

Circuit Court for Montgomery County
Case No. 409511-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2470

September Term, 2015

RODNEY RYAN GRAVES

v.

NATHANIEL SPINNER, *et al.*

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 27, 2018

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Rodney Ryan Graves returns to this Court to appeal a dismissal of a claim for specific performance. This time, he filed a complaint for declaratory judgment and specific performance against Nathaniel Spinner and Spinner Development, LLC (collectively “Spinner”) in the Circuit Court for Montgomery County. He sought a declaration that a contract existed between Spinner and him, and he asked the court to enforce the contract. The court granted Spinner’s motion to dismiss and Mr. Graves appeals. We affirm.

I. BACKGROUND

In 2015, Mr. Graves mailed a document to Spinner entitled “INTENT TO SUE FOR REFUSAL TO PAY FOR SERVICES” (the “Notice”). The Notice asserted that on March 14, 2015, Mr. Graves and Spinner entered into an “implied contract” to invest in commercial and residential real estate construction projects, that Spinner had agreed to purchase properties and Mr. Graves to fund renovations; and that Spinner breached their agreement by failing to pay the agreed amount. The Notice stated that failure by Spinner to pay the amount demanded “constitute[d] mutual consent and agreement . . . and establishe[d] this Notice as a contract.” And the Notice concluded with the warning that “THIS IS A CONTRACT, your failure to remit payment and rebut this affidavit is acquiescence, you have Ten (10) days to remit payment and answer, or this contract becomes law.”

When Spinner didn’t respond to the Notice, Mr. Graves filed a complaint in the Circuit Court for Montgomery County seeking a declaratory judgment that the Notice had formed an enforceable contract between Spinner and him and that Spinner had breached

the contract by failing to pay the demanded amount. As relief, the complaint requested specific performance of the terms contained in the Notice. Spinner moved to dismiss the complaint on the ground that it failed to state a claim for breach of contract, and moved for summary judgment in the event the court deemed the complaint sufficient. After a hearing, the circuit court found that the Notice did not form a contract, denied Mr. Graves’s motion for declaratory judgment, and granted Spinner’s motion to dismiss. Mr. Graves noted a timely appeal.¹

II. DISCUSSION

Mr. Graves appeals² the circuit court’s dismissal of his claim for declaratory relief and finding that no contract existed between Spinner and him. We review a circuit court’s grant of a motion to dismiss *de novo*. *Bacon v. Arey*, 203 Md. App. 606, 651 (2012).

A. The Notice Did Not Form A Contract.

Mr. Graves opens the argument section of his brief by contending that the circuit court lacked subject matter jurisdiction to dismiss his complaint. This, of course, is not what he really means—as the plaintiff in the circuit court, Mr. Graves *invoked* the court’s

¹ On July 3, 2017, Spinner filed a motion to dismiss the appeal as moot, arguing that pursuant to *res judicata*, final judgment in a subsequent case involving the same parties and claims rendered the appeal moot. We denied their motion.

² Mr. Graves phrased the Questions Presented in his brief as follows:

1. Did the lower Court exceed its jurisdiction by ignoring Appellants evidence of Records, Acts and Judicial proceedings in due form?
2. Whether Judge McCally committed an error in law or an abuse in discretion in failing to acknowledge Appellant Contract with Appellees?

jurisdiction when he filed his complaint, and his appellate arguments seek a further opportunity to have the case decided there.

Instead, Mr. Graves really is challenging the circuit court’s decision to dismiss his complaint. He contends the circuit court erred in finding no contract existed between Spinner and him, and that the Notice was a demand letter that never resulted in a meeting of the minds:

This [c]ourt is making a finding that this letter that is dated August 22nd is exactly that. It is a letter from Mr. Graves to Mr. Spinner, to Mrs. Spinner and to Spinner Development LLC but in no way is it a contract. There is no space provided for anybody by the last name of Spinner to sign it. There is no consideration for it. It is a demand letter for performance that then adds in this is a binding contract that you must respond to.

There is simply no consideration whatsoever with regard to this document. So as to specific performance the [c]ourt is going to grant the motion to dismiss because there is no remedy at law that this [c]ourt could utilize since there is no valid contract that has been offered here and nothing for the Spinners to, it’s not a contract. It says it is a contract but it has no consideration. It has no offer and there’s no provision for acceptance.

“Creation of a contract requires an offer by one party and acceptance by the other party.” *Cochran v. Norkunas*, 398 Md. 1, 23 (2007). “Acceptance of an offer is requisite to contract formation, and common to all manifestations of acceptance is a demonstration that the parties had an actual meeting of the minds regarding contract formation.” *Id.* “[I]n other words, to establish a contract the minds of the parties must be in agreement as to its terms.” *Mitchell v. AARP Life Ins. Program, New York Life Ins. Co.*, 140 Md. App. 102, 117 (2001) (cleaned up).

We agree that no contract was formed between Spinner and Mr. Graves. Mr. Graves does not even allege that Spinner ever agreed to the terms in the Notice. And although he contends Spinner “acquiesced” to the terms of the contract by failing to respond within the time allotted, that’s not how contracts normally are formed. And unless (a) the parties specifically agreed that silence could serve as an acceptance, (b) Spinner had benefited from the offer, or (c) it’s reasonable, based on past dealings, to infer that Spinner would have notified him if he didn’t intend to accept, silence cannot serve as acceptance of an offer. *See Cochran*, 398 Md. at 23–24. Mr. Graves has not alleged that any of those exceptions applied here, and they don’t. There is no allegation of any previous agreement to treat silence as acceptance, nor any course of dealing involving Spinner accepting and performing terms without manifesting assent, nor any benefit to Spinner from this arrangement. Accordingly, the court correctly dismissed Mr. Graves’s breach of contract claim and declined to order specific performance on a contract that never came into being.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**