UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1312

September Term, 2014

RAYMOND RAYSOR, ET UX.

v.

VILLAGE GREEN MUTUAL HOMES, INC.

Nazarian,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: July 27, 2015

On January 17, 2014, Raymond Raysor and his wife, Rene Sewell-Raysor ("the Raysors"), filed an amended complaint in the Circuit Court for Prince George's County against Village Green Mutual Homes, Inc. ("Village Green"). The amended complaint contained three counts: Count I-Wrongful Eviction; Count II-Negligence; and Count III-Trespass.

Village Green filed a motion to dismiss the amended complaint with prejudice. The Raysors filed a timely opposition to that motion. None of the parties asked for a hearing and none was held. In August 2014, a circuit court judge, sitting in the Circuit Court for Prince George's County, signed and filed an order granting Village Green's motion. The Raysors then filed this timely appeal in which they raised one question, *viz.*:

> Did the motions judge err when he granted Village Green's motion to dismiss?[1]

I.
UNDISPUTED FACTS[2]

Raymond Raysor is legally blind, but Rene Sewell-Raysor is not. For many years prior to October 22, 2013, the Raysors lived at 1635 Village Green Drive, Landover, MD in Prince George's County ("the Property"). The Property is owned by Village Green, a non-stock, cooperative housing corporation ("co-op"). The co-op permits members to

[1]The Raysors phrased the issue presented as follows: "Whether the trial court abused its discretion when it granted the [a]ppellee's motion to dismiss."

[2]The facts, as set forth in part I of this opinion, are based upon the allegations made in the Raysors' amended complaint together with the exhibits attached to that complaint.

purchase stock and to maintain a corporate interest in the corporation. The members in turn receive a place to reside, but the members do not acquire fee simple title to the units in which they live. Instead, the members receive an undivided joint ownership interest in the land and/or building that makes up the housing complex.

To occupy a co-op unit, members, like the Raysors, are required to sign two agreements, namely: 1) a subscription agreement that serves, in part, as the application to become a member; and 2) an occupancy agreement that secures a unit for occupancy, for which the member pays the co-op what is, in effect, rent. The occupancy agreement creates a landlord-tenant relationship between the co-op and the member. In the event that the tenant fails to pay rent when due, the cooperative may seek to evict the member pursuant to the terms of the occupancy agreement.

On August 19, 2013, pursuant to the occupancy agreement, Village Green filed a complaint in the District Court of Maryland for Prince George's County naming the Raysors as defendants. Village Green's complaint was captioned: "Failure to Pay Rent - Landlord's Complaint for Repossession of Rented Property [-] Real Property § 8-401." That complaint alleged that the Raysors were responsible for paying $692 rent on the first day of each month and that the Raysors failed to pay rent for the month of August, 2013. Village Green did not request a money judgment against the Raysors in its complaint. Instead, the complaint, in paragraph nine, asked that the Raysors' right of redemption in the Property be foreclosed because Village Green had obtained three prior judgments against the Raysors for unpaid

rent within the past 12 months. The complaint listed the case numbers and the dates of the three prior judgments for unpaid rent.

In filing its complaint against the Raysors, Village Green used a pre-printed form issued by the District Court of Maryland. The summons to be served upon the named defendants was a part of that complaint and the summons contained a pre-printed signature line for a district court judge to sign and date.

On the same date that Village Green filed its complaint, August 19, 2013, the Honorable Thomas J. Love, who was then the Chief Judge of the District Court of Maryland for Prince George's County, signed a summons that directed the Sheriff of Prince George's County as follows:

> You are ordered to notify the tenant, assignee, or subtenant, or their known or authorized agent, by personal service, if such service is requested by the plaintiff, to appear in the District Court at the trial of this matter to show cause why the demand of the landlord should not be granted. Personal service is to be performed at the property subject to this complaint or at any other known address. If personal service is not requested, or if no person to be served is found on the property or at another known address, you shall affix an attested copy of the summons and complaint conspicuously on the property that is the subject of this suit and mail a copy of the summons and complaint to the tenant . . . by first-class mail to the address specified by the plaintiff.

(Emphasis added.)

The summons also contained a notification advising the Raysors that a trial date had been scheduled for September 10, 2013 at 1:15 p.m. in Courtroom 6 in the district court sitting in Hyattsville, Maryland.

On September 6, 2013, one "P. Franke," a Prince George's County Deputy Sheriff, stamped the court's copy of the summons; the stamp indicated that the Deputy Sheriff had affixed the summons on the Property.

On September 10, 2013, the district court held a hearing to consider Village Green's complaint. The Raysors did not appear at the hearing. Because the Raysors failed to appear, the district court ordered a judgment for possession in favor of Village Green. On that same date, the court also ordered that the possession of the premises be returned to Village Green and that the Raysors would not have a right of redemption.

On September 25, 2013, Village Green filed a petition for a Warrant of Restitution. The Honorable Thomas J. Love, at 5:20 p.m. on September 25, 2013, signed that order which gave Village Green the right to possess the Property; the order also said that the Property could not be redeemed by the Raysors. A Writ of Restitution was issued by the district court on October 2, 2013. Twenty days later, the sheriff evicted the Raysors from their unit.

The Raysors filed their original complaint in the subject case against Village Green on November 14, 2013, which was twenty-three days after the sheriff evicted them. A little over two months later, the Raysors filed the amended complaint that was the subject of Village Green's motion to dismiss.

II.
ALLEGATIONS IN THE AMENDED COMPLAINT CONCERNING VILLAGE GREEN'S PURPORTED WRONGDOING

The main contentions made by the Raysors against Village Green in their amended complaint was that, prior to eviction, Village Green: 1) never even attempted to have them personally served with a copy of the summons; 2) Village Green never filed a pleading alleging that Village Green could not locate the plaintiffs; and 3) Village Green never filed an affidavit in the district court alleging that the plaintiffs were evading service.

The amended complaint, in paragraph 9, alleges that Village Green was at fault for having them evicted without proper service. Paragraph 9 reads:

> 9. After filing their complaint, the Defendant did not attempt to personally serve the Plaintiffs, nor did they file any pleadings, with the Court, suggesting that they could not locate the Plaintiffs, nor did they file an affidavit, indicating that the Plaintiffs were evading service, and that the Court should issue an order authorizing them to post their complaint and have it mailed to the Plaintiffs, pursuant to: Rule 3-124, (b) (c), and Rule 2-122, (a)(3), (b), before engaging the Sheriff to post their complaint, on the door to the Plaintiffs' unit. The Sheriff allegedly posted the Defendant's complaint, on the door, to the Plaintiff's unit, on September 6, 2013. Exhibit #1. It allegedly informed them that their trial was set for September 10, 2013. *Id*. The Plaintiffs failed to appear because they were not served with the Defendant's complaint to evict them.

In paragraph 11 of the amended complaint, the Raysors once again asserted their claim that Village Green was at fault for the eviction. That paragraph reads as follows:

> 11. When the Defendant caused the Plaintiffs eviction, it and its attorney knew, or through the exercise of ordinary care, they should have known, that

> the Plaintiffs' eviction was in violation of the Court's Rules: 3-121, 3-124, and 2-122(a)(3), before causing the Plaintiffs' eviction.

(Footnotes omitted.)

Paragraph 12 indicates that the sheriff gave them less notice than that to which they claim were entitled, *viz.*:

> 12. When the Sheriff allegedly posted the Defendant's complaint, on the door to the Plaintiffs' unit, it was posted four days before the Plaintiffs were to appear for trial. This is in violation of Rule 2-122(a)(b) that requires that the posting must be at least 30 days before a response is due to the complaint.

(Footnotes omitted.)

Paragraph 19 of the amended complaint is part of Count I, the "Wrongful Eviction" count. In paragraph 19, the Raysors alleged:

> When the Defendant caused the Plaintiffs' eviction, it and its attorney knew, or through the exercise of ordinary care, they should have known, that the eviction was in violation of Article 24-Due Process of the Maryland Constitution's Declaration of Rights and the Court's rules but they nevertheless proceeded to evict the Plaintiffs without first complying with the requirements of the law.

III.
LEGAL ASSERTIONS MADE BY VILLAGE GREEN IN ITS MOTION TO DISMISS

In its motion to dismiss, Village Green's main point was that, contrary to the allegations in the amended complaint, the action it filed against the Raysors in the district court was not controlled by the provisions set forth in Md. Rule 3-121, or Rule 3-124, or

Rule 2-122. In support of its position, Village Green stressed that the complaint it filed in the district court was a summary eviction action and not an action for money damages. Village Green maintained that when such an action is brought, personal service upon the defendant[s] is not required. What is required is that the sheriff send a copy of the complaint, by first-class mail, to the defendants and that the sheriff post a copy of the summons and complaint on the premises. Village Green further maintained that the statute that governs summary eviction actions is set forth in Md. Code (2010 Repl. Vol.) Real Property Article, (Real Prop.) § 8-401. Section 8-401 reads, in material part, as follows:

> (a) **Whenever the tenant or tenants fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises.**
>
> (b)(1) Whenever any landlord shall desire to repossess any premises to which the landlord is entitled under the provisions of subsection (a) of this section, **the landlord or the landlord's duly qualified agent or attorney shall file the landlord's written complaint under oath or affirmation**, in the District Court of the county wherein the property is situated[.]
>
> * * *
>
> (3) **The District Court shall issue its summons, directed to any constable or sheriff** of the county entitled **to serve process, and ordering the constable or sheriff to notify the tenant . . . by first-class mail:**
>
> (i) **To appear before the District Court at the trial to be held on the fifth day after the filing of the complaint**; and
>
> (ii) To answer the landlord's complaint to show cause why the demand of the landlord should not be granted.

> (4)(i) The . . . sheriff shall proceed to serve the summons upon the tenants . . . or their known or authorized agent as follows:
>
> 1. If personal service is requested and any of the persons whom the sheriff shall serve is found on the property, the sheriff shall serve any such persons; or
>
> 2. **If personal service is requested and none of the persons whom the sheriff is directed to serve shall be found on the property . . . the . . . sheriff shall affix an attested copy of the summons conspicuously upon the property**.
>
> (ii) **The affixing of the summons upon the property after due notification to the tenant . . . by first-class mail shall conclusively be presumed to be a sufficient service to all persons to support the entry of a default judgment for possession of the premises . . . in favor of the landlord[.]**

(Emphasis added.)

Appellee argued in its motion to dismiss that under the pertinent provisions of section 8-401, personal service on the delinquent tenant(s) was not required so long as the sheriff sends a copy of the summons and complaint to the delinquent tenant(s) by first-class mail and affixes a copy of the summons "conspicuously upon" the tenant's property.

Lastly, Village Green contended that the amended complaint failed to state a claim upon which relief could be granted for other reasons, namely:

> [The] Plaintiffs have not alleged that Defendant was not entitled to take possession of the premises or that Plaintiffs had some defense to the complaint for repossession, separate and apart from the issue of notice to appear in District Court on September 10, 2013. Plaintiff[s] also did not allege that Defendant went beyond the District Court's order, which directed that, after several judgments for non-payment of rent were obtained, the Plaintiffs were ineligible for redemption as per REAL PROP., § 8-401(e)(2), and that the Defendant could lawfully seek repossession of the cooperative unit. Plaintiffs

were also afforded the opportunity to appeal the judgment of the District Court and/or obtain a bond to stay execution of the judgment which they elected not to do. *See* § 8-401(f).

IV.
STANDARD OF REVIEW

In *Ricketts v. Ricketts*, 393 Md. 479, 491-92 (2006), the standard of review applicable in a case like the one *sub judice*, was set forth, in considerable detail, by the Court of Appeals:

> As we made clear in *Afamefune ex rel. Afamefune v. Suburban Hosp., Inc.*, 385 Md. 677, 683, n.4, 870 A.2d 592, 595 n.4 (2005),
>
> > A motion to dismiss for failure to state a claim tests the sufficiency of the pleadings. Md. Rule 2-322(b)(2); *see Converge Services Group, LLC v. Curran*, 383 Md. 462, 475, 860 A.2d 871, 878-79 (2004) ('consideration of the universe of "facts" pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any'); Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary*, 206 (3d ed. 2003) ('[t]he object of the motion is to argue that as a matter of law relief cannot be granted on the facts alleged').
>
> Thus, when reviewing the grant of such a motion, a court "must assume the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts." *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414, 823 A.2d 590, 597 (2003) (indicating that we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party). *See Benson v. State*, 389 Md. 615, 626, 887 A.2d 525, 531 (2005); *Bobo v. State*, 346 Md. 706, 707-708, 697 A.2d 1371, 1372-1373 (1997); *Allied Invest. Corp. v. Jasen*, 354 Md. 547, 555, 731 A.2d 957, 961 (1999) (reviewing motions to dismiss, trial and appellate courts "assume the truth of all well-pleaded, relevant, and material facts in the complaint and any reasonable inferences that can be drawn therefrom."); *Bennett Heating & Air Conditioning, Inc.*, 342 Md. 169, 674 A.2d 534 (1996) ("the facts to be

> [considered are] those that are well pleaded by the plaintiffs, including those facts that may fairly be inferred from the matters expressly alleged"); *Board of Education v. Browning*, 333 Md. 281, 286, 635 A.2d 373, 376 (1994) (in evaluating a motion to dismiss, the court "must accept as true all well-pleaded facts and allegations in the complaint"); *A.J. Decoster Co. v. Westinghouse Electric Corp.*, 333 Md. 245, 249, 634 A.2d 1330, 1332 (1994) ("the truth of all well-pleaded relevant and material facts as well as all inferences that reasonably can be drawn therefrom" must be assumed). Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff. *Allied Invest. Corp. v. Jasen*, 354 Md. at 555, 731 A.2d at 961; *Bobo v. State*, 346 Md. at 709, 697 A.2d at 1373; *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531, 667 A.2d 624, 630 (1995). "On appeal, a reviewing court must determine whether the trial court was legally correct, examining solely the sufficiency of the pleading." *Benson v. State*, 389 Md. at 626, 887 A.2d at 531.

V.
RESOLUTION OF THE QUESTION PRESENTED

The Raysors contend in this appeal that, prior to eviction, they were entitled to personal service of the complaint filed against them by Village Green, which they alleged they never received. This contention is without merit. In *Brown v. Housing Opportunities Commission of Montgomery County*, 350 Md. 570, 577 n.1 (1998), the Court, while discussing sections 8-401 and 8-402 of the Real Property Article, noted:

> If only possession is sought, the complaint may be served on the tenant by first class mail, with a copy posted on the premises. If a money judgment is sought for the rent due, personal service must be made on the tenant. § 8-401 (c)(2).

In their complaint, the Raysors never contended that Village Green failed to comply with the dictates of Real Prop. section 8-401. More specifically, nowhere in their amended complaint did appellant allege: 1) that the sheriff failed to notify them by first-class mail of

the pending summary eviction proceeding; or 2) that the sheriff failed to affix a copy of the summons to their Property.

In this appeal, appellants contend, as they did below, that Village Green was required to abide by the provision of Md. Rules 3-121, 3-124 and 2-122 prior to evicting them. In support of that argument, the Raysors rely on Md. Rule 3-711, which provides:

> Landlord-tenant and grantee actions shall be governed by (1) the procedural provisions of all applicable general statutes, public local laws, and municipal and county ordinances, and (2) unless inconsistent with the applicable laws, the rules of this Title, except that no pretrial discovery under Chapter 400 of this Title shall be permitted in a grantee action, or an action for summary ejectment, wrongful detainer, or distress for rent, or an action involving tenants holding over.

(Emphasis added.)

According to the Raysors, Md. Rule 3-711 "makes compliance with the rules, in the Prince George's County District Court, mandatory before any eviction can take place." This argument is without merit. As can be seen, Rule 3-711 requires the application of the rules set forth in Title 3, unless the rules set forth in Title 3 are inconsistent with the provision of "applicable laws," i.e., inconsistent with general statutes, public local law, or municipal statutes. Section 8-401 of the Real Property Article (quoted, *supra*, at pages 7-8) is an "applicable general statute" within the meaning of Md. Rule 3-711. The question then becomes: is the service requirement for summary eviction cases inconsistent with Rule 3-121?

Md. Rule 3-121 provides:

> (a) **Generally**. Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery – show to whom, date, address of delivery." Service by certified mail under this Rule is complete upon delivery. Service outside of the State may also be made in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice.
>
> (b) **Evasion of service.** When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant.
>
> (c) **By order of court.** When proof is made by affidavit that good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.
>
> (d) **Methods not exclusive.** The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

Md. Rule 3-121 is inconsistent with the rules for summary eviction proceedings that are set forth in Real Prop. section 8-401(b), because that section makes it much easier for a plaintiff to serve a defendant, in a case where money damages are not sought. *See Brown*,

supra, 359 Md. at 577 n.1. All that is required is that the defendants receive notice of the complaint by first-class mail and that a copy of the summons and complaint be affixed to the defendant's property. Thus, Real Prop. section 8-401(b) governs service of process in summary eviction proceedings, not, as appellants contend, Md. Rule 3-121, where personal service is required.

Appellants also alleged in their amended complaint that the "eviction was in violation" of Md. Rule 3-124. The amended complaint is unclear as to what subsection of Md. Rule 3-124 appellants claim that appellee violated. But the only possible subsection of Rule 3-124 that could even arguably be relevant is subsection (c) which reads:

> (c) **Individual under disability**. Service is made upon an individual under disability by serving the individual and, in addition, by serving the parent, guardian, or other person having care or custody of the person or estate of the individual under disability.

It is possible that the Raysors contend that Mr. Raysor is an "individual under disability" and that he was not served pursuant to Rule 3-124(c). But, under the Maryland Rules, the phrase "individual under disability" means "an individual under the age of 18 years or an individual incompetent by reason of mental incapacity." *See* Md. Rule 1-202(m). Nothing in the amended complaint indicates that Mr. Raysor met that definition.

As mentioned earlier, appellants allege in their amended complaint that Village Green failed to comply with the dictates of Md. Rule 2-122(a) and (b), which reads:

> (a) **Service by Posting or Publication.** In an in rem or quasi in rem action when the plaintiff has shown by affidavit that the whereabouts of the

> defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant, the court may order service by the mailing of a notice to the defendant's last known address and:
>
> (1) by the posting of the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, or
>
> (2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, or
>
> (3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by [the sheriff] in a conspicuous place on the land.
>
> Additionally, the court may order any other means of notice that it deems appropriate in the circumstances.
>
> (b)**Time.** The mailing and the posting or publication shall be accomplished at least 30 days before the date by which a response to the complaint is to be filed.

Maryland Rule 2-122 appears in Title 2 of the Maryland Rules. Md. Rule 1-101(b) limits the application of rules that are set forth in Title 2. Rule 1-101(b) provides:

> (b) **Title 2.** Title 2 applies to civil matters in the circuit courts, except for Juvenile Causes under Title 11 of these Rules and except as <u>otherwise specifically provided or necessarily implied</u>.

(Emphasis added.)

According to appellants' complaint, Village Green violated Md. Rule 2-122 because the posting of the Property did not occur "at least 30 days" before a response to the complaint was due.

The action filed by Village Green was filed in the district court. That court has exclusive jurisdiction over landlord and tenant cases. See Md. Code (2013 Repl. Vol.), Courts and Judicial Proceedings Article, (Cts. & Jud. Proc.) section 4-401(4). Nothing in any Maryland Rule or statute "specifically" makes Title 2 of the Md. Rules applicable to landlord-tenant cases nor is the application of Title 2 "necessarily implied" by any rule or statute. In fact, as mentioned earlier, the specific rule for posting of property and service of the summons by first-class mail in summary ejectment cases is spelled out in Real Prop. section 8-401. Thus, Md. Rule 2-122 was inapplicable and appellants were not entitled to 30 days notice of the summary eviction proceeding.

Appellants argue in their brief as follows:

> The Appellee's reliance on: **§ 8-401(b)(3)(i)** is misplaced. That code section requires that the Sheriff[] send to Appellants a copy of the landlord and tenant complaint, vie [sic] first class mail[,] the so called, "nail and post" requirement.[3] They [sic] did not. The Appellee was obligated, under the Prince George[']s County District's Court rules and the Maryland Code, to serve Appellants with a copy of their landlord and tenant complaint, prior to evicting them, but they failed to do so.

Contrary to appellant's argument, Village Green was not required "under the Prince George[']s County District[ ] Court rules and the Maryland Code" to serve appellants with a copy "of their [ ] complaint" prior to evicting them. Instead, once Village Green filed its complaint which contained, as part of the complaint, a summons, the sheriff had the duty to

[3]The requirement is usually referred to as the "mail and nail" requirement.

mail the summons and post the Property and, as mentioned earlier, appellants never alleged in their amended complaint that the sheriff failed to perform his duty to mail the notice or to post the Property.

Appellants did allege in their complaint, in a conclusory fashion, that they were "not served with the [d]efendant's complaint[.]" That allegation was ambiguous, however, because the allegation was made in connection with an invalid assertion that they were entitled to service pursuant to Md. Rule 3-121, 3-124 and 2-122.[4] *See Continental Masonry Co., Inc. v. Verdel Const. Co., Inc.*, 279 Md. 476, 480 (1977) (ambiguity in complaint to be construed against the pleader) and *Tucker v. Woolery*, 99 Md. App. 295, 304 (1994) (failure to allege facts with specificity bars claim).

Even if appellants had relied, in their amended complaint, on Real Prop. section 8-401 and alleged that the sheriff had failed to mail them a copy of the summons prior to eviction, they still would not have alleged a viable cause of action against Village Green. Count I was captioned "Wrongful Eviction." "A wrongful eviction . . . occurs when the person recovering the property had no right to dispossess the other party from the property." *BTR v. Source Interlink*, 194 Md. App. 538, 557 (2010) (quoting *Black's Law Dictionary* (7th ed. 1999 p. 575, col. 2). The amended complaint does not allege that Village Green had

[4]The invalid assertion was that for these to be validly served, Village Green was required to serve them pursuant to Md. Rule 2-122 (a) and (b), and Md. Rule 3-124 (b) and (c). See paragraph 9 quoted, *supra*, at page 5.

no right to evict them. To the contrary, exhibits attached to that complaint show that appellants were evicted pursuant to a court order issued by the district court. Therefore, even if appellants alleged that the sheriff had failed to mail them a copy of the summons and the complaint, the Raysors would not benefit. Moreover, the appellants did not allege in their amended complaint that the judgment has ever been set aside. Under such circumstances, appellants did not come even close to alleging a valid cause of action for wrongful eviction.

The "Negligence" count failed to state a cause of action because all the allegations of negligence were based upon the erroneous assertions that Rule 3-121, 3-124 and 2-122 applied to the summary eviction action filed by Village Green in the district court and that agents of Village Green had failed to abide by those rules. But, as already shown, the rules cited by appellants in their amended complaint were inapplicable. Furthermore, the exhibits attached to the amended complaint show, unambiguously, that Village Green complied with the relevant statutory provisions governing summary eviction. Under such circumstances, appellants' allegations of negligence plainly did not set forth a viable negligence claim.

In regard to Count III, captioned "Trespass," little additional needs to be said. The facts set forth in the amended complaint showed that on the date Village Green filed its summons and complaint in the district court, appellants had not paid their rent when due for the fourth time in one-year. Village Green thereafter evicted appellants based on a district court order that: 1) has never been set aside, and 2) specifically granted it the right to evict

the Raysors. Under such circumstances, the amended complaint filed by the Raysors plainly did not allege facts showing that Village Green trespassed on the Raysors' property.

Lastly, the Raysors' brief contains the following statement:

> Assuming arguendo that the complaint does not state a claim, for which relief can be granted, the Court has the discretion to grant the Appellants leave to further amend their complaint. *Davis v. DiPino*, [337 Md. 642 (1995)].

We infer from that statement that the appellants contend that the motions judge abused his discretion in not granting leave to amend. But, in their brief, appellants do not support that [implied] contention with any argument. Compare, *Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (failure to set forth argument in support of a claim, may constitute waiver of argument). Moreover, in the circuit court, appellants never provided the motions judge with any reason why leave to amend should be granted and never even hinted as to what additional facts would have been alleged if leave to amend had been granted. Under such circumstances, the motions judge did not abuse his discretion in failing to grant appellants leave to amend.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANTS.