we leave undecided today, among other issues. However, because we have determined that the circuit court properly denied the motion for preliminary injunctive relief for a different reason, and because the expiration of Subtitle 8C is likely to render other issues moot in this case, the resolution of that question will likely need to await a future challenge.

did create a private right of action for a tenant, it is still unclear how an injunction prohibiting the City from enforcing Subtitle 8C would be appropriate.

CONCLUSION

We hold that the circuit court neither erred nor abused its discretion when it denied the Landlords' motion for a temporary restraining order and preliminary injunction. Accordingly, we will affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.