Circuit Court for Queen Anne's County
Case No. C-17-CV-23-000033

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 1107 and 1675

September Term, 2023

KEVIN TRACY, ET AL.,

v.

107 TERRAPIN LANE, LLC, ET AL.

THE COVE CREEK CLUB, INC.,

v.

107 TERRAPIN LANE, LLC.

Ripken,
Albright,
Wright, Alexander S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: July 24, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is a dispute between a Queen Anne's County homeowners' association and nine homeowners on the one hand, and a tenth homeowner on the other. After the tenth homeowner started to use its property for short-term rentals, the homeowners' association (with the support of the nine homeowners, among others) amended its governing declaration to prohibit short-term rentals for all homeowners. The homeowners' association and the nine homeowners, respectively, appeal from the decisions of the Circuit Court for Queen Anne's County that the amendment was unenforceable as to the tenth homeowner and that the nine homeowners were neither necessary parties to, nor entitled to intervene in, the action.[1]

The homeowners' association, one of the Appellants here, is The Cove Creek Club, Inc. ("Cove Creek" or "HOA"). The other Appellants are the nine homeowners—Kevin M. Tracy, Terry L. Tracy, James B. Mitchell, James and Judy Keyton, Daniel and Joy Shields, and Joshua and Amanda Hahn (collectively, the "Homeowner Appellants"). The tenth homeowner, 107 Terrapin Lane, LLC, ("107 Terrapin"), is the Appellee here.

[1] In November 2023, this Court granted the Homeowner Appellants' motion, joined by Cove Creek, to consolidate appeals.

Cove Creek presents three questions for our review.[2] The Homeowner Appellants present essentially the same three questions.[3] We have consolidated and reordered all of them as follows:

1. Did the circuit court err or abuse its discretion in not dismissing 107 Terrapin's declaratory judgment count for failure to join all Cove Creek homeowners as necessary parties?

[2] Cove Creek's questions were:

1. Did the trial court err in refusing to dismiss Count II of the Complaint for failure to join all necessary parties, where all homeowners in the Association would be affected by any declaratory judgment entered, and where their interests were not necessarily adequately protected by the Association?

2. Did the trial court err in requiring that the Declaration contain specific language permitting the Amendment, where the Maryland Code specifically states that the power to amend governing documents lies with the membership, "notwithstanding the provisions of a governing document." (Md. Code. Real Prop. Art. § 11B-116)?

3. Did the trial court err in exempting existing homeowners, including Terrapin, from the Amendment, where the Amendment itself conformed to the character of the community, was reasonable in scope and application, is applied uniformly across the membership, and was adopted in good faith by a supermajority of the membership?

[3] The Homeowner Appellants' questions were:

1. Whether the Court erred in denying the initial intervenors motion to intervene, their Rule 2-534 motion, and the additional intervenors' motion to intervene.

2. Whether the Court erred in refusing to hold hearings on Appellants' motions despite requests.

3. Whether the Court erred in its rulings on the merits in Opinion One and Opinion Two, including the grant of partial summary judgment, dismissal the counterclaim and denial of the joinder motion.

2. Did the circuit court err or abuse its discretion in denying the Homeowner Appellants' motions to intervene?
3. Did the circuit court err in declaring that the 2022 Amendment to the 2008 Declaration was unenforceable as to existing homeowners?

For the reasons below, we answer Questions 1 and 2 in the negative. We answer Question 3 in the affirmative. Accordingly, we affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

Cove Creek is a residential community consisting of over one hundred private lots and community property on Kent Island in Queen Anne's County (collectively, the "Property"). On November 1, 1979, the Property was subjected to a Declaration of Covenants, Conditions, and Restrictions (the "Original Declaration"). On January 23, 2008, an Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "2008 Declaration") was recorded in the land records of Queen Anne's County. The 2008 Declaration "super[s]ede[d], restate[d] and replace[d]" the Original Declaration.

Cove Creek's 2008 Declaration provides that it governs the Property and "inure[s] to the benefit" of the Property's owners. Specifically, the 2008 Declaration provides that the Property is "held, sold and conveyed subject to" the 2008 Declaration, that the 2008 Declaration runs with the property, that it is "binding on all parties having any right, title or interest in the Property or any part thereof, their personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof."

The 2008 Declaration provides that it can be amended and lays out the process for doing so. Amendments pass "only upon the assent of a two-thirds of all Membership

votes eligible to be cast," and are not effective until "duly recorded." Amendments can be "proposed by the Board of Directors or by a written petition signed by 25% of the Members."

The 2008 Declaration also contains restrictions on the use of private lots. Section 6.5 of the 2008 Declaration provides that private lots could be used for "residential purposes exclusively," with the exception that a "no-impact home based business" is acceptable under some circumstances.[4] Section 6.6 of the 2008 Declaration prohibits

[4] Section 6.5 of the 2008 Declaration provides:

> The Private Lots shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Private Lot other than one used as a dwelling, except that the use of a dwelling unit for a "no-impact home based business", as defined in Section 11B-111.1 of the Maryland Homeowners Association Act (the "Act"), as amended, shall be permitted, provided that: (1) before any dwelling unit may be used for a non-impact home based business the Owner and/or resident of such dwelling unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the no-impact home based business; and (ii) in no event shall the Common Area be used by or in connection with any permitted no-impact home based business.

Section 11B-111.1 of the Real Property Article, which the 2008 Declaration references, provides:

> (4) "No–impact home–based business" means a business that:
>
> (i) Is consistent with the residential character of the dwelling unit;
>
> (ii) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;
>
> (iii) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be

"noxious or offensive activit[ies]" on any private lot or the doing of "anything" that "would cause embarrassment, discomfort, annoyance or a nuisance to the Owners of neighboring properties or to the community in general."[5]

In January 2022, 107 Terrapin purchased a home at 107 Terrapin Lane in the Cove Creek community. At the time of the purchase, 107 Terrapin made it known that it intended to use the property for short-term rentals of the kind advertised on Airbnb and VRBO. Indeed, 107 Terrapin financed the purchase with a lender, who secured its interest with an Assignment of Rents. In the spring of 2022, 107 Terrapin started renting the property for short-term rentals. That summer, according to the Homeowner Appellants, they noticed problems that they attributed to 107 Terrapin's short-term renters. For example, one renter was found unconscious on the community's dock. Two

> solely and directly attributable to a no–impact home–based business; and
>
> (iv) Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State or any local governing body designates as a hazardous material.

RP § 11B-111.1(a)(4).

[5] Section 6.6 provided

> No noxious or offensive activity shall be permitted on any Private Lot, nor shall anything be done thereon which would cause embarrassment, discomfort, annoyance or a nuisance to the Owners of neighboring properties or to the community in general. There shall not be maintained on a Private Lot any plants or animals or devices or things of any kind, the normal activities or existence of which is in any way noxious, offensive, dangerous, unsightly, unpleasant, or of a nature that would diminish or destroy the enjoyment of other property in the community by the Owners thereof.

suspicious vehicles blocked driveways, and the homeowners believed the vehicles (or their occupants) were canvassing homes for potential burglary. One individual peered inside a home.[6]

In November 2022, following a proposal from the HOA's Board of Directors, the Membership, i.e., the other lot owners,[7] voted to amend the 2008 Declaration to prohibit rentals of less than 90 days in duration effective July 2023. Denominated "First Amendments to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of the Cove Creek Club, Inc.[,]" the 2022 Amendment added Section 6.22 to the 2008 Declaration.[8] This new section provides that

> **6.22 Leasing.** No Lot shall be used or occupied for transient or hotel purposes. No Lot may be leased for a term of less than ninety (90) consecutive days. No portion of any Lot (other than the entire Lot) shall be leased for any period. No Owner shall lease a Lot other than on a written form of lease: **(a)** requiring the lessee to comply with all Association Documents; and **(b)** providing that failure to comply constitutes a default under the lease. The tenant under any lease is required to comply with all restrictions set forth in this Declaration and in the Association's Rules and Regulations. A copy of any lease agreement shall be provided to the Association or its managing agent. The Board of Directors may, at its discretion, require lessors and lessees to execute an addendum in a form

[6] Problems of this kind continued to be reported into the summer of 2023, after 107 Terrapin filed the lawsuit that generated this appeal. During the summer of 2023, loud parties resulted in calls to the police and EMTs to address injuries resulting from intoxication. One renter backed a pickup truck over a concrete retaining wall. One of 107 Terrapin's neighbors reported being videoed by a renter and having drones launched by the renter to hover over the neighbor's pool.

[7] 102 of 112 eligible Cove Creek members voted on the 2022 Amendment.

[8] Also added, as a new final sentence to Section 7.4 of the 2008 Declaration, was a provision regarding the award of attorney's fees incurred by the HOA to enforce the 2008 Declaration's covenants and restrictions other than for non-payment of assessments, which continued to be governed by another section.

> approved by the Board, and to submit the executed lease or addendum to the Board prior to the beginning of the rental period.

The 2022 Amendment was recorded in the land records of Queen Anne's County on February 2, 2023.

About two months after the 2022 Amendment was adopted (but about three days before it was recorded), 107 Terrapin filed suit against Cove Creek in the circuit court.[9] 107 Terrapin challenged the validity of the 2022 Amendment, seeking injunctive and declaratory relief, and monetary damages.[10] Not long after filing suit (in fact, before Cove Creek filed its answer), 107 Terrapin followed with a Motion for Summary Judgment as to Liability Only. In support of the motion, 107 Terrapin argued that it was entitled to judgment as a matter of law because the 2022 Amendment, coming as it did after 107 Terrapin purchased its home at Cove Creek, amounted to an invalid taking of 107 Terrapin's right to engage in short-term rentals.

With the filing of its answer, Cove Creek moved to dismiss 107 Terrapin's declaratory judgment count, arguing that 107 Terrapin had failed to join necessary parties. Specifically, Cove Creek argued that the declaratory relief 107 Terrapin sought affected all present homeowners because what 107 Terrapin wanted was a declaration

[9] We note that 107 Terrapin did not seek injunctive relief stopping the 2022 Amendment from being recorded, with result that 2022 Amendment became effective on June 1, 2023, i.e., while 107 Terrapin's suit was pending.

[10] 107 Terrapin's Complaint contained four counts: Count I for Permanent Injunctive Relief; Count II for Declaratory Relief; Count III for Breach of Contract; and Count IV for Negligent Misrepresentation.

that 107 Terrapin was not subject to the 2022 Amendment that the other homeowners had passed. As a consequence, Cove Creek argued, the other homeowners were necessary parties.[11]

On May 30, 2023, following a May 23, 2023 hearing, the circuit court issued an opinion.[12] The circuit court denied Cove Creek's dismissal motion, determining that the homeowners were not necessary parties. Additionally, the circuit court found that "all homeowners were notified of the lawsuit and at the February 2023 Board meeting, minutes were circulated discussing its pendency." The circuit court noted that "no homeowners have attempted to join despite notice of this action." The circuit court also granted 107 Terrapin's partial summary judgment motion as to each of 107 Terrapin's four counts. As to 107 Terrapin's request for declaratory relief, the circuit court declared that the 2022 Amendment could not be enforced against 107 Terrapin:

> 1) that [107 Terrapin] did have a property right to use his property for short-term rental under Maryland law, and that [Cove Creek] could not take away said right without notice; and 2) that the [2022] Amendment cannot be enforced against [107 Terrapin] or any other Cove Creek homeowners engaged in short-term rental of their properties before its June 1, 2023

[11] Cove Creek also sought affirmative relief against 107 Terrapin. Specifically, in a counter-complaint and then an amended counter-complaint, Cove Creek alleged that by engaging in short-term rentals, 107 Terrapin was breaching the covenants in place at the time it purchased its lot as well as those put in place after the purchase. Cove Creek sought to recover the attorney's fees it had incurred in the action.

[12] In October 2023, the circuit court granted 107 Terrapin and Cove Creek's joint motion to dismiss, with prejudice, the breach of contract and negligent misrepresentation counts and to enter final judgment in favor of 107 Terrapin on the permanent injunctive relief and declaratory judgment counts, consistent with the circuit courts May 30, 2023 order.

> effective date. The Court notes that this does not affect [Cove Creek]'s ability to enforce the [2022] Amendment to prevent short-term rental in the future.

In support of its decision to essentially exempt, or "grandfather in," existing short-term rental use, the circuit court explained that 107 Terrapin had purchased its property to rent on a short-term basis, which was not prohibited under the 2008 Declaration. The circuit court concluded that because there was "no notice" to 107 Terrapin in the governing documents of the possibility of a future amendment restricting short-term rentals, Cove Creek "improperly took away" 107 Terrapin's right to engage in short-term rental use. [13]

About two weeks after the circuit court's ruling, Mr. Tracy and Mrs. Tracy moved to intervene. At the same time, Mr. and Mrs. Tracy also filed a counterclaim for declaratory judgment and a permanent injunction. Recognizing that "[t]he dispute relates solely to the application of the [2022] Amendment to [107 Terrapin,]" they sought a declaration that 107 Terrapin was subject to the 2022 Amendment "in the same manner as is any other member within the community[.]" They also sought a permanent injunction enjoining 107 Terrapin from renting its lot in violation of the 2022 Amendment.

The circuit court denied Mr. and Mrs. Tracy's motion to intervene, leaving them as non-parties whose counterclaim was not before the court. In denying intervention, the

[13] To the extent that these findings were in regard to 107 Terrapin's "takings" argument, we need not address them because 107 Terrapin does not repeat its "takings" argument on appeal.

circuit court concluded that Mr. and Mrs. Tracy's motion was untimely and that it "fail[ed] to meet the other three requirements for intervention as of right[.]"[14] In denying reconsideration, the circuit court asserted that it considered 107 Terrapin's Opposition to the motion to intervene and had "essentially adopted all arguments as to timeliness."

Nine other homeowners[15] later moved to intervene in late July 2023, offering a counterclaim that was similar to Mr. and Mrs. Tracy's. This intervention motion was also denied, the circuit court adopting the reasons it had supplied for denying the first intervention motion.

Cove Creek and almost all of the homeowners that moved to intervene noted timely appeals,[16] which we have consolidated.

DISCUSSION

I. The circuit court did not err or abuse its discretion in declining to dismiss 107 Terrapin's declaratory judgment count for failure to join all Cove Creek homeowners as necessary parties.

Cove Creek and the Homeowner Appellants contend that reversal is required because all of Cove Creek's homeowners were necessary parties below, and because they were not joined, the circuit court "lacked jurisdiction to render declaratory judgment." They point to Maryland Rule 2-211 and argue that because the declaratory judgment

[14] Reconsideration motions were also unsuccessful.

[15] These nine homeowners were James Mitchell, James and Judy Keyton, Mark and Carolyn Keller, Daniel and Joy Shields, and Joshua and Amanda Hahn.

[16] Those who appealed are Kevin and Terri Tracy, James Mitchell, James and Judy Keyton, Daniel and Joy Shields, and Joshua and Amanda Hahn.

count sought to nullify the votes of the "super-majority" of Cove Creek homeowners who voted for the 2022 Amendment and "to continue a rental business that the community found objectionable," each Cove Creek homeowner should have been joined.

107 Terrapin argues that the circuit court was correct to conclude that all Cove Creek homeowners were not necessary parties. It points out that the nature of the community association is such that a ruling on the applicability of governing documents necessarily applies to all homeowners. Thus, an approach requiring that all lot owners be added in such cases would unnecessary and burdensome on the courts. 107 Terrapin adds that even if all the Cove Creek homeowners were necessary parties, because they had notice of the suit and declined to participate, their non-joinder is not a basis for dismissal.

Section 3-405 of the Courts and Judicial Proceedings ("CJP") Article, entitled "Necessary parties to declaratory relief," provides that "[i]f declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party" and that, "[e]xcept in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding." CJP § 3-405(a). In declaratory judgment actions, the "general rule [is] that ordinarily, . . . all persons interested in the declaration are necessary parties." *Rounds v. Maryland-Nat. Cap. Park & Planning Comm'n*, 441 Md. 621, 655 (2015). If all those who should be joined as necessary parties are not, dismissal is required. *Id.*

Maryland Rule 2-211(a) also lays out when a person must be joined as a party in a lawsuit.[17] This is known as "compulsory joinder." The party that must be joined is a "necessary party." Rule 2-211(a) provides:

> **(a) Persons to Be Joined.** Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence
>
> (1) complete relief cannot be accorded among those already parties, or
>
> (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.
>
> The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

Md. Rule 2-211(a).[18] "The purpose of this rule is to provide 'for the compulsory joinder of necessary parties so that the case can proceed efficiently with respect to all persons

[17] We note that Rule 2-211 differs from CJP § 3-405(a) in that Rule 2-211 expressly provides that the remedy for failure to join the necessary parties is that they must be joined if possible whereas, under *Rounds*, failure to join necessary parties as required under CJP § 3-405(a) warrants dismissal. *Rounds*, 441 Md. at 655; Md. Rule 2-211(a).

[18] Maryland Rule 2-211(c), entitled "Effect of Inability to Join," lays out what is to happen if a necessary party cannot be joined. It provides

> **(c) Effect of Inability to Join.** If a person meeting the criteria of (1) or (2) of section (a) of this Rule cannot be made a party, the court shall determine whether the action should proceed among the parties before it or whether the action should be dismissed. Factors to be considered by the court include: to

having a cognizable interest in the matter and, at the end, the court can grant complete relief.'" *Burns v. Scottish Dev. Co. Inc.*, 141 Md. App. 679, 694 (2001) (quoting *Caretti, Inc. v. Colonnade Ltd. P'ship,* 104 Md. App. 131, 142 (1995), *cert. denied*, 339 Md. 641 (1995)).

Because 107 Terrapin's declaratory judgment count went to the ability of the Cove Creek homeowners to amend the HOA's declaration, we agree with Cove Creek and the Homeowner Appellants that all Cove Creek homeowners were necessary parties.[19] A limitation on the homeowners' ability to amend the declaration would affect the property rights of the homeowners that the declaration's covenants protect. Relatedly, because the 2022 Amendment prohibiting short term rentals is a restriction on a property use, the

> what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; to what extent the prejudice can be lessened or avoided by protective provisions in the judgment or other measures; whether a judgment rendered in the person's absence will be adequate; and finally, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Md. Rule 2-211(c). No one contends that 107 Terrapin would have been unable to join the other Cove Creek homeowners.

[19] It is unclear whether Maryland courts apply an abuse of discretion or de novo standard for appellate review of necessary party determinations. *Serv. Transp., Inc. v. Hurricane Express, Inc.*, 185 Md. App. 25, 37 (2009) (explaining that "[t]he federal circuits are divided on the appropriate standard" and deciding not to "enter into this thicket" because under either standard, the trial court's decision would be affirmed). Whether the circuit court's necessary party determination is analyzed under an abuse of discretion or a de novo consideration of a legal issue, we believe the result would be the same: the circuit court's decision denying Cove Creek's motion to dismiss was correct. *See id.*

property rights of all Cove Creek homeowners are affected, and they have an interest in the circuit court's decision.

The two cases cited by 107 Terrapin—*Cherington Condo. v. Kenney* ("*Cherington*"), 254 Md. App. 261 (2022) and *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374 (2006)—do not suffice to overcome this conclusion, as neither is about amending a common ownership community's declaration. *Cherington* originated from an administrative complaint filed with the Commission on Common Ownership Communities for Montgomery County in which Ms. Kenney alleged that the budget adopted by the board violated the condominium association's declaration and bylaws. *Cherington*, 254 Md. App. at 267. *Garfink* was a suit brought by a condominium association, citing a violation of the condominium's bylaws, to enjoin a single unit owner from installing a dryer vent on the exterior of their unit. *Garfink*, 392 Md. at 377. An appeal from the decision of an administrative body and a suit to enforce a condominium's bylaws against a single unit owner are both dissimilar to and distinguishable from this case.

But the circuit court's failure to require that the homeowners be joined as necessary parties does not, by itself, render its judgment a nullity. One exception to Section 3-405(a)(1)'s joinder requirement is when those who know about a suit fail to join it. "Persons who are directly interested in a suit, and have knowledge of its pendency, and refuse or neglect to appear and avail themselves of their rights, are concluded by the proceedings as effectually as if they were named in the record."

Rounds, 441 Md. at 648–49 (cleaned up). "[T]o excuse non-joinder of necessary parties, [a plaintiff] must demonstrate, without resorting to self-serving hearsay declarations, that (1) the non-joined party clearly had knowledge of the pending litigation, and (2) the non-joined party must have purposely declined to join the litigation despite the party's ability to join." *Id.* at 649.

Regardless of whether all Cove Creek homeowners are necessary parties, we affirm the circuit court's denial of Cove Creek's motion to dismiss because of the applicable exception to CJP § 3-405(a) in this case, where all homeowners were aware of the pending litigation but did not join despite notice. *See Rounds*, 441 Md. at 649. Here, no party disputes the circuit court's conclusion that all members of Cove Creek were made aware of the litigation.[20] As the circuit court found in its opinion, all homeowners were notified of the lawsuit after 107 Terrapin filed its Complaint. Specifically, "at the February 2023 Board meeting, minutes were circulated discussing its pendency." A copy of the February 16, 2023 Cove Creek Board meeting minutes in the record reflects that the lawsuit was discussed, and that Cove Creek's response would be due early March 2023. Despite clearly having notice, no homeowners joined. Mr. and Mrs. Tracy and the other nine homeowners who moved to intervene did not attempt to do so until four months later, after the circuit court issued its decision on the merits—a decision that was

[20] 107 Terrapin attached the February 16, 2023 Cove Creek Board meeting minutes as an exhibit to its Opposition to Cove Creek's motion to dismiss. On appeal, no party challenges the fact that the circuit court treated Cove Creek's motion to dismiss as a motion to dismiss, rather than as a motion for summary judgment.

unfavorable to these homeowners in that it declared that the 2022 Amendment is unenforceable against 107 Terrapin.

II. The circuit court did not err or abuse its discretion in denying the homeowners' untimely motions to intervene.

The Homeowner Appellants argue that their motions for intervention should have been granted because their motions were timely, they have an interest in the litigation, their interests and Cove Creek's interests are not identical, and their interests are not adequately protected by Cove Creek. As to timeliness, the Homeowner Appellants describe the time from the filing of 107 Terrapin's Complaint (in January 2023) to the circuit court's hearing (in May 2023) as "very short" and argue that "[t]here was and there remains plenty of opportunity to provide due process to the [Homeowner] Appellants."

107 Terrapin argues that Homeowner Appellants were not entitled to intervention because they delayed until after summary judgment was granted in 107 Terrapin's favor, making their motions untimely. 107 Terrapin further argues that Homeowner Appellants did not meet the requirements to intervene because they did not state an interest "*beyond* the generalized interest in a community standard to which they and others may be subjected." 107 Terrapin contends that Homeowner Appellants and Cove Creek "advanced the exact same interest."

Maryland Rule 2-214(a), which deals with intervention as of right, provides

> **(a) Of Right.** Upon *timely* motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the

> property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

Md. Rule 2-214(a) (emphasis added).

We review the denial of a motion to intervene "premised on a matter of right . . . non-deferentially for legal correctness." *Maryland-Nat. Cap. Park & Planning Comm'n v. Town of Washington Grove* ("*MNCPPC*"), 408 Md. 37, 64–65 (2009). However, where the circuit court denies intervention "due to a finding of untimeliness," we review that decision for abuse of discretion provided that the circuit court "articulates reasons for why the motion is untimely." *Id.*

Timely application is a prerequisite for intervention. *Jenkins v. City of College Park*, 379 Md. 142, 154 (2003). Timeliness depends upon the individual circumstances of each case, and consideration of those circumstances rests with the discretion of the trial court.[21] *MNCPPC*, 408 Md. at 70. "[A] court must consider the purpose for which intervention is sought, the probability of prejudice to the parties already in the case, the extent to which the proceedings have progressed when the movant applies to intervene, and the reason or reasons for the delay in seeking intervention." *Id.*

[21] Under certain circumstances, a motion to intervene may satisfy the timeliness requirement even after judgment has been entered: federal and state "cases have upheld post-judgment intervention for purposes of appeal when the applicant has the requisite standing and files the motion to intervene promptly after the losing party decides against an appeal." *MNCPPC*, 408 Md. at 70–71 (quoting *Coalition for Open Doors v. Annapolis Lodge No. 622, Benevolent & Protective Order of Elks*, 333 Md. 359, 368–71 (1994)).

By incorporating 107 Terrapin's arguments as to timeliness, the circuit court found that the Homeowner Appellants did not provide a sufficient reason for delaying until after the circuit court entered summary judgment given that they had knowledge of the lawsuit by way of the February 2023 Board meeting minutes. The circuit court rejected the Homeowner Appellants' argument that they were awaiting the circuit court's ruling on Cove Creek's motion to dismiss. In *MNCPPC*, which the Homeowner Appellants cited to support their argument that intervention after summary judgment is sometimes permitted, the intervenor had already been actively involved in the litigation as a party. Here, the Homeowner Appellants were not already involved as parties to the dispute between 107 Terrapin and Cove Creek when they moved to intervene. Other considerations weighing against intervention were that intervention would be prejudicial to 107 Terrapin's interest in efficient resolution of the issue, and, because the circuit court had already decided the issue, it would be unclear what purpose intervention would serve.

We affirm the circuit court's denial of the two motions to intervene due to their untimeliness.[22] Despite the notice of the litigation reflected in the February 2023 Board meeting minutes, Mr. Tracy and Ms. Tracy did not move to intervene until mid-June 2023. The other group of nine homeowners did not move to intervene until late July 2023. These motions to intervene were both filed after the circuit court held the May 23, 2023 hearing and issued its opinion a week later. Homeowner Appellants did not

[22] Because we affirm on this threshold question of timeliness, we do not address the circuit court's conclusion that the Homeowner Appellants did not meet the requirements for intervention.

sufficiently explain their reason for delay despite knowledge of the lawsuit for months. Further, the circumstances in this case are distinguishable from other instances in which post-judgment intervention has been upheld, as exemplified and explained in *MNCPPC*: Cove Creek did not "decide against" an appeal (and thus Homeowner Appellants were not seeking intervention in order to appeal in light of such a decision) and, unlike the intervenor in *MNCPPC*, Homeowner Appellants were not already involved in the lawsuit as parties. *See MNCPPC*, 408 Md. at 48, 71–72. Under the circumstances here, we cannot say that the circuit court's decision to deny intervention was an abuse of discretion.

III. The circuit court erred in declaring that the 2022 Amendment is unenforceable against 107 Terrapin.

Cove Creek and the Homeowner Appellants argue that with its interpretation of the 2008 Declaration, the circuit court impermissibly limited what Cove Creek could do when amending its governing documents. Specifically, they contend that the circuit court's creation of an exemption for existing short-term rental use is inconsistent with Section 11B-116 of the Real Property Article insofar as that provision permits a homeowners' association to amend its governing documents "[n]otwithstanding the provisions of a governing document." Citing *Walton v. Jaskiewicz*, 317 Md. 264, (1989), Cove Creek adds that the 2022 Amendment must be applied uniformly across the community in order to meet the expectation that "covenants will be enforced uniformly and that owners will enjoy a degree of mutuality under the restrictions."

107 Terrapin responds that the circuit court was correct to conclude that Cove Creek could not use its general amendment power to add a new use restriction and then

enforce it against those engaging in the use prior to the new restriction. 107 Terrapin points to the Maryland Homeowners Association Act, particularly Section 11B-106's warning to would-be buyers that the property they are purchasing may have restrictions on it, and argues if any new restriction can be enforced against pre-existing uses, there would no way for would-be purchasers to know what property rights they were getting with their purchase. Arguing that "property rights cannot be taken by amendment[,]" 107 Terrapin attempts to distinguish *Walton* because it "did not concern grandfathering a pre-existing use."

We review a declaratory judgment entered as the result of the grant of a motion for summary judgment *de novo*.

> Prior to determining whether the trial court was legally correct, an appellate court must first determine whether there is any genuine dispute of material facts. Any factual dispute is resolved in favor of the non-moving party. Only when there is an absence of a genuine dispute of material fact will the appellate court determine whether the trial court was correct as a matter of law.

Dashiell v. Meeks, 396 Md. 149, 163 (2006) (citations omitted). Interpretation of restrictive covenants is subject to de novo review as a legal question. *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55 (2013).

When construing restrictive covenants, we are governed by what the parties intended. That intention may appear, or be implied from, the language of the restrictive covenant itself. *RDC Melanie Drive, LLC v. Eppard*, 474 Md. 547, 568 (2021) (citing *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n*, 321 Md. 152, 157–58 (1990)). Our Supreme Court explained:

> In construing covenants, it is a cardinal principle that the court should be governed by the intention of the parties as it appears or is implied from the instrument itself. The language of the instrument is properly considered in connection with the object in view of the parties and the circumstances and conditions affecting the parties and the property. This principle is consistent with the general law of contracts. If the meaning of the instrument is not clear from its terms, the circumstances surrounding the execution of the instrument should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources.
>
> If an ambiguity is present, and if that ambiguity is not clearly resolved by resort to extrinsic evidence, the general rule in favor of the unrestricted use of property will prevail and the ambiguity in a restriction will be resolved against the party seeking its enforcement. *The rule of strict construction should not be employed, however, to defeat a restrictive covenant that is clear on its face, or is clear when considered in light of the surrounding circumstances.*

RDC Melanie Drive, 474 Md. at 568–69 (cleaned up).

We start by identifying the issues that we do not address. To start, it is beyond dispute that homeowners' associations may amend their declarations. Section 11B-116 of the Real Property Article provides that, "[n]otwithstanding the provisions of a governing document, a homeowners association may amend the governing document by the affirmative vote of lot owners in good standing having at least 60% of the votes in the development, or by a lower percentage if required in the governing document." RP § 11B-116(c).[23] "The validity of properly created restrictive covenants is well established

[23] Section 11B-116 of the Real Property Article defines "governing document" to include:

> (i) A declaration;
>
> (ii) Bylaws;

in Maryland." *Markey v. Wolf*, 92 Md. App. 137, 148 (1992). Here, 107 Terrapin does not—and could not—contend that the voting process in this case was either flawed or that the 2022 Amendment was adopted by less than the required percentage of votes. Nor did 107 Terrapin do anything to stop the 2022 Amendment from being recorded.

Having recognized that governing documents may be amended, we need not decide what the practical outer limit is of what an HOA can do with an amendment, or whether the 2022 Amendment transgresses that limit.[24] Because it was passed in a manner that complies with Section 11B-116, the 2022 Amendment is presumptively valid. *See Markey*, 92 Md. App. at 148. And below, no party sought a declaration on the

(iii) A deed and agreement; and

(iv) Recorded covenants and restrictions.

RP § 11B-116(a)(2).

[24] 107 Terrapin does not argue that the 2022 Amendment transgresses the outer limit of what a homeowners' association may do with an amendment, only that it imposes a new restriction, i.e., one that did not appear in the 2008 Declaration. Moreover, 107 Terrapin concedes that the 2022 Amendment can be enforced against other lot owners into the future. ("The trial court, in allowing an amendment but grandfathering pre-existing uses, struck the proper balance between protecting [107 Terrapin's] property rights and a community association's interests in phasing out uses it determines are no longer desirable.") Given 107 Terrapin's concession, we need not take up Cove Creek's invitation to adopt standards or factors for assessing the validity of new amendments. The standards or factors that Cove Creek suggests include whether the amendment is reasonable, whether the amendment is arbitrary and capricious, whether there is a rational relationship between the new amendment and the safety and enjoyment of the community, whether the amendment is nondiscriminatory and evenhanded, and whether the decision to adopt the amendment made in good faith and for the common welfare of the community. For now, we simply recognize that *RDC Melanie Drive* did not address the validity of a new amendment, i.e., one that is not "consistent with," or "within the reasonable contemplation of the [subdivision's] Original Declaration." *See RDC Melanie Drive*, 474 Md. at 577 n.16.

validity or invalidity of the 2022 Amendment generally.[25] Instead, we focus on the narrower declaration that 107 Terrapin sought (and the circuit court granted), which is whether the 2022 Amendment can be enforced against 107 Terrapin. *See S. Kaywood Cmty. Ass'n v. Long*, 208 Md. App. 135, 143–44 (2012) (holding that where plaintiffs sought declaratory judgment that restrictive covenant "did not restrict the use of the property to persons related by blood, marriage, or adoption[,]" the circuit court erred by going further and entering declaratory judgment on issues that were not in the plaintiffs' complaint).

Restrictive covenants must be enforced uniformly among all lots in the subdivision unless the covenants themselves specify otherwise. *Walton*, 317 Md. at 271–

[25] 107 Terrapin requested a declaration that the 2022 Amendment could not be enforced against it specifically:

> WHEREFORE, Plaintiff requests:
>
> a. That this Court determine and adjudicate that *Plaintiff had a property right* to utilize its property as a short-term rental property that Defendant could not take without its consent; and
>
> b. That this Court determine and adjudicate that Defendant *cannot adopt or enforce its proposed amendment against the Plaintiff*; and
>
> c. Any other relief this Court finds proper.

(Emphasis added).

The specific declaration the Homeowner Appellants sought was that "Plaintiff/Counterclaim Defendant, 107 Terrapin Lane, LLC, and the real property known as 107 Terrapin Lane, Stevensville, MD, 21666 (Cove Creek Lot 92) are subject to the Declaration and the Declaration Amendment in the same manner as is any other member within the community, including all amendments thereto[.]" The Homeowner Appellants' counterclaims (in which they sought declaratory relief) were rejected as untimely.

72. In *Walton*, the Waltons were the owners of a roughly four-acre lot with a natural ravine running through the center. They wanted to subdivide their lot into two, but the restrictive covenants that governed the subdivision in which they lived prohibited "further subdivision of lots in this tract." *Id.* at 265–66. Although a majority of the other lot owners signed what purported to be an Amended Declaration of Covenants (such that the Waltons' lot would be excepted from the no-further-subdivision restriction), other lot owners sued to stop the Waltons' planned resubdivision. *Id.* at 266.

Our Supreme Court held that the purported amendment excepting the Waltons' lot was unenforceable. The Declaration of Covenants "expresse[d] an intent that the covenants apply uniformly to all lots within the subdivision." *Id.* at 272. Moreover, "[t]he amendment provision . . . provide[d] for changing the covenants in whole or in part; it does not indicate that changes can be made selectively to exempt a single lot from a particular restriction, but rather the amendment must apply uniformly to all lots subject to the covenant." *Id.*

Here, the circuit court erred by creating an exemption for, or a "grandfathering in" of, existing short-term rentals. *See id.* at 272 (holding that, where covenant provided that it applied to all lots, circuit court erred in approving a purported covenant amendment that exempted one lot from the covenant's applicability). Plainly read, Cove Creek's covenants allow for no such exemption. The preamble to the 2008 Declaration made clear that it applies to all of Cove Creek's private lot owners.

> [T]he Corporation and its constituent members here declare that *all of the property described above shall be held, sold and conveyed subject to* the

> following Amended and Restated Declaration of Covenants and Restrictions, . . . and which shall run with the Property and be *binding on all parties having any right, title or interest in the Property* or any part thereof, their personal representatives, successors and assigns, and *shall inure to the benefit of each Owner thereof*.

(Emphasis added). The "use" and "activity" restrictions of Sections 6.5 and 6.6 similarly apply to "each" or "any" Private Lot in Cove Creek.[26]

The only exception to the 2008 Declaration's residential use restriction (Section 6.5) is for "no-impact home based business[es]," but this exception applies only to how a lot's "dwelling unit" may be used. [27] Specifically, Section 6.5 provides that "dwelling unit[s]" could be used for "'no-impact home based business[es]', as defined in Section 11B-111.1 . . . as amended," and further provides that the lot owner had to notify Cove Creek of such use. Further, this exception for "home-based businesses" is not the type of exemption, or "grandfathering in" of, that the circuit court created for 107 Terrapin. Rather, the home-based business exception applies uniformly to all lot owners. In *Walton*, the Supreme Court explained that when the declaration expresses an intent that the covenants apply uniformly to all lots, changes cannot be made selectively to exempt a

[26] In describing the "Permitted Uses for Private Lots," Section 6.5 reiterated that it applied to "the Property" and "each Private Lot therein[.]" Section 6.5 then provided that "[t]he Private Lots" were to be used "for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any such Private Lot other than one used as a dwelling[.]" Section 6.6's prohibition of "Offensive Activities," which extended to noxious of offensive activities or "anything . . . which would cause embarrassment, discomfort, annoyance or a nuisance to the Owners of neighboring properties or to the community in general," also applied to "any Private Lot."

[27] No one contended, and the circuit court did not find, that 107 Terrapin's short-term rental business was "a no-impact home based business."

single lot from a particular restriction. *Walton*, 317 Md. at 272. The difference between Cove Creek's residential use restriction, with its exception for no-impact home based businesses, and the circuit court's exemption for 107 Terrapin is that the former applies uniformly to all lot owners, consistent with the Cove Creek declaration, and the latter is a single exemption created by the court.

Nor does the 2008 Declaration provide for exemptions in the event that a court determines that any of its provisions were invalid. Instead, the 2008 Declaration calls for severability. Under a heading labeled "Severability," the 2008 Declaration provides that the "[i]nvalidation of any one of the provisions of the Declaration by judgment or court order shall not affect any other provisions, all of which shall remain in full force and effect." There was no mention of an exemption, or grandfathering in, in the event that a provision of the Declaration was found to be invalid. Instead, the invalid provision is severed, leaving the remaining provisions intact and applicable to all lot owners.

107 Terrapin attempts to distinguish *Walton* by arguing that "*Walton* sought forever to exempt one lot from a restriction while applying it to all others. It did not concern grandfathering a pre-existing use." We see no meaningful difference between pre-existing uses and proposed uses in this context. Even though the exemption 107 Terrapin sought (and was awarded) was to allow it to continue to use its lot in the manner that pre-existed the 2022 Amendment, that exemption could as easily result in the "patchwork quilt of different restrictions," *see Walton*, 317 Md. at 271, that the uniformity requirements of the 2008 Declaration and *Walton* disallow.

107 Terrapin also argues that Cove Creek "cannot use a general amendment provision to add a new restriction and enforce it against those engaging in such use prior thereto." Specifically, 107 Terrapin contends that prior to its adoption of the 2022 Amendment, Cove Creek (either through its Board or its agents) made various statements that amount to admissions that short-term rentals were permitted prior to the adoption of the 2022 Amendment.

Even if Cove Creek's statements amount to admissions, the basic fact is that when 107 Terrapin bought its lot in Cove Creek, 107 Terrapin had notice that the 2008 Declaration could be amended, how such amendments were to occur, and that it would be subject to such amendments. In this regard, *Burgess v. Pelkey*, 738 A.2d 783 (D.C. 1999), *cert. denied*, 529 U.S. 1099 (2000) is instructive. There, a member of a cooperative association (Mr. Burgess) had been subleasing his apartment for several years before the cooperative amended its bylaws to restrict subleasing. Mr. Burgess challenged the enforcement of the amendments, but the District of Columbia Court of Appeals found that Mr. Burgess "had sufficient notice before he bought his stock . . . that he would be bound by subsequent changes to the cooperative instruments." *Id.* at 789 (noting that "[t]o hold otherwise would negate uniformity, a principal purpose of cooperative and condominium living arrangements, by creating disparity among units subjected to differing regulatory regimes"). Here, in addition to having notice that the 2008 Declaration could be amended, 107 Terrapin had notice that the restrictions in the 2008 Declaration apply to all lot owners. Thus, even with the "admissions" 107 Terrapin

identifies, 107 Terrapin cannot have expected that these "admissions" could substitute for the amendment procedure in the 2008 Declaration or that these "admissions" could somehow confer an exemption on 107 Terrapin.

Relatedly, 107 Terrapin argues that, under the 2008 Declaration, it had the right to engage in short-term rentals. 107 Terrapin points to *Lowden v. Bosley*, 395 Md. 58 (2006), to emphasize that even though the 2008 Declaration restricts the use of Cove Creek's lots to "residential purposes only," that restriction cannot be read to prohibit short-term rentals because it did not expressly say so. *Lowden* concluded that if the framers of a restrictive covenant intend to impose a restriction, they must do so explicitly. *Id.* at 72 ("If the framers of the Declaration had intended to prohibit rentals shorter than a certain period, they would have said so, just as they prohibited tents, trailers, campers, etc."). But *Lowden* was not a case in which one lot owner sought an exemption from the subdivision's covenants with the result that the covenants would be enforced in a non-uniform manner.[28]

107 Terrapin next argues that "Cove Creek cannot strip [107 Terrapin] of the right to engage in short-term rentals without [107 Terrapin's] consent."[29] Looking at Section

[28] In the circuit court, the *Lowden* plaintiffs named as defendants the subdivision's developer, the County and one of its agencies, and four other lot owners. The plaintiffs sought declaratory and injunctive relief that short terms rentals violated the subdivision's residential use restrictive covenant and applicable zoning regulations and that seeking a zoning exception would violate the restrictive covenant. *Lowden*, 395 Md. at 61–62.

[29] The circuit court took up a similar argument in its opinion creating an exemption for existing short-term rental uses, framed in terms of a lack of notice to

11B-106 of Maryland's Real Property Article, which warns prospective development lot purchasers that they "will automatically be subject to various rights, responsibilities, and obligations," 107 Terrapin argues that this section should not be read to permit the addition and enforcement of new use restrictions against pre-existing uses. 107 Terrapin concludes that there would be little benefit to reviewing a development's governing document before purchase if homeowners' associations could "simply add a new use restriction after you purchase and enforce it against you."

Section 11B-106 does not support the notion that a declaration of restrictive covenants cannot be amended, or that lot owners who purchased property prior to amendments will not be subject to future restrictions. Instead, Section 11B-106 provides that a contract for the sale (or resale) of a development lot notify prospective purchasers that they will "automatically be subject to various rights, responsibilities, and obligations," including the payment of assessments. RP § 11B-106(a). The required notice further provides that "[t]he lot you are purchasing may have restrictions on: . . . (4) [r]enting, leasing, mortgaging, or conveying property; . . .or (6) [o]ther matters."[30] RP §

(rather than consent of) 107 Terrapin. The circuit court applied a standard derived from *Kalway v. Calabria Ranch HOA, LLC*, 506 P.3d 18, 22 (Ariz. 2022), wherein the Arizona Supreme Court held that "a general-amendment-power provision may be used to amend only those restrictions for which the HOA's original declaration has provided sufficient notice."

[30] Section 11B-106(a) provides, in pertinent part:

> By purchasing a lot within this development, you will automatically be subject to various rights, responsibilities, and obligations, including the

11B-106(a). Section 11B-106 does not prohibit the addition and enforcement of new covenants as to prior purchasers. 107 Terrapin's read of Section 11B-106 would make this section inconsistent with Section 11B-116(c), which expressly provides that a homeowners' association may amend its declaration. Adopting 107 Terrapin's view would be contrary to standard rules of statutory construction. *See, e.g., Wheeling v. Selene Fin. LP*, 473 Md. 356, 377 (2021) ("We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.") (quoting *Lockshin v. Semsker*, 412 Md. 257, 276 (2010)). By contrast, an interpretation that the statute requires notice of present restrictions (but permits future amendments) harmonizes both sections.

By declaring that the 2022 Amendment could not be enforced against 107 Terrapin (or others engaging in short-term rental before June 1, 2023), the circuit court created an exemption to the 2022 Amendment's that the 2008 Declaration, with its

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> obligation to pay certain assessments to the homeowners association within the development. The lot you are purchasing may have restrictions on:
>
> (1) Architectural changes, design, color, landscaping, or appearance;
> (2) Occupancy density;
> (3) Kind, number, or use of vehicles;
> (4) Renting, leasing, mortgaging, or conveying property;
> (5) Commercial activity; or
> (6) Other matters.

RP § 11B-106(a).

uniform application to all Cove Creek lot owners, does not allow. For this reason, we reverse.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED IN PART AND REVERSED IN PART. COSTS TO BE DIVIDED EVENLY BETWEEN APPELLANTS AND APPELLEE.