Circuit Court for Washington County
Case No. C-21-CV-19-000670

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1194

September Term, 2020

KIND THERAPEUTICS USA, LLC, ET AL.

v.

MARI HOLDINGS MD, LLC, ET AL.

Kehoe,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: December 7, 2021

This case arises from a dispute between two entities in Maryland's emergent medical cannabis industry. The issue on appeal is the grant of an order for a preliminary injunction requiring the parties to abide by their contractual agreements pending trial. Appellant, Kind Therapeutics USA, LLC ("Kind"), filed an action in the Circuit Court for Washington County against Appellees, MariMed, Inc ("MM Inc."), its wholly owned subsidiary MariMed Advisors, Inc. ("MariMed Advisors"), and MariMed Advisors' partially owned subsidiary, Mari Holdings MD, LLC ("Holdings") (collectively referred hereinafter as the "MariMed Parties").

The gravamen of Kind's complaint was that the MariMed Parties had usurped and mismanaged Kind's medical cannabis business, and that the multiple agreements underlying the parties' business relationships were invalid and unenforceable. Kind asserted various claims for relief and sought a preliminary and permanent injunction order to prevent the MariMed Parties from interfering in Kind's business pending trial. The MariMed Parties filed a counterclaim and third-party complaint against Kind. The MariMed Parties sought a preliminary and permanent injunction order to enjoin Kind from interfering with the MariMed Parties' management, leasing, and product licensing rights of Kind's business, facilities, and product licenses, respectively. After extensive preliminary injunction proceedings, the trial court granted the MariMed Parties request for a preliminary injunction.

Kind presents four questions for our review,[1] which we have rephrased, for clarity, as follows:

> I. Whether the trial court abused its discretion in finding that the MariMed Parties were likely to succeed on the merits of the claims against Kind.
>
> II. Whether the trial court abused its discretion in finding that the MariMed Parties would suffer irreparable harm if the preliminary injunction were not granted.
>
> III. Whether the trial court abused its discretion in balancing the convenience between Kind and the MariMed Parties.
>
> IV. Whether the trial court abused its discretion in its assessment of the public interest in granting the preliminary injunction.

The MariMed Parties present four questions for our review,[2] which we have rephrased, for clarity, as follows:

[1] Kind's original questions presented are as follows:

> 1. Advisors and MM, Inc. are not likely to succeed on their respective claims for specific performance of the MSA and LMA.
>
> 2. The potential, irreparable harm identified by the circuit court did not justify the injunctive relief it granted.
>
> 3. The circuit court erred in balancing the equities.
>
> 4. The circuit court erred in its assessment of the public interest.

[2] The MariMed Parties' original questions presented are as follows:

I. Whether the trial court correctly determined that the MariMed Parties were likely to succeed on the merits of the claims against Kind.

II. Whether the trial court correctly determined that the MariMed Parties were likely to suffer substantial, irreparable harm without a preliminary injunction.

III. Whether the trial court correctly determined that the balance of convenience favored the MariMed Parties.

IV. Whether the trial court correctly determined that the public interest is best served by granting a preliminary injunction in favor of the MariMed Parties.

For the reasons explained herein, we shall affirm the judgment of the trial court.

FACTS AND PROCEEDINGS

In 2014, Maryland adopted legislation that legalized the production and sale of cannabis for medical use. Md. Code (1982, 2019 Repl. Vol., 2021 Suppl.), § 13-3301 *et seq* of the Health – General Article. In addition to legalizing the production and sale of

1. The circuit court correctly determined the MariMed Parties' likelihood of success on the merits and appropriately fashioned preliminary injunctive relief tailored towards maintaining the status quo until trial.

2. The circuit court correctly determined that the MariMed Parties are likely to suffer substantial, irreparable harm without the preliminary injunction order.

3. The circuit court correctly determined that the balance of convenience favors the MariMed Parties.

4. The circuit court correctly determined that the public interest is best served by the terms of the preliminary injunction order entered by the court.

medical cannabis, the law also created the Maryland Medical Cannabis Commission ("the Commission"). *Id.* The Commission is responsible for developing policies and regulations to ensure the availability and delivery of medical cannabis to Maryland patients in a safe and effective manner. *See* https://mmcc.maryland.gov/Pages/aboutus.aspx, *archived at* https://perma.cc/M8BH-9A5B. A key responsibility of the Commission is regulating, selecting, and licensing the entities that will produce and sell medical cannabis to Maryland patients. *Id.*

Kind is such an entity, and in 2015, Susan Zimmerman, MD, William Tham, MD, Sophia Leonard Burns, PA, and Jennifer DiPietro (the "Kind Members") formed Kind to apply for medical cannabis licensing. Around that same time, Kind engaged MariMed Advisors to prepare the necessary licensing applications for submission to the Commission. The licensing, if granted, would permit Kind to grow, process, and dispense medical cannabis. The consulting agreement between Kind and MariMed Advisors was executed on July 8, 2015. Kind's applications were ultimately successful, and in August 2016 and December 2016, Kind was given pre-approval by the Commission to grow, process, and dispense cannabis for medical use.

After the Commission granted Kind's preapproval licensing, Kind engaged MariMed Advisors for further consultation to assist in developing a cannabis cultivation and operating facility. MariMed Advisors formed its subsidiary Holdings to acquire such a facility, and in February 2017, Holdings purchased a warehouse facility in Hagerstown, Maryland. The warehouse was renovated and equipped to grow, cultivate, and process

medical cannabis, primarily with funding from Holdings. In October 2017, the Hagerstown facility was completed, and Kind began leasing the facility from Holdings, and accordingly commenced its operations. From October 2017 until late 2018, Kind asserts that although there was no written agreement, "[MariMed] Advisors took on [a] substantial, albeit unofficial, role in the day-to-day management of Kind" and its facility in Hagerstown.[3]

In late 2018, Kind sought to formalize and clarify MariMed Advisors' role in the management and oversight of Kind's operations. The Kind Members and the MariMed Parties met in Boston, Massachusetts on December 13, 2018. The parties initiated this meeting with the intent to enter into three distinct agreements: (1) an agreement to a merger plan which would transfer the entirety of Kind to an MM Inc. subsidiary; (2) a management services agreement (the "MSA"), under which MariMed Advisors would provide Kind with comprehensive management services;[4] and (3) a commercial lease (the "Lease") for

[3] The primary purpose of the initial July 8, 2015 consulting agreement between Kind and MariMed Advisors was that MariMed Advisors would provide consulting, licensure, and application services for obtaining licensing from the Commission. The agreement further included, however, "post licensure services" which allowed MariMed Advisors to engage in "ongoing management" of Kind's operations including cultivation, production, staffing, sales, marketing, and merchandising.

[4] The MSA's effectiveness was contingent on "the date on which the [Commission] notifies Kind in writing that it has approved or does not object to the terms hereof." Evidence introduced at the preliminary injunction hearing demonstrated that the Commission did not object to the terms of the MSA. The evidence also demonstrated, however, that the Commission did not give express written approval to Kind indicating that it had approved the MSA. A witness from the Commission testified that although the Commission often issued letters rejecting other similar management agreements, the Commission almost never issued any letters approving such agreements like the MSA.

the Hagerstown facility. At the December 13, 2018 meeting, the parties formally agreed to the Lease, and the MSA, but were unable to agree to the merger plan.

Pursuant to the MSA, MariMed Advisors would be responsible for the "development, administration, operation, and management" of Kind's cultivation, processing, and dispensing of medical cannabis. MariMed Advisors would provide management services to Kind in exchange for a percentage of Kind's gross revenue. Under the Lease of the Hagerstown facility, Kind would rent the facility from Holdings for a twenty-year term. The Lease provided for a "percentage rent" that would be determined from Kind's gross sales. Finally, in June 2019, the parties entered into one final agreement, a License and Manufacturing Agreement (the "LMA"). The LMA provided Kind with a license to develop and distribute MM Inc. branded medical cannabis products.

As mentioned previously, the parties had failed to come to an agreement on the proposed merger at the December 13, 2018 meeting in Boston. Both Kind and the MariMed Parties assert that a continued failure to agree on the merger plan led to further deterioration of the parties' ability to work together. Accordingly, in October 2019, Kind notified the MariMed Parties that they were unwilling to negotiate any further on the proposed merger, and that the MSA and LMA were void. The MariMed Parties allege that Kind began acting on this assertion, and that Kind took steps to lock the MariMed Parties out of the management of Kind's operations and facility. Kind conversely alleged that MariMed Advisors and the MariMed Parties refused to be accountable to budgetary

concerns, mishandled Kind's funds, refused to be transparent, and excluded the Kind Members from any involvement in the management of Kind's business.

Kind commenced litigation against the MariMed Parties on November 13, 2019. Kind asserted claims for declaratory judgment, breach of contract, breach of fiduciary duty, accounting, fraudulent concealment, unjust enrichment, and sought money damages along with preliminary and permanent injunctive relief. The MariMed Parties countersued, making claims for declaratory judgment, specific performance, breach of contract, unjust enrichment, promissory estoppel, fraudulent inducement, constructive trust, and likewise sought preliminary and permanent injunctive relief. Both parties moved for temporary restraining orders, which were denied. The trial court scheduled a two-day hearing on the parties' competing motions. The hearing was initially scheduled for December, but then further delayed multiple times due to the COVID-19 pandemic.[5] The hearing was eventually held on September 14 through 17, and was completed on November 2 and 4, 2020.

Over the cumulative six-day hearing, the trial court heard testimony from nine witnesses and received in evidence approximately 200 exhibits. Following the hearing, on December 18, 2020, the trial court issued its Preliminary Injunction Opinion and Order and found that the MariMed Parties were entitled to injunctive relief relating to the MSA and

[5] When the hearing was initially scheduled, the parties entered into a Status Quo Agreement dated December 8, 2019. The terms of the Status Quo Agreement maintained many aspects of the MariMed Parties' continued management of Kind's business and operations.

the LMA.[6] The trial court examined the claims under the four-factor test for preliminary injunctions and found that the MariMed Parties were entitled to injunctive relief. *See Dep't of Transp., Motor Vehicle Admin. v. Armacost*, 299 Md. 392, 404–05 (1984).

The trial court determined that the MariMed Parties were likely to succeed on the merits of the claims and set forth a series of facts that the MariMed Parties were likely to prove at trial. The trial court also found that the MariMed Parties would likely suffer irreparable harm if the preliminary injunction were not granted, largely due to the significant amount of money that the MariMed Parties had invested in Kind. The trial court determined that the balance of convenience weighed in favor of the MariMed Parties, and further, that the public interest would be served by granting the preliminary injunction.

The trial court also found that "the last, actual, and peaceable status between the parties occurred between December 13, 2018 and the spring/summer of 2019" when Kind and the MariMed Parties "were operating pursuant to the Lease, MSA and [LMA]." The trial court directed that the MSA and LMA were to remain in effect until a trial was held on the merits. The trial court's preliminary injunction provided that the MariMed Parties shall have the continuing rights, duties, and responsibilities within the MSA and LMA, and

[6] Kind withdrew its own request for a preliminary injunction on the final day of the hearing. Therefore, the court did not issue a ruling on Kind's withdrawn motion. Additionally, while the trial court's order on the preliminary injunction was pending, the trial court entered summary judgment in favor of Mari Holdings with respect to the Lease by a separate order for summary judgment on November 18, 2020. The trial court determined that the Lease was valid as a matter of law and that Holdings was entitled to summary judgment. Accordingly, the trial court did not issue any injunctive relief with regard to the Lease.

also, that the MariMed Parties shall maintain, "complete transparency regarding all operations of Kind." Finally, the trial court enjoined the Kind Members from interfering with the performance of the MSA and LMA. Kind filed this timely appeal.

DISCUSSION

Standard of Review

We will consider the following factors when reviewing a trial court's decision to grant or deny a preliminary injunction:

> (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.

Armacost, supra, 299 Md. at 404–05 (1984) (internal quotation marks omitted). The party who moves for a preliminary injunction has the burden to present facts in support of the above factors. *Fogle v. H&G Restaurant*, 337 Md. 441, 456 (1995). Injunctive relief will be precluded if the moving party "fail[s] to prove the existence of even one of the four factors." *Id.* Additionally, regarding the first factor, "the 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.* (emphasis in original).

Notably, preliminary injunctive relief is forward looking, and is therefore used to "protect[] a party, in a preventative manner, from future acts." *Eastside Vend Distributors,*

Inc. v. Pepsi Bottling Grp., Inc., 396 Md. 219, 224 (2006). In this way, a preliminary injunction "maintain[s] the status quo between parties until the issues in contention are fully litigated." *Id.* The status quo between the parties is "the last, actual, peaceable, noncontested status which preceded the pending controversy." *Id.* at 241 (internal quotation marks omitted).

Our review will be conducted for an abuse of discretion and will be limited, "because we do not now finally determine the merits of the parties' arguments." *Ehrlich v. Perez*, 394 Md. 691, 707 (2006) (internal quotation marks omitted). We, therefore, "review only whether the trial court properly granted the preliminary injunction." *Id.* An abuse of discretion occurs when "an untenable judicial act [] defies reason and works an injustice" or when "no reasonable person would take the view adopted by the [trial] court." *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 96 (2013), *aff'd* 437 Md. 47 (2014). We will also find an abuse of discretion "where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, or when the ruling is violative of fact and logic." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal quotation marks and citations omitted).

I. The trial court did not abuse its discretion in granting the preliminary injunction in favor of the MariMed Parties with regard to the MSA and the LMA.

For the reasons stated herein, we hold that the trial court did not abuse its discretion in granting the preliminary injunction in favor of the MariMed Parties with regard to the MSA and the LMA. The trial court properly applied the four *Armacost* factors to the

MariMed Parties' claims. The trial court determined that the MariMed Parties were likely to succeed on the merits of the claims, that there would likely be irreparable injury without relief, and that the balance of convenience as well as the public interest favored granting the preliminary injunction. We discuss each factor, the trial court's findings, and the parties' arguments below.

A. The trial court did not abuse its discretion in finding that the MariMed Parties had established that they were likely to succeed on the merits of the claims with regard to the MSA and the LMA.

As stated above, the first factor that we consider is whether the trial court properly determined that the MariMed Parties were likely to succeed on the merits of the claims. "[T]he 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." *Fogle*, *supra*, 337 Md. at 456 (1995) (emphasis in original). The MariMed Parties asserted claims for declaratory judgment, breach of contract, unjust enrichment, promissory estoppel, fraudulent inducement, constructive trust, reformation, and sought specific performance relief as well as money damages.

The trial court announced that the likelihood of success on the merits regarding the MSA, "hinges squarely on the issue of the [Commission's] written approval or written objection to the MSA as required by the parties in the first paragraph of the MSA." The trial court found that there was a real probability that MariMed Advisors would likely be successful in proving twelve independent facts regarding the validity and enforceability of the MSA:

a. The parties placed the language in the first section of the MSA concerning written approval or denial based on an honest belief that the [Commission] would respond in writing after submission of the MSA without further action by the parties.

b. Although [the Commission] required MSAs to be submitted in order to flag those MSAs that attempted to change ownership, [the Commission] failed to respond in any meaningful way to almost all of its licensees concerning MSA approval.

c. Though [the Commission] created an obligation on its licensees to submit MSAs, [the Commission] failed to communicate properly with its licensees.

d. [The Commission] reviewed the parties' MSA at the time of submission and approved it.

e. The entity at fault for not sending written approval to the parties was [the Commission], not the parties.

f. The parties' addition of a requirement of written approval from [the Commission] was either a mutual mistake or, if enforced, would estop [the Commission's] approval of this MSA.

g. The MSA was supported by independent and adequate consideration.

h. The MSA contains no cross-default provision and there is no other document that can cause cross-default.

i. Kind agreed for MariMed Advisors to manage the business for an initial period of four (4) years.

j. Irrespective of [the Commission's] failure to communicate properly with its licensees concerning MSAs submitted for review, Kind acted in a manner that accepted the benefits of the MSA.

k. After execution and submission, Kind expected and wanted MariMed Advisors to manage Kind's operations according to the MSA.

l. The parties have not acted unlawfully by acting in accord with the MSA.

Taking these twelve findings together, the trial court found: (1) that the MSA was a valid and enforceable contract; (2) that Kind intended to accept the benefits of the MSA; (3) that there was no cross-default provision within the MSA; and (4) that the Commission's failure to give express written approval of the MSA did not make the MSA invalid or unenforceable. The trial court viewed these facts, as well as evidence and testimony presented at the hearing, as sufficient support for its determination that the MariMed Parties would likely succeed on the merits of the claims.

We agree with the trial court's finding that the merits of the MariMed Parties' likelihood of success largely depended on whether the MSA's effectiveness was contingent on the Commission's express written approval. Although the Commission's written approval was a necessary condition to make the MSA effective, testimony presented at the hearing indicated that the parties treated the MSA as effective even though the Commission remained silent. Furthermore, evidence was presented that the Commission rarely, if ever, provided express approval of similar management agreements. A witness from the Commission testified that although the Commission often issued letters rejecting other similar management agreements, the Commission never issued any letters approving such agreements like the MSA.

We hold that the trial court did not abuse its discretion in finding that the MariMed Parties were likely to succeed on the merits of the various claims with regard to the MSA as well as the LMA. The trial court found that the MSA and LMA were valid and enforceable contracts, and that the parties had accepted the benefits of both agreements. This finding is amply supported by the record. The facts presented in the trial court's opinion described why the MSA and LMA were valid and enforceable, and further detailed why the MariMed Parties were likely to establish that the MSA and LMA were valid and enforceable.

Kind, in its brief, has not directly disputed any of the trial court's specific factual findings. Rather, Kind has asserted that the trial court abused its discretion because it failed to find that the MariMed Parties were likely to succeed on the merits of the claims for specific performance of the MSA and the LMA. Kind argues that the trial court abused its discretion by focusing on the validity and enforceability of the MSA and LMA, and not whether the MariMed Parties would likely succeed on the claims for specific performance.[7]

In support of this argument, Kind has presented case law which stands for the general proposition that specific performance is an extraordinary contractual remedy that

[7] At oral argument before this Court, Kind raised an argument that was neither presented to the trial court nor asserted in its briefs to this Court. Namely, Kind argued that § 3-601 of the Courts and Judicial Proceedings Article precluded the trial court from specifically enforcing the MSA and the LMA because Kind could "[p]rove that [it] has property from which [] damages may be collected." Md. Code (2006, 2020 Repl. Vol.), § 3-601 of the Courts and Judicial Proceedings Article. We decline to address Kind's reference to the statute because it was not "raised in or decided by the trial court . . ." *See* Md. Rule 8-131(a).

should only be granted under exceptional circumstances.[8] Although Kind correctly recites the law regarding specific performance generally, its attempt to shoehorn this well-established law into the standard for granting a preliminary injunction is unavailing. Kind's argument fails for three primary reasons.

First, the law for granting or denying preliminary injunctions requires a trial court to examine "the likelihood that the plaintiff will succeed *on the merits*." *Armacost, supra*, 299 Md. at 404–05 (1984) (emphasis added). Kind has argued that the trial court abused its discretion by not examining whether the MariMed Parties were likely to succeed in obtaining specific performance of the MSA and LMA. Establishing a likelihood of success on the *merits*, however, is not equivalent to establishing a likelihood of success in obtaining particular *relief*. Although specific performance is both a claim and a remedy, the merits of a claim -- and the relief ultimately obtained -- are different concepts.[9] Indeed, Kind

[8] *See Falls Garden Condo. Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 309, n.8 (2015) ("Specific performance is an extraordinary contract remedy that is only available to enforce a valid contract against one party.") (internal quotation marks omitted); *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 454 (2012) ("Specific performance is an extraordinary equitable remedy which may be granted, in the discretion of the chancellor, where more traditional remedies, such as damages, are either unavailable or inadequate.") (internal quotation marks omitted); *Barranco v. Kostens*, 189 Md. 94, 97 (1947) ("the extraordinary remedy of specific performance is not a matter of right in either party, but is a matter of discretion in the court.").

[9] Kind's own recitation of the law regarding specific performance runs counter to its argument. Each case cited by Kind in its brief describes specific performance as a remedy only. *Falls Garden Condo. Ass'n, Inc.*, *supra*, 441 Md. at 309, n.8 (2015) ("Specific performance is an extraordinary *contract remedy*.") (emphasis added); *Yaffe*, *supra*, 205 Md. App. at 454 (2012) ("Specific performance is an extraordinary *equitable remedy*.") (emphasis added); *Barranco*, *supra*, 189 Md. at 97 (1947) ("the *extraordinary remedy* of specific performance . . .") (emphasis added).

asserts in its own brief that, "even if, *arguendo*, the agreements are valid, binding, and enforceable, it does not necessarily mean the court will order their specific performance."

Kind's assertion reinforces the distinction between establishing a likelihood of success on the merits, and the likelihood of obtaining particular relief. Even if a party establishes a likelihood of success on the merits with absolute certainty, it does not automatically imply that he will obtain a particular form a relief. This is especially true when the decision to grant particular relief is vested solely within the discretion of the trial court -- as is the case with specific performance. *See Yaffe*, *supra*, 205 Md. App. at 454 (2012) ("Specific performance is an extraordinary equitable remedy which may be granted, *in the discretion of the chancellor*, where more traditional remedies, such as damages, are either unavailable or inadequate.") (emphasis added).

The law regarding preliminary injunctions has never required a party to prove entitlement to particular relief. Rather, the law only requires a party to show that he will likely succeed in proving the merits of his claim. We agree with the trial court's assessment that the merits of the MariMed Parties' claims necessarily depend on establishing whether the MSA and LMA are valid and enforceable agreements. Accordingly, we hold that the trial court was correct in its determination that the likelihood of success factor largely hinged on the validity and enforceability of these agreements.

Second, Kind argues in its brief that the trial court's preliminary injunction order effectively forces specific performance of the MSA and LMA. Kind concludes that the trial court was therefore required to find that the MariMed Parties were likely to succeed

on the claim for specific performance, because the effect of the preliminary injunction was effectively specific performance. This argument appears to be circular. It does not logically follow that a party seeking a preliminary injunction must show that he will likely succeed on the merits of a claim and obtain permanent relief that mirrors the temporary effect of the preliminary injunction. If this were the case, a party seeking a preliminary injunction would first need to determine the effect of the sought-after preliminary injunction. The party would then need to draft a motion that established that he is likely to succeed on the merits of a claim and obtain permanent relief with the same effect of the pending injunction. A party cannot determine the effect of an injunction before it is granted.

Finally, Kind provides only one case that is on point to support its argument that a trial court will not ordinarily grant preliminary injunctive relief that requires specific performance. In *M. Leo Storch*, a plaintiff landlord leased a commercial retail space to a defendant to sell and rent televisions, video cameras, video tape recorders, videotapes, movies, and accessories. *M. Leo Storch Ltd. P'ship v. Erol's, Inc.*, 95 Md. App. 253, 255 (1993). The defendant's business struggled from the get-go and was ultimately acquired by the once internationally successful video rental chain, Blockbuster LLC.[10] *Id.* After Blockbuster acquired the defendant's outstanding shares, it attempted to revitalize the defendant's store. *Id.* Nevertheless, the defendant decided to close the location. *Id.* The

[10] *See* https://www.businessinsider.com/the-rise-and-fall-of-blockbuster-video-streaming-2020-1, *archived at* https://perma.cc/QDT2-VDKC.

plaintiff landlord sought *ex parte* injunctive relief to enforce the lease's continuous operations clause, which the trial court denied, and instead issued a show cause order. *Id.* at 256. The defendant's video store had been closed for over six weeks by the time a hearing was held. *Id.* The trial court denied interlocutory injunctive relief because it found that the plaintiff could not prove a likelihood of success on the merits in an action for damages over and above the defendant's rent. *Id.* at 258.

This Court reviewed the trial court's denial of injunctive relief. *M. Leo Storch, supra*, 95 Md. App. at 258. We held that despite the defendant's alleged breach, that it was unlikely that the plaintiff would succeed in obtaining an injunction to specifically enforce the continuous operation clause of the lease because enforcement of the injunction would require unreasonably difficult court supervision. *Id.* In so holding, we upheld the body of case law "that specific performance will not [ordinarily] be decreed if the performance is of such a character as to make effective enforcement unreasonably difficult or to require such long-continued supervision by the court." *M. Leo Storch, supra*, 95 Md. App. at 259 (quoting *Edison Realty Co. v. Bauernschub*, 191 Md. 451, 460 (1948)). We further noted, however, that "[a] trial court *may* award injunctive relief notwithstanding the difficulty of enforcement." *Id.* (emphasis in original).

The plaintiff in *M. Leo Storch* asserted that the lease's continuous operations clause could be enforced without extensive court supervision. *M. Leo Storch, supra*, 95 Md. App. at 260. The plaintiff argued that an injunction would merely prevent the defendant from continuing to breach the lease. *Id.* We disagreed and held that a "negative" injunction that

prohibits certain actions will not usually present risks of unreasonably difficult enforcement, whereas a "mandatory" injunction that "requires a party to perform a positive act" is more likely to "make enforcement unreasonably difficult." *Id.* at 261 (internal citations omitted). Because the defendant's video store had been closed for over six weeks, we held that an injunction enforcing the lease's continuous operations clause would require the defendant to take certain mandatory acts to re-open the video store such as hiring, training, and managing new employees. *Id.* at 264. We upheld the trial court's denial of injunctive relief because the injunction would be of the "mandatory" variety making "effective enforcement unreasonably difficult." *Id*. at 265 (internal citation omitted).

Kind argues that had the trial court adhered to the principals in *M. Leo Storch* it "would not have found that [MariMed] Advisors was likely to succeed on the merits of its claims for specific performance of the MSA." We fail to see a compelling similarity between the current case and *M. Leo Storch* for three independent reasons.

First, unlike the MariMed Parties, the plaintiff in *M. Leo Storch* sought *only* injunctive relief for specific performance. In our view this distinction is critical. Because the plaintiff in *M. Leo Storch* only brought a cause of action for specific performance, he was required to show a likelihood of success on the merits *only for specific performance*. In the case at hand, the MariMed Parties have brought a variety of causes of action based in breach of contract. It reasons therefore, that the MariMed Parties' likelihood of success on the merits is not as narrow as the plaintiff's likelihood of success in *M. Leo Storch*. Additionally, *M. Leo Storch* was tightly focused on only one clause of a lease, and a

singular issue -- whether the lease's continuous operations clause could be enforced by specific performance. This factual scenario, and the legal issues, are far afield from the general contractual dispute presented at the case at hand, which concerns multiple agreements, multiple legal issues, and multiple allegations of breach of contract. The multiple causes of action, and the merits of this case are far different from those presented in *M. Leo Storch*.

Second, Kind fails to demonstrate how the preliminary injunction in this case is like the injunction in *M. Leo Storch*. The injunction in *M. Leo Storch* would have required the breaching defendant to start from square one and re-open his business, thereby making "effective enforcement unreasonably difficult." *M. Leo Storch*, *supra*, 95 Md. App. at 265 (internal citation omitted). Conversely, the trial court's findings in this case strongly indicate that the injunction here is not a "mandatory" injunction that "requires a party to perform a positive act" but is rather a "negative" injunction that merely prevents Kind from continuing to treat the MSA and LMA as void. *Id.* The MariMed Parties requested that the trial court enjoin Kind from interfering with its management rights under the MSA and further enjoin Kind from treating both the MSA and the LMA as void. The MariMed Parties did not request that the trial court require Kind and the Kind Parties to take any action that they were not already undertaking.[11] Unlike the defendant in *M. Leo Storch*,

[11] While not construed against either party, the MariMed Parties and the Kind Parties entered into the Status Quo Agreement pending resolution of the preliminary injunction proceedings. The Status Quo Agreement maintained the existing agreements and relationships between the parties, as initially outlined in the MSA and the LMA.

Kind and the Kind Parties have not vacated the Hagerstown facility, nor has Kind's business nor the Hagerstown facility ceased its operations.

Finally, as we made clear in *M. Leo Storch*, a trial court has broad discretion to grant a preliminary injunction "notwithstanding the difficulty of enforcement." *M. Leo Storch*, *supra*, 95 Md. App. at 260. Therefore, even if the injunction in this case presents difficulty of enforcement, as Kind has argued, the trial court had discretion to grant or deny the injunction. We credit the trial court's ability to judge the credibility of witnesses and evidence at trial. We further note the trial court's ability to assess the level of supervision needed to enforce its order for preliminary injunction based on the testimony and evidence received at the hearing. The trial court's decision to grant the injunction in favor of the MariMed Parties, in light of any perceived difficulties of enforcement, is supported by the evidence presented at the extensive six-day hearing.

In sum, we hold that the trial court did not abuse its discretion in finding that the MariMed Parties were likely to succeed on the merits of the claims with regard to the MSA and LMA.

B. The trial court did not abuse its discretion in finding that the MariMed Parties were likely to suffer substantial, irreparable harm without a preliminary injunction with regard to the MSA and the LMA.

The second factor we consider is whether the trial court properly determined that the MariMed Parties were likely to suffer substantial and irreparable harm without a preliminary injunction. *Armacost*, *supra*, 299 Md. at 404–05 (1984). The claimed injury need not "be beyond all possibility of compensation in damages, nor need it be very great."

Maryland Nat'l Park and Planning Comm'n v. Washington Nat'l Arena, 282 Md. 588, 616 (1978) (quoting *Hart v. Wagner*, 184 Md. 40, 47–48 (1944)). There can be irreparable injury even when "monetary damages are difficult to ascertain or are otherwise inadequate." *Id.* In the realm of injunctions, an injury may be irreparable, "where it is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice . . . [because] it cannot be readily, adequately, and completely compensated for with money." *Coster v. Dep't of Personnel*, 36 Md. App. 523, 526 (1977). Further, a petitioner must present more than mere allegations or arguments that he will suffer irreparable injury; "facts must be adduced to prove that a petitioner's apprehensions are well-founded." *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 356 (2001).

The trial court found that the MariMed Parties were likely to suffer irreparable harm based on the following findings of fact: (1) the MariMed Parties' significant monetary investments in Kind's business; (2) the MariMed Parties' goodwill and profit as a publicly traded company; and (3) the MariMed Parties' investment of time, expertise, and resources to manage Kind's business. The trial court found that all of these interests and investments could suffer irreparable harm if an injunction were not granted. The trial court found that the harm that can befall MM Inc., and MariMed Advisors "is difficult to calculate and cannot be understated" and that, "the goodwill enjoyed by any medicine/pharmaceutical manufacturer is of such tremendous value that the harm of being frozen out of the manufacturing and management process . . . may have no limit and no remedy."

The trial court concluded that "[t]o deny an injunction in this instance would, in essence, deny the existence of the MSA. The future harm that can befall the MariMed Parties cannot be understated and could be limitless." Accordingly, the trial court found that the MariMed Parties had successfully proved that they would likely suffer irreparable harm if an injunction were not granted. Further, the trial court also found that the MariMed Parties would likely suffer irreparable harm if the LMA were not enforced, due to the loss of goodwill and sales. Evidence was presented at the hearing which indicated that Kind was mislabeling the products subject to the LMA, and therefore causing confusion and harm to the brand recognition of these products.

Kind presents two arguments that the trial court abused its discretion in finding irreparable harm. First, Kind argues that the trial court abused its discretion because the trial court's use of the language "can befall" and "could be limitless" fails to establish that it found that the harm *would likely* occur. We disagree with Kind's argument. Kind may dispute the trial court's use of the word "can" over "will." It does not defy reason, however, to conclude that if the injunction were not granted, and Kind continued to deny the validity of the MSA and the LMA, that the MariMed Parties would be frozen out of the management of its investment, and also from reaping the profits of that investment. The trial court clearly found that there would be harm to the MariMed Parties if Kind continued to deny the validity of the MSA and the LMA. This finding was based on admitted evidence and testimony presented at trial. Furthermore, the trial court's finding that the harm "could be limitless" speaks directly from established law that holds that the precise

scope of the harm need not be fully ascertained. *See Coster, supra,* 36 Md. App. at 526 (1977). Indeed, an injury that "cannot be readily, adequately, and completely compensated for with money" is strong support for the finding of an irreparable injury and the grant of a preliminary injunction. *Id.*

Second, Kind argues that the trial court's ruling does not logically flow from its findings and does not bear a reasonable relationship to the objective of the preliminary injunction. Kind asserts that the logical error lies in the trial court's failure to treat the MariMed Parties as distinct entities, and the agreements with Kind as distinct contracts. Kind argues that the irreparable injury to the "investment" that the MariMed Parties placed in Kind was Holding's investment in the purchase and build-out of the Hagerstown facility. Because the case at hand concerns only the MSA and the LMA, and not the Hagerstown Lease, Kind argues that the trial court inappropriately attributed a harm to the MariMed Parties on the real estate investment by Holdings -- a subsidiary not involved with the MSA or LMA.

We disagree with this contention. Kind asserts that "the circuit court erroneously treated this 'investment' by Holdings as if it was made by Advisors and/or MM, Inc." Indeed, there is no indication that the trial court considered *only* Holding's investment in the Hagerstown facility. The trial court's opinion, to the contrary, supported its finding of irreparable harm by listing the *various* investments by the MariMed Parties, including MM, Inc., and MariMed Advisors. These investments took the form of millions of dollars in monetary investment, as well as time, talent, resources, and expertise. Further, the trial

court makes absolutely no mention of Holdings in its analysis of irreparable harm with regard to the MSA or the LMA. As such, Kind misrepresents that the trial court failed to treat the MariMed Parties as distinct entities.

Accordingly, for the above reasons, we hold that the trial court did not abuse its discretion in finding that the MariMed Parties would suffer irreparable injury without a preliminary injunction with regard to the MSA and the LMA.

C. The trial court did not abuse its discretion in finding that the balance of convenience favors the MariMed Parties with regard to the MSA and the LMA.

The next factor we consider is whether the trial court abused its discretion in finding that the balance of convenience weighed in favor of the MariMed Parties with respect to the MSA and the LMA. This determination is made when the trial court examines "whether greater injury would be done to the defendant by granting the injunction than would result from its refusal." *Perez, supra,* 394 Md. at 708. We hold that the trial court did not abuse its discretion in resolving this factor in favor of the MariMed Parties.

The trial court found that Kind had agreed for MariMed Advisors to manage its business for a period of four years. Kind, therefore, expected MariMed Advisors to manage its business under the MSA. The trial court further found that the MariMed Parties had a significant interest in "managing its proprietary and licensed products." The trial court concluded that Kind would not be harmed by requiring the parties to abide by the MSA pending trial. The trial court also determined that Kind only gained to benefit from the license products and technology under the LMA. The trial court did find, however, that

the MariMed Parties would be greatly harmed if Kind continued to deny the validity of the MSA and the LMA and if the preliminary injunction were not granted. The trial court concluded that the balance of convenience weighed in favor of the MariMed Parties and announced:

> Granting an injunction requiring the parties to abide by the MSA pending trial, at its most basic level, requires the parties to do that which they agreed to do, voluntarily and with counsel, on December 13, 2018 in Boston, when they had no motive to gain advantage over each other.

We agree with the trial court's finding that the balance of convenience weighs in favor of the MariMed Parties.[12] It would defy logic if the trial court had found that Kind was to suffer greater harm than the MariMed Parties by requiring Kind to abide by the MSA and the LMA. The MariMed Parties, as investors and managers of Kind, have every interest in Kind's success. It would be counterintuitive, and illogical, if the trial court arrived at a finding that any inconvenience to Kind outweighed the harm of not enforcing the MSA and the LMA which the MariMed Parties rely on to reap the benefits of the investments in Kind. Kind would suffer minimal harm if the preliminary injunction were granted, whereas the MariMed Parties would suffer substantial harm in the loss of its

[12] Kind's principal argument against the trial court's finding on this factor is that it has suffered greater harm than the MariMed Parties because "entry of the preliminary injunction has stripped Kind of its right to manage its own business." We fail to see how requiring Kind to abide by a contract that requires it to allow MariMed Advisors to manage its business "strips it of its right to manage its own business." The trial court's finding established that Kind voluntarily agreed to assign its management rights to MariMed Advisors at the December 13, 2018 meeting in Boston. Kind freely gave away its right to solely manage its business and can thus not be "stripped" of anything.

investment in Kind, as well as a loss of goodwill as a publicly traded company. We, therefore, hold that the trial court did not abuse its discretion in finding that the balance of convenience favored the MariMed Parties.

D. The trial court did not abuse its discretion in finding that the public interest is best served by granting a preliminary injunction in favor of the MariMed Parties with regard to the MSA and the LMA.

The final factor we consider is whether the trial court abused its discretion in finding that the public interest would be served by granting the preliminary injunction in favor of the MariMed Parties with regard to the MSA and the LMA. The trial court found that the "general public has a great interest to be sure that production and dispensing of any medicine is done in a safe and lawful manner." The trial court determined that this public interest would be better served by holding the parties to the MSA so that the original management structure, as explained to the Commission in the MSA, remains intact. Furthermore, the trial court found that the public interest is better served by requiring the parties to abide by the LMA, because doing so ensured the availability of the licensed medical cannabis products on the market. We hold that the trial court did not abuse its discretion in finding that the public interest would be better served by granting the preliminary injunction and requiring the parties to abide by the MSA and the LMA.

II. The trial court did not abuse its discretion in granting the preliminary injunction in favor of the MariMed Parties to maintain the status quo with regard to the MSA and the LMA.

Finally, we hold that the trial court was correct in granting the preliminary injunction to maintain the status quo between the parties pending trial. The purpose of a

preliminary injunction is to "maintain the status quo between parties until the issues in contention are fully litigated." *Eastside Vend Distributors, Inc., supra,* 396 Md. at 224. The status quo between the parties is "the last, actual, peaceable, noncontested status which preceded the pending controversy." *Id.* at 241. (internal quotation marks omitted).

The trial court properly granted the preliminary injunction to maintain the status quo between the parties. As we have previously held, "maintenance of the status quo, in order to prevent the ultimate frustration of a litigant's claim, is a permissible goal of preliminary injunctions." *Antwerpen Dodge, Ltd. v. Herb Gordon Auto World, Inc.*, 117 Md. App. 290, 308 (1997). Testimony presented at the hearing established that Kind was treating the MSA and LMA as void, and accordingly freezing the MariMed Parties out of management and supervision of Kind's business as well as control over the MM Inc. licensed products. We further agree with the trial court's finding that the "the last, actual, and peaceable status between the parties occurred between December 13, 2018 and the spring/summer of 2019." The parties freely entered into agreements with regard to the MSA and LMA, and the parties peaceably maintained their relationship until the disputes began to arise in the summer of 2019. We, therefore, hold that the trial court was correct in crafting the preliminary injunction to maintain the status quo between the parties, reflective of the period between December 13, 2018 and the summer of 2019.

III. Conclusion

In summary, the trial court did not abuse its discretion in granting a preliminary injunction in favor of the MariMed Parties. The trial court correctly, and thoroughly,

applied the standard for granting preliminary injunctions to the facts of this case. The trial court's finding that the MariMed Parties were likely to succeed on the merits of the claims with regard to the MSA and the LMA was not an abuse of discretion. The trial court correctly found that that the MariMed Parties would suffer irreparable harm if the preliminary injunction were not granted, and further, that the balance of convenience and public interest favored granting the preliminary injunction. We, therefore, affirm the trial court's grant of the MariMed Parties request for a preliminary injunction.

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