Circuit Court for Baltimore County
Case No. 03-C-10-007328

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 113

September Term, 2016

FLORA LIPITZ, et al.

v.

WILLIAM A. HURWITZ

Meredith,
Kehoe,
Thieme, Raymond G., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: August 22, 2017

In August 2009, Flora and Roger Lipitz ("the Lipitzes"), as trustees of the Revocable Property Trust of Flora and Roger Lipitz, appellants, entered into a contract with William Hurwitz ("Hurwitz"), appellee, to sell their real property located at 3120 Blendon Road, within the Caves Valley Golf Club Development, in Baltimore County. Hurwitz refused to close on the purchase, and told the Lipitzes that he was cancelling the contract because he had not been provided certain notifications required under the Maryland Homeowners Association Act (the "HOA Act"), Maryland Code (1974, 2010 Repl.Vol.), Real Property ("RP"), § 11B-106(b). The Lipitzes eventually sold their property to another buyer for roughly $1 million less than the sale price in the contract with Hurwitz.

In June 2010, the Lipitzes filed suit against Hurwitz in the Circuit Court for Baltimore County. That court granted Hurwitz's motion to dismiss, and the circuit court's dismissal was affirmed by this Court in *Lipitz v. Hurwitz*, 207 Md. App. 206 (2012). The Court of Appeals granted the Lipitzes' petition for writ of *certiorari* and, in *Lipitz v. Hurwitz*, 435 Md. 273 (2013), reversed our affirmance of the circuit court's dismissal. The Court of Appeals held that sufficient material facts were in dispute concerning the Lipitzes' contention that Hurwitz was equitably estopped from cancelling the contract for the Lipitzes' complaint to survive Hurwitz's motion to dismiss. On remand, following extensive discovery, the circuit court granted Hurwitz's motion for summary judgment, and denied the Lipitzes' motion for the same, holding that Hurwitz had a statutory right to cancel the contract, and that no reasonable jury could find that Hurwitz was equitably estopped from cancelling the contract. This appeal followed.

QUESTIONS PRESENTED

The Lipitzes present four questions for our review:

1. Does the [Maryland Homeowners Association] Act grant a buyer, who has actual possession of accurate and up-to-date disclosures, the extraordinary right to cancel a contract merely because some of those disclosures were delivered by persons other than the seller?

2. Is a party who adopts the position that substantial compliance is sufficient to comply with the Act when he is a seller estopped from asserting that identically substantial compliance is insufficient when he is a buyer?

3. Is a buyer entitled to summary judgment on the issue of whether he is estopped from cancelling a contract under the Act when the seller committed an honest mistake detrimental only to the seller's interest, even though there is substantial evidence that the seller has otherwise met the elements of estoppel, including testimony showing that the seller's agent attempted to furnish the required disclosures and the buyer's agent rejected them?

4. Does the law of the case doctrine apply when the evidence on remand is substantially and materially different from the state of the record considered by the prior appellate court?

We answer "yes" to Question 1. The answers to Questions 2 and 4 depend upon multiple factors, and those questions, as presented, cannot be answered with a simple yes or no. Because we conclude that the resolution of the seller's equitable estoppel defense should have been submitted to a trier of fact rather than decided upon a motion for summary judgment, we answer "no" to Question 3. We will vacate the judgment of the Circuit Court for Baltimore County, and remand the case for further proceedings.

FACTS & PROCEDURAL BACKGROUND

The Court of Appeals summarized the factual background of this controversy as follows in *Lipitz v. Hurwitz*, 435 Md. 273, 276-79 (2013), an appeal of an earlier ruling in the case that is currently before us:

> William A. Hurwitz (the buyer) entered into a contract on August 6, 2009, with Flora E. and Roger C. Lipitz, as trustees of the revocable property trust of Flora E. and Roger C. Lipitz (the sellers), to purchase a home in the Caves Valley Golf Club Development in Owings Mills, Maryland. The buyer, who was represented in the sale by Krauss Real Property Brokerage, owned two other houses within the Caves Valley Golf Club Development and resided in one of them. The parties agreed to a sale price of approximately $4 million.
>
> The written offer submitted by the buyer included two form addenda, the Maryland Homeowners Association Act Notice to Buyer and the Maryland Homeowners Association Act Disclosures to Buyer and Transmittal of Documents. After negotiations between the parties, they agreed to strike those documents from the contract, apparently because each party believed they were not applicable or could be waived. The bottom of the first page of the contract contains a handwritten note, which states "Subject to Caves Valley Club declaration of covenants, easements, charges and liens." According to the sellers' complaint, they "made attempts to provide [the buyer] with information required by the Act," but "Mr. Hurwitz declined such information stating that he already had those materials." The sellers claim that both parties, although represented by licensed real estate brokers, believed that the Maryland Homeowners Association Act did not apply to the sale.
>
> Both parties signed the contract on August 6, 2009, and set the date of settlement for November 2, 2009. Based on this agreement, the sellers no longer sought alternative buyers for the property. The sellers contend that prior to the closing date the buyer was given access to the property to "take measurements and consult with interior designers"; that the sellers also provided Mr. Hurwitz with a demonstration of the "electronic amenities" in the house; and that the buyer "repeatedly conveyed his enthusiasm" about the property, describing the uses to which he might put various rooms in the house and discussing how he might decorate them.

On November 1, 2009, the day before closing, the buyer's agent orally informed the sellers that the buyer would not be closing on the property. No reason was given at that time. The buyer's attorney later contacted the sellers on November 12, 2009, to inform them that, because the buyer had not received the disclosures required under the Maryland Homeowners Association Act, he was canceling the contract. The sellers also received a letter from the buyer, dated November 11, 2009, relaying the same information.

The sellers filed a complaint in the Circuit Court for Baltimore County on June 10, 2010, alleging breach of contract and seeking specific performance. They filed an amended complaint on November 9, 2010. The buyer filed a motion to dismiss the amended complaint on November 19, 2010, and the sellers filed a cross-motion for summary judgment.

The Circuit Court held a hearing on the motions on March 29, 2011. At the hearing, the buyer argued that the sellers were required to provide the disclosures to him under § 11 B–106(b), and that the failure to provide those disclosures rendered the contract unenforceable and gave the buyer the right to cancel. He further argued that under the statute any attempted waiver of the right to receive the disclosures was void, thereby making any representations by him that he did not need the documents irrelevant.

During the hearing, the sellers conceded that they had not delivered to the buyer the disclosures specified by the Maryland Homeowners Association Act. The Act requires that notice be given to "a member of the public who intends to occupy or rent the lot for residential purposes." § 11B–106(a). The sellers agreed that the buyer qualified as someone who intended to occupy the lot, but disagreed that he was a "member of the public" under the statute. The sellers maintained that the General Assembly's intent in requiring disclosures was to ensure that people buying into a homeowners association were aware of the relevant applicable rules and policies. Based on this interpretation, the sellers argued that the General Assembly's use of the phrase "member of the public" was designed to differentiate "insiders," *i.e.*, those who already own property in a development and have access to the homeowners association policies, from "outsiders," who are buying into the development for the first time and require protection. Thus, the sellers argued that this buyer, an insider, should not be considered a "member of the public."

As a fallback argument, the sellers contended that even if the buyer is properly considered a member of the public within the meaning of the Act, and therefore ordinarily entitled to the right to cancel the contract, he was in

this case precluded from doing so by application of the doctrine of equitable estoppel because he affirmatively refused to receive the required documents and information proffered to him by the sellers.

The Circuit Court ruled orally on the motions, stating

> Looking at the statute, I find it is clear and unambiguous. Starting with § 11 B–106(a), it says the contract is not enforceable unless the disclosures are given within 20 days of entering the contract, as provided in B.
>
> Section 11 B–108(a) provides that a person who has not received all of the disclosures required is entitled to cancel the contract.
>
> Section 11 B–108(d) provides that, for the right to cancel, which may not be waived, an attempted waiver is void. Section 11 B–103 provides that the provisions of the Act may not be varied by agreement and again says that the rights may not be waived.
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> So the statute in two different sections says that the rights may not be waived under the Act.
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> With respect to the meaning of the term "members of the public," I don't find that to be ambiguous at all. I think it means members of the public. Members of the public means members of the public.
>
> And, again, applying the rule of statutory construction, to apply the ordinary and plain meaning of the language, I don't think it is all that complicated.
>
> I find it does include Mr. Hurwitz. He's a member of the public. I think in this context or my interpretation is it refers to a human being, an individual, as opposed to a corporation.
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> * * *
>
> And with respect to the equitable estoppel argument, I don't find any facts alleged in this case that would give rise to the application of the equitable estoppel argument. I think it

> boils down to the fact that the [sellers] don't like the statute and if somebody exercises their rights, it doesn't seem fair. That may be, but that's what the statute says.
>
> The Circuit Court granted the buyer's motion to dismiss and denied the sellers' motion for summary judgment. The Court of Special Appeals affirmed the judgment of the Circuit Court. *Lipitz v. Hurwitz*, 207 Md. App. 206, 210, 52 A.3d 94 (2012).

(Footnotes omitted.)

The Court of Appeals granted the Lipitzes' petition for a writ of *certiorari*, and reversed our ruling – *see Lipitz v. Hurwitz*, 207 Md. App. 206 (2012) -- in which we had affirmed the dismissal of the Lipitzes' complaint. *Lipitz, supra*, 435 Md. at 294. The Court of Appeals held that the Lipitzes had "alleged sufficient facts on which to base an equitable estoppel argument and defeat a motion to dismiss," and the Court noted that "[g]enuine questions of fact are raised as to when, how often, and in what manner the sellers offered the disclosure documents to the buyer, and if, and in what way, he declined to receive the materials." *Id*. The case was remanded to the Circuit Court for Baltimore County for further proceedings.

On January 27, 2015, the Lipitzes filed a second amended complaint. On April 13, 2015, Hurwitz moved to strike the second amended complaint, contending that it exceeded the scope of remand from the Court of Appeals. On April 30, 2015, the Lipitzes moved for summary judgment. Via order entered September 23, 2015, the circuit court granted Hurwitz's motion to strike the second amended complaint. On October 15, 2015, Hurwitz moved for summary judgment.

On February 23, 2016, the circuit court held a hearing on the parties' cross-motions for summary judgment. At the hearing, the motion judge opined that she disagreed with the circuit court's order of September 23, 2015; the motion judge ruled that the second amended complaint *was* within the scope of remand from the Court of Appeals, and therefore should not have been stricken. But, at the conclusion of the February 2016 hearing, the court granted Hurwitz's motion for summary judgment and denied the Lipitzes' motion. The circuit court explained its decision as follows:

> All right. Well, I think I understand [counsel for the Lipitzes'] argument. Is there -- but I am not persuaded that, under these facts, that the equitable estoppel doctrine is available to the Lipitzes under this circumstance, when the -- it is through their mistake, that has nothing to do with Mr. Hurwitz. He is under no obligation to advise them.
>
> I hear what you are saying about fair play and honest dealing, but I do not think that means that Mr. Hurwitz has any obligation to the sellers here to say, ["]I think you are wrong and the HOA does apply to your property.["]
>
> * * *
>
> If you had some evidence Mr. Hurwitz knew that the HOA applied to the Lipitzes' property, then I think that long line of cases would apply, but that's not the situation here.[1]
>
> There is no contention that Mr. Hurwitz was in any way in a superior position to the Lipitzes to know what the -- that the HOA applied to the Lipitzes' property, so we don't have that fact here.

[1] But, as noted above in the opinion of the Court of Appeals, there was evidence that Mr. Hurwitz had previously purchased "two other houses within the Caves Valley Golf Club Development and resided in one of them." *Lipitz, supra*, 435 Md. at 276. As will be discussed later in this opinion, there was also evidence that Mr. Hurwitz was in actual possession of documentation from the HOA.

The circuit court's order was docketed on March 4, 2016. The Lipitzes appealed on March 23, 2016. Additional facts are discussed as needed later in this opinion.

DISCUSSION

I. The Law of the Case Doctrine

The Lipitzes and Hurwitz disagree about the issues that were open for further consideration upon the remand from the Court of Appeals. *See Lipitz*, *supra*, 435 Md. at 294. There, the Court of Appeals instructed that the case was being remanded with respect to the Lipitzes' assertion of equitable estoppel, because, the Court of Appeals said: "[W]e conclude that under the circumstances of this case, it is for the trier of fact to determine whether the buyer is equitably estopped from walking away from this contract." *Id*. at 293. Although the decision of the Court of Appeals foreclosed further arguments from the Lipitzes as to why the HOA Act did not apply to them, *id*. at 290-91, the Court of Appeals remanded the case for further litigation of the Lipitzes' argument that the doctrine of equitable estoppel should bar Hurwitz from availing himself of the cancellation remedy created by the HOA Act. The Court rejected Hurwitz's arguments that: (1) "equitable estoppel 'cannot be used to contradict the HOA Act's express language that its rights cannot be waived, that its provisions cannot be varied by agreement, and that a seller cannot evade its requirements, limitations or prohibitions,'" *id*. at 291; and (2) "even if the doctrine of equitable estoppel may be asserted, the sellers[, as a matter of fact and law,] 'could not satisfy its elements.'" *Id*. at 293.

The Lipitzes filed their second amended complaint on January 27, 2015. On April 13, 2015, Hurwitz moved to the strike the second amended complaint, contending that it exceeded the scope of remand from the Court of Appeals. Initially, the circuit court granted Hurwitz's motion to strike the second amended complaint via order entered September 23, 2015, relying upon a sentence in the Court of Appeals's opinion that stated: "Genuine questions of fact are raised [by the Lipitzes] as to when, how often, and in what manner the sellers offered the disclosure documents to the buyer, and if, and in what way, he declined to receive the materials." *Id*. at 294. In striking the Lipitzes' second amended complaint, the circuit court stated: "Since the Second Amended Complaint seeks to introduce facts beyond those bearing on a) offers made [by the Lipitzes] to furnish Mr. Hurwitz's alleged disclosure documents; or b) purported declinations [by Hurwitz] to receive those materials, the Second Amended Complaint must be stricken."

But, at the hearing on the parties' cross-motions for summary judgment on February 23, 2016, a different judge of the circuit court opined that the second amended complaint *was* within the scope of remand from the Court of Appeals, and therefore, could be considered by the court. At the February 2016 hearing, the motion judge engaged in the following colloquy concerning the scope of remand:

> THE COURT: I disagree with [Hurwitz and the previous circuit court judge's] interpretation of the Court of Appeals opinion. I don't think that -- I agree with you that the Court of Appeals opinion did not limit the issue of remand.
>
> [COUNSEL FOR THE LIPITZES] Okay. Just so that I understand, in that case, in other words, any evidence that is relevant, that is material and has

> probative value to any of the three elements of estoppel, conduct, reliance, detriment --
>
> THE COURT: Yes.
>
> [COUNSEL FOR THE LIPITZES]: -- your Honor believes that would be admissible on remand.
>
> THE COURT: I do.

In Hurwitz's brief in this Court, he contends that the "sole issue on remand [from the Court of Appeals] was whether the Lipitzes could use equitable estoppel to avoid Hurwitz's exercise of his right to cancel [the contract] . . . and that question was to be determined by the number and quality of the Lipitzes' 'attempts' to offer Hurwitz the disclosure documents . . . ." Therefore, according to Hurwitz, the Court of Appeals "made it law of the case that what information [Hurwitz] had by other means was not relevant to estoppel and was beyond the scope of remand."

In response, the Lipitzes assert that the Court of Appeals did not intend to limit the scope of remand with respect to the evidence that either party could offer relative to equitable estoppel, and that all evidence relevant to the elements of equitable estoppel was properly before the circuit court. The Lipitzes rely upon the Court of Appeals's statement in *Lipitz* that "it is for the trier of fact to determine whether the buyer is equitably estopped from walking away from this contract." *Id*. at 293. We agree with the Lipitzes' argument on this point.

The Court of Appeals provided the following explanation of the law of the case doctrine in *Reier v. State Dep't of Assessments & Taxation*, 397 Md. 2, 20–22 (2007), stating:

> The "law of the case doctrine is one of appellate procedure." *Scott v. State*, 379 Md. 170, 183, 840 A.2d 715, 723 (2004) (quoting *Goldstein & Baron Chartered v. Chesley*, 375 Md. 244, 253, 825 A.2d 985, 990 (2003)). "Under the doctrine, once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Id*. (citing *Turner v. Hous. Auth.*, 364 Md. 24, 32, 770 A.2d 671, 676 (2001)). The function of the doctrine is to prevent piecemeal litigation. *Fid.-Balt. Nat'l Bank & Trust Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 371-72, 142 A.2d 796, 798 (1958). Thus, litigants
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> > "cannot prosecute successive appeals in a case that raises the same questions that have been previously decided by this Court in a former appeal of that same case; and, furthermore, they cannot, on the subsequent appeal of the same case raise any question that could have been presented in the previous appeal on the then state of the record, as it existed in the court of original jurisdiction. If this were not so, any party to a suit could institute as many successive appeals as the fiction of his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate. Once this Court has ruled upon a question properly presented on an appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the 'law of the case' and is binding on the litigants and the court alike, unless changed or modified after reargument, and neither the questions decided not the ones that could have been raised and decided are available to be raised in a subsequent appeal."
>
> *Fid.-Balt. Nat'l Bank & Trust Co.*, 217 Md. at 372, 142 A.2d at 798. It appears to us, however, that **the doctrine of the law of the case, in its proper application, concerns appellate conclusions as to questions of law, not pure questions of fact**. *Stokes v. Am. Airlines, Inc.*, 142 Md. App. 440, 446, 790 A.2d 699, 702 (2002) . . . . **Although factual determinations**

> **undergirding or mixed with conclusions of law may become the law of the case, pure matters of fact, absent commingling with the application of legal principles, have no estoppel effect under the law of the case doctrine**. *Barrett*, 151 Md. at 139, 134 A. at 39.

(Emphasis added; some citations and footnotes omitted). *See also Baltimore Cty. v. Fraternal Order of Police, Baltimore Cty. Lodge No. 4*, 449 Md. 713, 729 (2016); *Kearney v. Berger*, 416 Md. 628, 641–42 (2010).

We agree with the Lipitzes that the remand from the Court of Appeals was not restricted solely to the issues of "when, how often, and in what manner the sellers offered the disclosure documents to the buyer, and if, and in what way, he declined to receive the materials." *Lipitz*, *supra*, 435 Md. at 294. In its opinion, the Court of Appeals outlined several factual allegations made by the Lipitzes which were relevant to establishing various elements of an equitable estoppel, but did not concern "when, how often, and in what manner the sellers offered the disclosure documents to the buyer, and if, and in what way, [Hurwitz] declined to receive the materials." *Id*.

The Court of Appeals made clear that the remand was necessary because "it is for the trier of fact to determine whether the buyer [*i.e.*, Hurwitz] is equitably estopped from walking away from this contract." *Id*. at 293. Making this determination would require the trier of fact to consider all relevant evidence pertaining to the elements of the equitable estoppel defense. In our view, Court of Appeals's statement that "[g]enuine questions of fact are raised as to when, how often, and in what manner the sellers offered the disclosure documents to the buyer, and if, and in what way, he declined to receive the materials," *id*. at 294, was an illustrative list of factual issues that were evident in the record when

Hurwitz's motion to dismiss was initially granted by the circuit court before substantial discovery had been conducted, and did not restrict the scope of the remand in the manner advocated by Hurwitz. Accordingly, we hold that the Lipitzes' second amended complaint was properly before the circuit court, as the circuit court held on February 23, 2016, at the summary judgment hearing.

II. Summary Judgment in favor of Hurwitz

A. Standard of Review

Motions for summary judgment are governed by Maryland Rule 2-501. Rule 2-501(f) states that the circuit court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law."

The standard of appellate review we apply when reviewing a circuit court's granting of summary judgment is the *de novo* standard of review:

> A circuit court's decision to grant summary judgment is reviewed *de novo*. *Iglesias v. Pentagon Title & Escrow*, LLC, 206 Md. App. 624, 657, 51 A.3d 51 (2012). We must determine whether there was "a genuine dispute of material fact on the summary judgment record" and "whether the party that obtained summary judgment was entitled to judgment as a matter of law." *Id*.

Reiner v. Ehrlich, 212 Md. App. 142, 151 (2013) (internal quotation omitted).

The Court of Appeals has also held that "[t]he existence of a dispute as to some non-material fact will not defeat an otherwise properly supported motion for summary judgment, but if there is evidence upon which the jury could reasonably find for the non-

moving party or material facts in dispute, the grant of summary judgment is improper." *Okwa v. Harper*, 360 Md. 161, 178 (2000); *see also Danielewicz v. Arnold,* 137 Md. App. 601, 612–13 (2001). "A reasonable dispute over a material fact will preclude summary judgment, because its resolution lies with the jury." *Carter v. Aramark Sports & Entm't Servs., Inc.*, 153 Md. App. 210, 225 (2003). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006).

B. The Circuit Court's Interpretation of the Maryland Homeowners Association Act

The Lipitzes contend that the circuit court erred by granting Hurwitz's motion for summary judgment -- and in failing to grant the Lipitzes' motion for summary judgment -- because the circuit court, according to the Lipitzes, failed to consider whether Hurwitz had received from sources other than the Lipitzes and their agent the information a seller is required to disclose by the Maryland Homeowners Association Act, RP § 11B-106(b). The Lipitzes assert that, although RP § 11B-106(b) expressly requires a seller to *provide* the required documentation directly to a prospective purchaser, the right of cancellation granted by RP § 11B-108(a) arises if the purchaser "has not *received* all of the disclosures," without expressly saying that the disclosures must be *received from the seller*. Based on that distinction between the two sections of the HOA, the Lipitzes argue that the right to cancel under § 11B-108(a) does not arise in instances where the seller fails to provide the required disclosures but the purchaser somehow acquires the information from some source

unrelated to the seller. The Lipitzes contend, in the alternative, that, even if RP § 11B-106(b) did require them, as sellers, to provide the required disclosures directly to Hurwitz in order to avoid the potential cancellation remedy provided by RP § 11B-108(a), they *substantially* complied with RP § 11B-106(b), and their *substantial* compliance precluded Hurwitz from cancelling the contract pursuant to RP § 11B-108(a).

i. The Lipitzes' Disclosure Obligations under § 11B-106(b) of the HOA Act

With respect to a seller's statutory obligations pursuant to the HOA Act, we find no merit in the Lipitzes' efforts to parse the statutory language in support of their argument that the Act did not require them to provide Hurwitz the information specified in RP § 11B-106. Even though the Court of Appeals left open the possibility of a buyer such as Hurwitz being barred by equitable estoppel from enforcing the statutory cancellation remedy, the sellers' statutory obligation to disclose the HOA information, and the potential consequences of failing to do so, are clear, and any lingering question in that regard was settled in the previous appeal of this case. As the Court of Appeals has already ruled:

> The statute that is applicable here is cast in broad terms with the specific objective of providing meaningful protection to members of the public. We will not dilute that intended effect by adopting an interpretation that would engraft exceptions not contemplated by a legislature clearly intent on providing expansive protections.

Lipitz, supra, 435 Md. at 290-91.

Section 11B-106 of the HOA Act, the disclosure section at issue in this appeal, provides in relevant part:

> (a) **A contract for the resale of a lot within a development**, or for the initial sale of a lot within a development containing 12 or fewer lots, to a member of the public who intends to occupy or rent the lot for residential purposes, **is not enforceable by the vendor unless**:
>
> > (1) **The purchaser is given**, on or before entering into the contract for the sale of such lot, or within 20 calendar days of entering into the contract, **the disclosures set forth in subsection (b) of this section**;
> >
> > * * *
> >
> > **(b) <u>The vendor shall provide the purchaser</u> the following information in writing** . . . .

(Emphasis added.)

Section 11B-108(a) of the HOA Act outlines the remedy a prospective buyer is entitled to receive if the required disclosures are not provided by a seller, and states:

> (a) A person who enters into a contract as a purchaser but who has not received **all of the disclosures required by** § 11B-105, **§ 11B-106**, or § 11B-107 of this title, as applicable, **shall, prior to settlement, be entitled to cancel the contract** and to the immediate return of deposits made on account of the contract.

(Emphasis added.)

The "cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature." *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). "If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction." *Id*. at 275.

The purpose of the HOA Act was described by the General Assembly as follows:

> FOR the purpose of regulating homeowners associations in the State; providing for certain exceptions to the applicability of this Act; **providing that provisions of this Act may not be varied by agreement**; providing for the applicability of certain building code and zoning laws; providing for the preemption of certain local laws; providing requirements for the enforceability of certain sales and contracts of lots; **providing for the contents of certain disclosure statements to be given to the purchaser at or before the sale of a certain lot; providing for the right of a purchaser to rescind a contract for sale of a lot within a certain time limit and to receive deposits made on account of the contracts under certain circumstances**; providing for the liability of a vendor to a purchaser for making an untrue statement of material fact or omitting to state a material fact necessary to prevent misleading the purchaser under certain circumstances; providing for a certain implied warranty on improvements to common areas; providing for open meetings of a homeowners association with certain exceptions; providing that books and records of the homeowners association be open for inspection under certain circumstances with certain exceptions; defining certain terms; and generally relating to the regulation of homeowners associations in this State.

Acts 1987, c. 321, § 1 (emphasis added).

In the previous appeal of this case, the Court of Appeals discussed the General Assembly's intent regarding a seller's disclosure obligations under the HOA, stating:

> Further evidence of the generally understood meaning of the disclosure requirements of the Act is provided by a 1987 opinion of the Attorney General of Maryland. 72 Md. Op. Atty. Gen. 158. "The evident intent of the provision is that a buyer be provided the facts that will allow the buyer to make a rational judgment about whether to contract for the particular house. This objective is satisfied so long as the buyer receives the required disclosures at a time when the buyer still has an opportunity to decide whether to enter a binding contract." *Id.* at 161. The opinion further states that **"the seller has a duty to obtain and disclose to the buyer, prior to the formation of the contract, all of the information described in [the statute].**" *Id.* at 162.
>
> The opinion [of the General Assembly] specifically addresses a situation in which the buyer does not acknowledge receipt of the disclosures:

> [Section] **11B–106 speaks of the seller's duty to "giv[e]" or to "provide" the buyer** with the required information. [Section] 11B–107 is drafted in terms of the buyer's having "received" the disclosures. **The intent, apparently, is that the seller deliver the disclosures into the buyer's actual possession. If actual delivery is made, the statutory requirement will have been satisfied even if the buyer refuses to acknowledge receipt.** However, a prudent seller ought to have some proof of delivery.
>
> *Id.* at 163.

Lipitz, *supra*, 435 Md. at 288–89 (emphasis added) (alterations in original).

The Court of Appeals in *Lipitz* added:

> **The law may be overinclusive, providing disclosures to buyers, such as Mr. Hurwitz, who might already be aware of much of the information contained therein. But that, in itself, is not an absurd result.** As the Court of Special Appeals noted, "there are sound reasons why the Act should require a seller to provide disclosures even to a buyer who is already a member of the HOA." *Lipitz*, 207 Md. App. at 223, 52 A.3d 94. These could include "(1) if the buyer did not obtain the covenants when purchasing his previous home; (2) if the buyer did not use the previous lot for residential purposes; or (3) if the covenants and disclosures changed since the buyer last bought his previous home." *Id*. at 224, 52 A.3d 94. **The fact that these rationales might not apply in this buyer's case does not mean that the interpretation is otherwise absurd. "This policy avoids a situation where a buyer thinks he knows all of the information provided in the disclosures, but does not actually know this information." *Id.* at 222, 52 A.3d 94. The law does not place the burden on a buyer to retrieve these disclosures, even if they are readily available to him.**

Id. at 290 (emphasis added).

The plain language of RP § 11B-106(b) requires **that the "<u>vendor</u> shall provide" the required disclosures** outlined in RP § 11B-106(b)(1)–(5) to the prospective purchaser. (Emphasis added.) If the vendor does not provide the disclosures in RP § 11B-106(b)(1)–(5) to the prospective purchaser, then --- unless the doctrine of equitable estoppel is

applicable --- the purchaser is entitled to cancel the contract under RP § 11B-108(a). Section 11B-108(a) unambiguously provides that a "person who enters into a contract as a purchaser but who has not received all of the disclosures required by . . . § 11B-106 . . . **shall, prior to settlement, be entitled to cancel the contract** and to the immediate return of deposits made on account of the contract." (Emphasis added.)

The Lipitzes contend that "there are no sound policy reasons for the [HOA Act] to apply to one [*i.e.*, Hurwitz] who demonstrably possesses all or substantially all of the information" required by the HOA Act, albeit through a source other than the seller/vendor. (Emphasis omitted.) But that argument is clearly contrary to the Court of Appeals's previous holding in *Lipitz*, *supra*, 435 Md. at 290. There, the Court of Appeals made clear that the mere fact that certain rationales for requiring disclosures under the HOA Act be provided directly to the buyer by the seller "might not apply in this buyer's case does not mean that the interpretation is otherwise absurd." *Id*. The Court of Appeals interpreted the HOA Act to mandate that disclosures under RP § 11B-106(b) from the seller to the prospective buyer are always required --- irrespective of the buyer's prior awareness of information about the HOA --- because "[t]his policy avoids a situation where a buyer thinks he knows all of the information provided in the disclosures, but does not actually know this information." *Id*. The Court's interpretation of the seller's disclosure obligation in binding on the Lipitzes because it is not only the law of the case, it is also the law of the State.

ii. Substantial Compliance with § 11B-106(b) of the HOA Act; Injury to Buyer

In the alternative, the Lipitzes contend that, because they substantially complied with the HOA Act, and Hurwitz did not suffer injury as a result of any failure on the part of the Lipitzes to strictly comply with the HOA Act's disclosure requirements, Hurwitz was precluded from cancelling the contract; they assert that the circuit court should have granted summary judgment in their favor rather than entering judgment in favor of Hurwitz. We find no merit in this argument. Although substantial compliance may be one factor for the trier of fact to consider in weighing the equities in a case with respect to the doctrine of equitable estoppel, it is undisputed here that the Lipitzes themselves provided none of the disclosures required by § 11B-106(b) of the HOA Act.

We have previously explained the proper analysis we employ when determining whether strict or substantial compliance with a statute is required:

> In determining whether strict or substantial compliance with a statute is required, we must look to the legislative purpose behind the statute. *See Blackwell v. City Council for City of Seat Pleasant*, 94 Md. App. 393, 405, 617 A.2d 1110 (1993) ("We agree that while compliance is desired, it is not always mandatory. Substantial compliance, however . . . is required."). If the legislative purpose may be accomplished by something less than strict compliance with the statutory language, substantial compliance will be sufficient to find compliance with the statute's directives. *See Conaway v. State*, 90 Md. App. 234, 242–43, 600 A.2d 1133 (1992). Nevertheless, when the legislative purpose may only be accomplished through a strict compliance requirement, strict compliance with the statutory language will be required. *See Butler v. Tilghman*, 350 Md. 259, 268, 711 A.2d 859 (1998).

DeReggi Const. Co. v. Mate, 130 Md. App. 648, 658 (2000).

As we noted above, the Court of Appeals explained in *Lipitz*, *supra*, 435 Md. at 290–91, that the HOA Act "is cast in broad terms with the specific objective of providing meaningful protection to members of the public. We will not dilute that intended effect by adopting an interpretation that would engraft exceptions not contemplated by a legislature clearly intent on providing expansive protections." The Court of Appeals's discussion of the HOA Act's purpose leads us to conclude that the HOA Act's legislative purpose will not be accomplished by requiring something less than strict compliance with the statutory language.

The Lipitzes also argue that, as a matter of law, Hurwitz should not be permitted to cancel the contract under RP § 11B-108(a) because, according to the Lipitzes, he was not harmed by their failure to make all of the required disclosures under the HOA Act. The Lipitzes rely primarily upon our decision in the *DeReggi* case for this contention, pointing to a passage in that opinion stating that parties seeking relief "must show they were actually injured by appellants' violation of the Act." *DeReggi Const. Co.*, *supra*, 130 Md. App. at 665. The "Act" referenced in *DeReggi,* however, is not the Maryland Homeowners Association Act, but the Maryland Consumer Protection Act. The Consumer Protection Act authorizes a private cause of action for the express purpose of recovering "for a loss or injury." That act states: "(a) Actions authorized. In addition to any action brought by the Division or Attorney General authorized by this title . . . any person may bring an action **to recover for injury or loss sustained by him as the result of a practice prohibited by this title**." Maryland Code (1975, 2003 Repl.Vol.), Commercial Law, § 13-408(a)

(emphasis added). As we explained in *DeReggi*, "'the damages due to [a] consumer under § 13-408(a) are for "injury and loss" — such as will compensate the injured party for the injury sustained due to the defendant's acts and for indirect consequences of such acts.'" *DeReggi Const. Co.*, *supra*, 130 Md. App. at 665 (quoting *Citaramanis v. Hallowell*, 328 Md. 142, 153–54 (1992)).

Section 11B-108(a) of the HOA Act does not contain any similar requirement that a prospective buyer suffer "injury or loss" as a prerequisite to exercising the right to cancel a contract if the seller has not provided the required disclosures under RP § 11B-106(b). Our discussion in *DeReggi* of the requirements of loss or injury before bringing an action under the Maryland Consumer Protection Act does not support the imposition of such a condition precedent on parties seeking to exercise the right of cancellation pursuant to RP § 11B-108(a). Consequently, even if the Lipitzes prove that Hurwitz did not suffer additional injury aside from not being provided all the required disclosures under RP § 11B-106(b), that would not preclude Hurwitz from exercising his right to cancel the contract under RP § 11B-108(a).

C. Equitable Estoppel Preventing the Cancellation of the Contract by Hurwitz

In *Lipitz*, *supra*, 435 Md. at 294, the Court of Appeals held that "the [Lipitzes] have alleged sufficient facts on which to base an equitable estoppel argument and defeat a motion to dismiss." On remand, after discovery had been conducted, both parties filed motions for summary judgment. Hurwitz argued that the Lipitzes had created the disclosure problem themselves through their failure to provide the HOA disclosures required under

the HOA Act. The evidence filed in connection with the cross-motions for summary judgment, including Hurwitz's original contract of sale and the final ratified contract of sale, showed that the initial written offer submitted by Hurwitz included typical contractual language requiring the Lipitzes to provide all HOA disclosures pursuant to RP § 11B-106. When the Lipitzes made a counteroffer, they crossed out the language requiring them to deliver the HOA disclosures. At Mr. Lipitz's deposition, he stated that he did that because he believed there was no HOA. At some point during further negotiations, Hurwitz accepted the deletion of the HOA disclosure language and placed his initials by that alteration of his original offer.

At the hearing on the motions for summary judgment, the circuit court questioned counsel for the Lipitzes about the lack of dispute in the evidence regarding the deletion of the HOA language from the contract for sale:

> [THE COURT]: So you are attempting to rely on this doctrine of equitable estoppel, and I am just not seeing why it is equitable for the Lipitzes to take advantage of that doctrine in these circumstances, where the Lipitzes were, you know, sort of the source of this problem. You know, they are selling their house, inexplicably. They don't know that it's subject to an HOA, and so they cross out this requirement, and then this problem is generated.
>
> Had they not done that, if they had not been wrong about their property, none of this -- they wouldn't have had to be in this litigation with this most unpleasant buyer.
>
> [COUNSEL FOR THE LIPITZES]: Well, Your Honor, so that speaks to one of the principal contentions of Mr. Hurwitz, which is that the Lipitzes were the source of their own detriment.
>
> And in response to that, I would say there are -- there are multiple causes in this case. There are multiple but-for causes.

> It's true that Miss Claster [the Lipitzes' real estate agent], as they point out, made a mistake.

The motion court further confirmed that the evidence of the Lipitzes striking out the HOA language from Hurwitz's offer was not in the record when the case made its first trip to the Court of Appeals:

> [THE COURT]: Did we know at the time the Court of Appeals [wa]s considering this matter that the Lipitzes had crossed out or their agent had crossed out that provision in the parties' contract?
>
> [COUNSEL FOR THE LIPITZES]: I don't believe that was part of the record at that time.
>
> [THE COURT]: Okay. That's what I thought, but I thought you would know better.

In granting summary judgment in favor of Hurwitz, the circuit court ruled that, as a matter of law, because the Lipitzes had struck the HOA language from their counteroffer, the Lipitzes could not maintain an equitable estoppel defense against Hurwitz's cancellation of the contract. The circuit court explained: "**I am not persuaded that, under these facts, that the equitable estoppel doctrine is available to the Lipitzes under this circumstance, when the -- it is through their mistake**, that has nothing to do with Hurwitz," that resulted in the required HOA disclosures not being made. (Emphasis added.) The circuit court explained that the evidence showed that, because the failure to make the required disclosures "starts with the Lipitzes, it seems to me that's the end of the application of the doctrine" of equitable estoppel.

But the Lipitzes argue in their brief in this Court that there was a genuine question of material fact as to whether Hurwitz was aware that the Lipitzes were required to provide HOA disclosures under the HOA Act, yet chose not alert the Lipitzes, and instead continued to deal with the Lipitzes as though he intended to purchase their property up until the day closing was to occur. The Lipitzes argue: "Had Hurwitz spoken up about the alleged lack of disclosures (or his change of heart), the Lipitzes could have protected themselves against a loss by delivering [the disclosures]. Having remained silent when he should have spoken, Hurwitz is estopped from asserting the defense he would have had but for his silence."

Hurwitz responds to this argument by pointing out that he did not make any express representations to the Lipitzes regarding the HOA Act's disclosure requirements, and that the Lipitzes' alleged detriment was caused by their own mistake regarding which disclosures they were legally required to make to Hurwitz under RP § 11B-106(b).

Although we agree with the circuit court's assessment that the problem regarding HOA disclosures "starts with the Lipitzes," we do not agree that, as a matter of law, "that's the end of the application of the doctrine" of equitable estoppel.

The Court of Appeals provided the following definition of equitable estoppel in its opinion in the previous appeal:

> "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse

> and who on his part acquires some corresponding right, either of property, of contract, or of remedy."

Lipitz, *supra*, 435 Md. at 291 (quoting *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 309 (2007)).

"Equitable estoppel essentially consists of three elements: 'voluntary conduct or representation, reliance, and detriment.'" *Id*. (quoting *Hill*, *supra*, 402 Md. at 310). "[E]quitable estoppel can be raised as a defense to a claim based on the disclosure requirements of [RP] § 11B–106(b)." *Id.* at 292. "[T]he party who relies on an estoppel has the burden of proving the facts that create it." *Knill v. Knill*, 306 Md. 527, 535 (1986). **"'[E]quitable estoppel may be applied, not only when the conduct of the party to be estopped has been wrongful or unconscientious**, and relied upon by the other party to his detriment, **but also when the conduct, apart from its morality, has the effect of rendering it inequitable and unconscionable to allow the rights or claims to be asserted or enforced**.'" *Olde Severna Park Improvement Ass'n, Inc. v. Barry*, 188 Md. App. 582, 596 (2009) (emphasis added) (quoting *Zimmerman v. Summers*, 24 Md. App. 100, 123 (1975)). "**Whether an estoppel exists is a question of fact to be determined in each case.**" *Creveling v. Gov't Employees Ins. Co.*, 376 Md. 72, 102 (2003) (emphasis added) (internal quotations omitted); *accord Gould v. Transamerican Associates*, 224 Md. 285, 297 (1961); *Coll. of Notre Dame of Maryland, Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 180 (2000).

Although we have observed that the general rule is that "[m]ere silence will generally not raise an estoppel against a silent party," *Sav-A-Stop Services, Inc. v. Leonard*,

44 Md. App. 594, 599 (1980), *aff'd*, 289 Md. 204 (1981), we explained in *Ganley v. G & W Ltd. P'ship*, 44 Md. App. 568, 577 (1980), that certain situations may give rise to an equitable estoppel defense even if the conduct of the party to be estopped consists of silence:

> "It has been very justly and forcibly observed that there is a negative fraud in imposing a false apprehension on another by silence where silence is treacherously oppressive. **In equity, therefore, 'where a man has been silent when in conscience he ought to have spoken, he shall be debarred from speaking when conscience requires him to be silent.'** *Harris v. Am. Bldg., etc., Ass'n.*, 122 Ala. 545, 25 South. 200. Silence is a species of conduct and constitutes an implied representation of the existence of the state of facts in question, and the estoppel is accordingly a species of estoppel by misrepresentation. 16 Cyc. 681, note 10. When the silence is of such a character and under such circumstances that it would become a fraud upon the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act upon it, it will operate as an estoppel. 16 Cyc., 756. **Where a person with actual or constructive knowledge of the facts induces another by his words or conduct to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on such belief, alters his position, such person is estopped from repudiating the transaction to the other's prejudice.** *Id*. 791, and cases in note 87."

(Quoting *Carmine v. Bowen*, 104 Md. 198, 203–204 (1906)) (emphasis added).

The circuit court's granting of summary judgment in favor of Hurwitz was premised upon the court's conclusion that the breach of the sellers' duty to make the HOA disclosures required under the HOA Act "start[ed] with the Lipitzes," and, in the court's view, that undisputed fact barred the Lipitzes from relying upon the doctrine of equitable estoppel as a basis to prevent Hurwitz from availing himself of the remedy for the Lipitzes own breach. As quoted earlier in this opinion, the circuit court explained:

> All right. Well, I think I understand [counsel for the Lipitzes'] argument. Is there -- but **I am not persuaded that, under these facts, that the equitable estoppel doctrine is available to the Lipitzes under this circumstance, when the -- it is through their mistake, that has nothing to do with Mr. Hurwitz.** He is under no obligation to advise them.
>
> I hear what you are saying about fair play and honest dealing, but I do not think that means that Mr. Hurwitz has any obligation to the sellers here to say, I think you are wrong and the HOA [Act] does apply to your property.
>
> * * *
>
> If you had some evidence Mr. Hurwitz knew that the HOA applied to the Lipitzes' property, then I think that long line of cases would apply, but that's not the situation here.

(Emphasis added.)

The circuit court's assumption that there was no evidence that Hurwitz's knowledge about the applicability of the HOA Act was superior to that of the Lipitzes was apparently based upon the following exchange with the Lipitzes' counsel at the hearing on the cross-motions for summary judgment:

> [COUNSEL FOR THE LIPITZES]: [I]f it were [Mr. Hurwitz's] position at the time, at the relevant time that the Lipitzes needed to make some disclosures to him, fair play and honest dealing called for him to make it known.
>
> And the hide the ball or to say that ten days later, and **I am not saying that he did in fact know at the time**. **That is not**, you know, **in evidence about what he knew**.
>
> But if he did or if he didn't, he should have, and fair play and honest dealing would have called for him to make that fact known.
>
> * * *

> [THE COURT]: **Well, obviously, <u>we don't have anything in this record to indicate that he knew</u> that the HOA did apply to the Lipitzes' property.**
>
> [COUNSEL FOR THE LIPITZES]: **I concede that fully**.

(Emphasis added.)

On appeal, the Lipitzes indicate that this concession referred to direct evidence of Hurwitz's subjective knowledge, and point to Hurwitz's conduct and ownership of other properties in the subdivision as circumstantial evidence of his knowledge. As noted above, there is authority for the proposition that equitable estoppel can be invoked to prevent the assertion of rights even when the inequity arises from a party's silence or negative omission to act:

> The whole doctrine of equitable estoppel is a creature of equity and governed by equitable principles. It was educed to prevent the unconscientious and inequitable assertion of rights or enforcement of claims which might have existed or been enforceable, **had not the conduct of a party, including** his spoken and written words, his positive acts and **his silence or negative omission to do anything**, rendered it inequitable and unconscionable to allow the rights or claims to be asserted or enforced.

Johnson Lumber Co. v. Magruder, 218 Md. 440, 447–48 (1958) (emphasis added). But the Court of Appeals has also emphasized that a party who "desire[s] to invoke the doctrine of equitable estoppel" must exercise "ordinary care and caution and reasonable diligence," *id*. at 449, for "otherwise no equity arises in his favor." *Id*. at 448 (emphasis omitted); *see also Bessette v. Weitz*, 148 Md. App. 215, 242 (2002); *Hovnanian Land Inv. Grp., LLC v. Annapolis Towne Ctr. at Parole, LLC*, 421 Md. 94, 117–18 (2011).

The Court of Appeals's opinion in *Lipitz* supports the Lipitzes' claim that equitable estoppel can preclude Hurwitz's cancellation of their contract even if the evidence will show that Hurwitz made no affirmative misrepresentations. Indeed, the Court of Appeals expressly held that "equitable estoppel can be raised as a defense to a claim based on the disclosure requirements of [RP] § 11B-106(b)," *Lipitz*, *supra*, 435 Md. at 292, and any failure of a seller to make the required disclosures necessarily "starts with" the seller who, as we have outlined above, has the statutory duty to provide the HOA information. Consequently, we conclude that the fact that the Lipitzes may have been mistaken about their legal obligation to provide disclosures under the HOA Act does not foreclose, as a matter of law, the Lipitzes from asserting the doctrine of equitable estoppel to prevent Hurwitz from cancelling the contract under § 11B-108(a) of the HOA Act. *Cf. Peruzzi Bros. v. Contee*, 72 Md. App. 118, 131-32 (1987) (equitable estoppel applicable where it is "inequitable and unconscionable to allow the rights or claims to be asserted or enforced" (quoting *Johnson Lumber*, *supra*, 218 Md. at 448)).

Because this case was decided upon Hurwitz's motion for summary judgment, we are obligated to consider all evidence and all reasonable inferences from the evidence in the light most favorable to the Lipitzes. When we do so, we conclude, as the Court of Appeals did when it last considered an appeal in this controversy, that, "under the circumstances of this case, it is for the trier of fact to determine whether the buyer is equitably estopped from walking away from this contract." *Lipitz, supra*, 435 Md. at 293.

Here, the parties signed the contract for the sale of the Lipitzes' property on August 6, 2009, and set the date of closing for November 2, 2009. A number of events took place in the months between August 6, 2009, and November 1, 2009. During this time, Hurwitz visited the property and expressed to the Lipitzes his enthusiasm and eagerness to close on the property. On September 24, 2009, Hurwitz agreed to purchase over $60,000 worth of the Lipitzes' furniture, and represented that he intended to keep this furniture at the property. According to the Lipitzes' real estate agent, Ms. Claster, the Lipitzes offered Hurwitz a Caves Valley "green binder" containing all of the required HOA disclosures, but Hurwitz declined to accept to the binder. Candace Claster further testified that the real estate agent for Hurwitz, Heidi Krauss, had informed her that Hurwitz did not need the binder because "he has green binders. He is very aware of all of Caves' information." Until the day scheduled for closing, Hurwitz raised no concerns regarding the lack of information provided by the Lipitzes regarding the HOA.

By October 28, 2009, the Lipitzes had not only discontinued marketing their property, they had also moved all of their furniture out of the house (except for items of furniture that Hurwitz had purchased). On October 29, 2009, Hurwitz attended the final walk through of the property with Ms. Gell.

During the same period of time Hurwitz and the Lipitzes were under contract, Hurwitz, through Ms. Krauss, was attempting to sell another property Hurwitz owned in the Caves Valley subdivision to Mr. and Mrs. James Berg. Mr. Berg, via affidavit, stated that Ms. Krauss had provided the Bergs with a Caves Valley "green binder," and that the

sale contract between the Bergs and Hurwitz contained an "HOA Addenda Form." The addendum, entitled "Maryland Homeowners Association Act Disclosures to Buyer and Transmittal of Documents," contains a signature by Hurwitz attesting that he had "provided [to the Bergs] all information necessary to complete this Addendum, in compliance with [Maryland Homeowners Association Act] . . . ." Hurwitz's contract with the Bergs was executed November 2, 2009, the same day the closing was to occur with the Lipitzes. As of that date, Hurwitz had not given the Lipitzes any notice of his intent to cancel their contract.

It was not until November 1, 2009, the day before the closing was to occur, that Hurwitz's real estate agent, Ms. Krauss, orally informed the Lipitzes' agent, Ms. Claster, that Hurwitz would not attend the closing on the property. According to Ms. Claster, she had been told at that point in time that the reason Hurwitz would not be attending the closing was because he was having an issue obtaining financing. On November 11, 2009, Hurwitz mailed a notice to the Lipitzes advising that he was exercising his right to terminate the contract of sale because the contract did not include language required by the HOA Act, and the Lipitzes had failed to provide the disclosures required by the HOA Act. Hurwitz's attorney similarly wrote the Lipitzes' attorney on November 12, 2009, and informed the Lipitzes that Hurwitz was canceling the contract because the Lipitzes had not complied with the HOA Act.

The Lipitzes asserted that, after entering into the contract with Hurwitz, they immediately took their property off the market, and did not pursue any additional

marketing, although the Lipitzes further stated that they turned away several potential buyers between August and November 2009. After the property was placed back on the market, the Lipitzes' property sold for $2,695,000.00, roughly $1.3 million lower than the $4,047,500.00 sale price Hurwitz had agreed to pay for the property.

Although most of the facts are undisputed, we conclude that, if the evidence is considered in the light most favorable to the Lipitzes, there is a genuine dispute of material facts that could support a defense of equitable estoppel. Considering all the evidence, including circumstantial evidence and all inferences, in the light most favorable to the Lipitzes, we conclude that a rational jury could find that the Lipitzes reasonably relied, to their detriment, on Hurwitz's voluntary conduct, and that he is barred by equitable estoppel from availing himself of the statutory remedy he would otherwise be entitled to under RP § 11B-108(a).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED, AND THE CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.