

H.C. Utilities, LLC v. Song Y. Hwang, et al., No. 2423, September Term 2018. Opinion by Beachley, J.

CONTRACT—PERSONAL LIABILITY FLOWING FROM DECLARATION RECORDED IN LAND RECORDS

CONTRACT—STATUTE OF FRAUDS—DECLARATION NOT SIGNED BY THE PARTY TO BE CHARGED

Appellant owns the rights to a declaration (the “Declaration”) recorded in the Land Records for Howard County, giving it the right to recover utility charges related to Water and Sewer facilities. The Declaration provides that owners of property covered by the Declaration must make annual utility payments to H.C. Utilities for the Water and Sewer facilities, and that owners are also responsible for charges unpaid and due upon taking title to such property. On October 23, 2006, Olasumbo Agbe-Davies purchased property subject to the Declaration. Agbe-Davies failed to pay the Water and Sewer charges, and apparently also failed to make mortgage payments.

After foreclosure, on April 6, 2016, appellee Hwang purchased the Agbe-Davies property. H.C. Utilities then sought payment of Agbe-Davies’s unpaid Water and Sewer charges from Hwang pursuant to the Declaration, and filed a contract action to recover those charges. Hwang moved for summary judgment, and the circuit court found that although the Declaration constituted a binding contract between the parties, the debts associated with the unpaid charges were discharged in Agbe-Davies’s foreclosure. The court therefore granted summary judgment in favor of Hwang. H.C. Utilities appealed.

Held: Judgment affirmed. Although the Declaration constitutes a “contract” for purposes of the Maryland Contract Lien Act, that Act does not provide a statutory cause of action creating personal contractual liability. Instead, the Act simply provides the procedures for obtaining a lien on property.

Having established that the Maryland Contract Lien Act does not create a cause of action for personal contractual liability, the Court applies basic principles of contract law to determine whether the Declaration creates personal contractual liability. The statute of frauds requires a contract to be signed in writing by the party to be charged where, relevant here: 1) the contract cannot be completed within one year, and 2) the contract concerns an interest in land. Here, the Declaration requires property owners to pay the annual Water and Sewer charges over the course of forty years. Additionally, the Declaration concerns an interest in real property. Because Hwang never signed the Declaration, Hwang is not personally liable for charges set forth in the Declaration.

Circuit Court for Howard County
Case No. 13-C-17-113744

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2423

September Term, 2018

H.C. UTILITIES, LLC

v.

SONG Y. HWANG, ET AL.

Fader, C.J.,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 29, 2020

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Suzanne C. Johnson, Clerk

On December 18, 2017, appellant H.C. Utilities, LLC, filed a single count complaint in the Circuit Court for Howard County against appellees Song and Myong Hwang (“Ms. Hwang¹”). The complaint sought damages for breach of contract stemming from a Declaration recorded in the Land Records for Howard County which established a covenant running with the property at 8875 Warm Granite Drive, Unit 28, Columbia, Maryland (the “Property”). Specifically, H.C. Utilities alleged that Ms. Hwang was personally obligated to pay charges provided for in the Declaration, namely, the charges due and unpaid by the previous owner at the time Ms. Hwang acquired title to the Property. Following Ms. Hwang’s motion to dismiss, or in the alternative, for summary judgment, and H.C. Utilities’s response and cross-motion for summary judgment, the parties appeared for a hearing on May 15, 2018.

On July 20, 2018, the circuit court issued a Memorandum Opinion denying H.C. Utilities’s motion for summary judgment and granting Ms. Hwang’s motion for summary judgment. Following H.C. Utilities’s unsuccessful motion to alter or amend, H.C. Utilities noted a timely appeal, and Ms. Hwang noted a timely cross-appeal. H.C. Utilities presents the following question for our review:

Did the Circuit Court err in ruling that, despite the explicit provisions of a prior-recorded covenant running with the land, a foreclosure of a subsequently-recorded lien operated to extinguish the contractual liability of [Ms. Hwang], as enforcement of the provisions of a water and sewer declaration would offend public policy?

In her cross-appeal, Ms. Hwang presents the following question for our review:

¹ Sadly, Myong Hwang passed away during the pendency of this litigation. For clarity we shall simply refer to Ms. Hwang throughout the opinion.

Did the Circuit Court err in finding that the June 20, 2005 Utility Declaration recorded among the public land records constituted a contract between H.C. Utilities and Ms. Hwang?

As we shall explain, the Utility Declaration recorded among the land records did not, as a matter of law, create a contract between the parties such that Ms. Hwang could be susceptible to personal liability. Accordingly, we affirm the circuit court's granting of summary judgment in favor of Ms. Hwang, albeit for a different reason.²

FACTS AND PROCEEDINGS

The parties agree that there are no genuine disputes of material fact. On June 20, 2005, Patriot Homes, Inc. ("Patriot Homes") recorded in the Land Records of Howard County a Utility Declaration titled "Villas at Snowden Overlook Declaration Establishing Water and Sewer Facilities Charges" (the "Declaration"). The Declaration stated that Patriot Homes owned certain property in Howard County, and as part of a scheme of development, Patriot Homes would provide that property with water pipes, sewer pipes, and connection lines for water and sewer facilities ("Water and Sewer Facilities") pursuant to an agreement between Patriot Homes and Howard County. Rather than assess the costs of providing the Water and Sewer Facilities to Howard County, the Declaration explained that Patriot Homes would recover those costs from future owners of units on the property (and their successors) over the course of forty years.

² "Ordinarily, an appellate court will not affirm a summary judgment by ruling on a ground not ruled upon by the trial court. If the alternative ground is one as to which the trial court had no discretion, however, summary judgment may be affirmed." *Thomas v. City of Annapolis*, 113 Md. App. 440, 450 (1997) (citing *Md. Casualty Co. v. Lorkovic*, 100 Md. App. 333, 357 (1994)).

The Declaration further provided that it was meant to establish a covenant running with the property, and that it was binding upon Patriot Homes and all of its future successors and assigns, as well as the future unit owners, and all of their successors and assigns. Relevant to this appeal, the Declaration contained the following language requiring the payment of charges due when a grantee would acquire title to a lot on the property:

From and after the date hereof, upon fee simple conveyance by the Declarant of any Unit or any other portion of the Property comprising a Unit or Units, any and each such grantee shall pay all charges provided for in this Declaration at the times and in the manner required herein, whether or not such requirement be so expressed in any conveyance deed. Said charges shall include, without limitation, all those charges due and unpaid at the time said grantee acquires title, and all those charges thereafter falling due as long as said grantee shall hold title of record, without the right in any event to reimbursement from the Declarant or its successors or assigns for charges which said owner may pay in advance.

On June 27, 2007, Patriot Homes assigned certain rights created under the Declaration to H.C. Utilities, thereby authorizing H.C. Utilities to legally enforce the rights and obligations, if any, arising under the Declaration.

On October 23, 2006, Olasumbo Agbe-Davies bought the Property pursuant to a Purchase Money Deed of Trust. Nearly ten years later, on April 6, 2016, a foreclosure action was initiated against Agbe-Davies, apparently due to a failure to make mortgage payments. Following that foreclosure and sale, on February 24, 2017, Ms. Hwang became the record owner of the Property. Ten months later, H.C. Utilities initiated this action against Ms. Hwang by filing a single-count complaint for breach of contract in the Circuit Court for Howard County. The complaint alleged that \$12,494.29 in utility charges were

due when Ms. Hwang purchased the Property, and that pursuant to the Declaration, Ms. Hwang was personally liable for those charges. The complaint also sought to recover the costs of collection, late charges, and attorneys' fees. After filing an amended answer, Ms. Hwang filed a motion to dismiss, or in the alternative, for summary judgment. In its response to Ms. Hwang's motion, H.C. Utilities filed a cross-motion for summary judgment.

The parties appeared for a hearing on their respective motions for summary judgment on May 15, 2018. At the conclusion of the hearing, the circuit court instructed the parties to file supplemental memoranda, and held the matter sub curia. Following those filings, the circuit court issued its memorandum opinion. In its opinion, the circuit court held that the Declaration created "in personam" liability against Ms. Hwang, but that the April 6, 2016 foreclosure action extinguished any such liability. Thus, the court entered judgment in favor of Ms. Hwang.

H.C. Utilities timely moved to alter or amend that judgment, and following a hearing on September 6, 2018, the circuit court denied H.C. Utilities's motion. H.C. Utilities timely noted an appeal, and Ms. Hwang timely noted a cross-appeal.

DISCUSSION

The central issue in this case is whether the Declaration constitutes a legally binding contract between the parties so as to impose personal liability on Ms. Hwang. As we shall explain, the Maryland Contract Lien Act, codified at Md. Code (1974, 2015 Repl. Vol.), § 14-201 et. seq. of the Real Property Article ("RP"), defines "contracts" for purposes of recording liens against property, but does not create an independent cause of action

sounding in contract. Furthermore, we are aware of no authority in this State holding that a declaration signed by a single party and recorded in the land records establishes personal liability against owners of property whose land is subject to that declaration. We therefore conclude that, because the Declaration at issue here does not constitute an enforceable contract for personal liability under Maryland contract law, H.C. Utilities cannot seek personal damages from Ms. Hwang pursuant to the Declaration.

I. The Maryland Contract Lien Act Does Not Create an Independent Cause of Action for Personal Contractual Liability

In its brief, H.C. Utilities argues that “Covenants running with the land, like the [Declaration], are not liens, but rather they are contractual obligations.” In support of this contention, H.C. Utilities cites to *Select Portfolio Servicing v. Saddlebrook W. Util. Co.*, 455 Md. 313 (2017). As we shall explain, *Select Portfolio* does not support the proposition that covenants such as those that appear in the Declaration here create personal contractual liability between parties.

In *Select Portfolio*, the Court of Appeals examined the “use of a lien as part of a deferred financing arrangement for the construction of the water and sewer infrastructure to serve a new home development.” *Id.* at 315. There, a developer, Saddlebrook West, LLC (“Saddlebrook”), recorded a declaration in the land records of Prince George’s County which required future homeowners in Saddlebrook’s development to pay an annual assessment to Saddlebrook West Utility, LLC (“Utility”). *Id.* at 315, 317-18. The declaration provided that Saddlebrook and Utility would provide water and sewer infrastructure for the lots on a planned and soon-to-be-developed subdivision, and in order

to recover those costs, the declaration imposed an annual assessment on each of the lots. *Id.* at 317-18.

Of particular relevance was the fact that the declaration sought to establish a lien against future lot owners in order to secure payment of the annual assessment. *Id.* at 318-19. The Court of Appeals explained:

One paragraph of the [declaration] stated that each lot owner, by accepting deed to a lot, agree[d] to pay the annual water and sewer charge to Utility and grant[ed] Utility a lien to secure payment of that assessment. A later paragraph stated that the lien created with respect to each lot would have priority from the date of recording of the [declaration] in the land records over “any subsequently recorded or created lien, deed of trust, mortgage or other instrument encumbering” a lot. The [declaration] stated that, if a lot owner fail[ed] to pay an annual assessment, Utility [could], among other things, foreclose on the lien against the lot “in the manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property” and foreclose on the lien under the Maryland Contract Lien Act.

Id. Saddlebrook recorded the declaration in the land records for Prince George’s County on May 17, 2000. *Id.* at 319.

In October 2001, Saddlebrook entered into a “Lot Purchase Agreement” with Maryland Homes CD, LLC (“Maryland Homes”), a builder that was to purchase Saddlebrook’s lots in order to build single-family homes on them. *Id.* at 320. In November 2001, Maryland Homes purchased a property and recorded the deed conveying that property in the land records. *Id.* at 320-21. On April 1, 2002, Charles Bradley, Jr. purchased that property from Maryland Homes. *Id.* at 321. The deed conveying the property was recorded in the land records on April 23, 2002. *Id.*

On January 1, 2003, Mr. Bradley’s first annual water and sewer charge came due

pursuant to the declaration. *Id.* “Mr. Bradley apparently failed to pay that charge—or the charge that came due the following year on January 1, 2004.” *Id.* Consequently, a management company for Utility recorded two “Statements of Lien” in favor of Utility, both of which indicated that the property was covered by the declaration and subject to a lien pursuant to the Maryland Contract Lien Act. *Id.*

Shortly after Utility recorded the second lien against his property, Mr. Bradley sold it to Sherrylyn Mitchell on January 6, 2005. *Id.* at 321-22. The deed conveying the property was recorded in the land records on March 8, 2005. *Id.* Relevant here, “the Statements of Lien were not paid, cleared, and released upon closing of the sale of the [p]roperty by Mr. Bradley to Ms. Mitchell.” *Id.* at 323. Following the sale, Ms. Mitchell sought to refinance her loan, and did so with Long Beach Mortgage Company (“Long Beach”), which sold the loan to JP Morgan Chase Bank, N.A., which in turn sold the loan to Select Portfolio Servicing, Inc. (“Select Portfolio”). *Id.*

On October 7, 2010, Utility commenced foreclosure proceedings against Ms. Mitchell’s property for the unpaid water and sewer charges. *Id.* at 324. On March 5, 2012, Select Portfolio filed a motion to stay and dismiss the foreclosure proceeding, and also filed a declaratory judgment action which alleged, among other things, “that the [declaration] did not itself create a lien that gave Utility a priority over [Select Portfolio’s] Deed of Trust.” *Id.* at 324-25. The circuit court found that the declaration was “a valid, enforceable first-priority lien encumbering the [p]roperty[.]” reasoning that the declaration created a “‘super lien’ in favor of Utility that ‘[took] effect’ when a lot is sold to the first homeowner—in this case, Mr. Bradley.” *Id.* at 328. The Court of Appeals noted that

although “the [trial] court did not expressly address [Select Portfolio’s] argument that the Maryland Contract Lien Act is the sole vehicle for enforcement of any lien created under the [declaration],” it implicitly rejected the argument “that the [declaration] created a first-priority lien.” *Id.* at 328.

On appeal, the Court of Appeals began by reviewing the provisions of the Maryland Contract Lien Act. *Id.* at 330. It noted that, “[f]or purposes of the statute, a ‘contract’ is ‘a real covenant running with the land or a contract recorded among the land records of a county or Baltimore City.’” *Id.* (citing RP § 14-201(b)(1)). The Court further explained that the Maryland Contract Lien Act “was designed to establish procedural rules that comported with due process for establishing, enforcing, or denying a lien based on a contract.” *Id.* at 332 (citing Report of Senate Judicial Proceedings Committee concerning Senate Bill 625 (March 20, 1985)).

Turning to whether the declaration itself established a lien against the property, the Court acknowledged that, because the declaration created a covenant running with the land, it “fits the definition of ‘contract’ under the Maryland Contract Lien Act, and the establishment and enforcement of a lien for nonpayment of the water and sewer infrastructure assessment under the Act is appropriate.” *Id.* at 333.

Explaining the framework for the Maryland Contract Lien Act, the Court wrote:

RP § 14–201 contains the basic definitions applicable to the statute. RP § 14–202 defines the universe of contracts for which a lien may be created and the extent of the lien—*i.e.*, the contract has to expressly provide for the creation of a lien and must explicitly describe the property and party involved; a lien may only secure payment of the listed items. In particular, a lien may only secure damages and related costs, which necessarily relates the lien to a breach of the contract. RP § 14–203 then sets

forth the specific procedures that must be followed to establish a lien as a result of that breach. RP § 14–204 then sets forth how the lien, once established, may be enforced.

Id. at 334. In rejecting the notion that the declaration itself constituted a lien against the property, the Court noted “[i]t would be completely at odds . . . to provide for the creation of a lien by virtue of a contract alone and exempt it from the procedures that the statute created.” *Id.* at 336. The Court acknowledged that “the [declaration] may [have been] a contract for purposes of the Maryland Contract Lien Act But the [declaration] itself is not a statement of lien” *Id.* Finally, the Court rejected Saddlebrook and Utility’s attempt “to find a basis for the creation of a lien by the [declaration]” in the Maryland Rules. *Id.* at 337. The Court noted that although Title 14 of the Maryland Rules concerns foreclosure rules, “[t]he adoption of rules of procedure is not an occasion for the creation of substantive law concerning interests in real property and, even if it was, the rules in question govern the procedures for *foreclosure* of a lien, not the *creation* of the lien.” *Id.*

Turning to the instant case, H.C. Utilities argues that *Select Portfolio* stands for the proposition that “[c]ovenants running with the land, like the [Declaration] are not liens, but rather they are contractual obligations.” H.C. Utilities reads *Select Portfolio* too broadly. First, *Select Portfolio* makes clear that the word “contract” is essentially a term of art to be used only within the confines of the Maryland Contract Lien Act:

(b)(1) “Contract” means a real covenant running with the land or a contract recorded among the land records of a county or Baltimore City.

(2) “Contract” includes a:

(i) Declaration or bylaws recorded under the provisions of the Maryland Condominium Act or the Maryland Real Estate Time-Sharing Act[.]

RP § 14-201(b)(1-2) (footnote omitted). These “contracts” as specifically defined in the Maryland Contract Lien Act may be used to create liens on property pursuant to RP § 14-202. To that extent, H.C. Utilities is correct that the Declaration created a contract for purposes of the Maryland Contract Lien Act. However, H.C. Utilities is incorrect in its assertion that the Declaration creates an independent cause of action under Maryland contract law to impose personal liability. Indeed, the Maryland Contract Lien Act implicitly acknowledges that an owner’s personal liability is separate and distinct from the Act’s lien provisions. RP § 14-204(b) expressly provides: “If the owner of property subject to a lien is personally liable for alleged damages, suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit for a monetary judgment for unpaid damages may be maintained without waiving any lien securing the same.”

Second, as evidenced in *Select Portfolio*, the Maryland Contract Lien Act concerns the procedures for recording liens against real property, and holds that the mere existence of a recorded declaration does not, in and of itself, establish a lien against real property. Indeed, the only issue in *Select Portfolio* was the priority of the declaration against other lienholders. Thus, the actual holding of *Select Portfolio* concerning lien priority is wholly unavailing to H.C. Utilities’s argument that a “contract” as defined by the Maryland Contract Lien Act creates personal contractual liability. In short, we see nothing in *Select Portfolio* to support the proposition that the Maryland Contract Lien Act creates a statutory cause of action in contract that would impose personal liability.

II. There is a No Authority Providing that a Declaration Signed by a Single Party Constitutes a Contract

In its appellate brief, H.C. Utilities reiterates that it “is not asserting a lien in this matter. Rather, [H.C. Utilities] seeks to enforce a contractual provision of a covenant that runs with the land that was duly recorded prior to the lien instrument that was the basis of the Foreclosure Action.”³ Although there appears to be no dispute that the Declaration is a “contract” for purposes of the Maryland Contract Lien Act, H.C. Utilities fails to provide any authority to support its theory that the Declaration also constitutes a legally binding contract under Maryland contract law sufficient to impose personal liability on Ms. Hwang.

Indeed, our own research has failed to uncover any Maryland authority recognizing that the type of declaration at issue here constitutes a legally binding contract giving rise to personal liability.⁴ The only case that acknowledges this issue is *Bright v. Lake Linganore Ass’n, Inc.*, 104 Md. App. 394 (1995). There, multiple homeowners appealed a judgment that upheld the validity and application of certain covenants and restrictions in favor of Lake Linganore Association, Inc., a homeowners association. *Id.* at 395-96. The judgment also imposed liens against various lots belonging to the homeowners pursuant to

³ Because H.C. Utilities unequivocally asserts that it is not pursuing a lien against the Property pursuant to the Maryland Contract Lien Act, our discussion is limited solely to whether H.C. Utilities may pursue its contract claim against Ms. Hwang for personal liability. We express no opinion regarding the rights or abilities of a lienholder to enforce a lien under the Maryland Contract Lien Act.

⁴ RP § 11-110(c) addresses a condominium unit owner’s personal liability for assessments provided in a declaration, and RP § 11B-117 addresses a lot owner’s liability for assessments pursuant to the Maryland Homeowners Association Act. Neither of these statutes apply in this case.

the Maryland Contract Lien Act, and, relevant to the instant case, rendered a judgment against one family pursuant to a claim for quantum meruit.⁵ *Id.* at 396.

In reversing the trial court’s quantum meruit award, the *Bright* Court recognized the novelty of the issue that is similarly presented in the instant case:

Because the original claims . . . clearly proffered the contract claims and quantum meruit claims as alternate theories supporting the collection of but a single sum allegedly due, *we do not address the interesting and potentially important issue of whether quantum meruit claims can arise out of these types of developmental declarations, independent of the Contract Lien Act or other contract theories.*

Id. at 437 (emphasis added).⁶ Thus, the *Bright* Court clearly side-stepped the “interesting and potentially important issue” now raised in the instant case concerning the imposition of personal liability arising from a developmental declaration.⁷

Not only are we unable to find any authority supporting the position that a mere

⁵ We note that a claim for quantum meruit, though different than a claim for breach of contract, involves personal liability. *See Alts. Unlimited, Inc. v. New Baltimore City Bd. of School Comm’rs*, 155 Md. App. 415, 482-83 (2004) (stating that quantum meruit “is sometimes employed to measure damages in the case of an implied-in-fact contract and sometimes employed to assess reasonable restitution in the case of a quasi-contract” (citing *Mogavero v. Silverstein*, 142 Md. App. 259, 274-75 (2002))).

⁶ Although the Court noted this “interesting and potentially important issue,” it went on to hold that the Association “received all that it had requested” when the lien was established, rendering the quantum meruit judgment duplicative to the lien. *Bright*, 104 Md. App. at 437.

⁷ At oral argument, H.C. Utilities suggested that *Columbia Ass’n., Inc. v. Poteet*, 199 Md. App. 537 (2011) supported its assertion that a recorded declaration gives rise to personal liability of a subsequent grantee. Not only are the facts of that case distinguishable, but the Court held that the grantees’ liability there had been conclusively determined under principles of *res judicata* resulting from an unappealed circuit court judgment in a prior action. *Id.* at 562. The Court therefore did not address the question of personal liability emanating from a declaration.

recorded declaration can give rise to personal liability, but it is well-settled law that an assignee is not responsible for the duties of the assignor unless there is an express assumption of that performance:

Under the common law, by the great weight of authority, the assignee of rights, benefits, or privileges under a contract did not become responsible for the assignor's duties unless he expressly assumed performance of those duties. In other words, in the absence of an express manifestation of intention to accept the assignor's duties along with his rights and benefits, the assignee is presumed not to assume those duties, and they remain the obligation of the assignor.

Thompkins v. Mortg. Lenders Network USA, Inc., 209 Md. App. 685, 705 (2013) (citing *P/T Ltd. v. Friendly Mobile Manor*, 79 Md. App. 227, 238 (1989)). Here, the record is devoid of any indication that Ms. Hwang expressly assumed any obligation Agbe-Davies may have had to pay utility charges pursuant to the Declaration.

III. The Statute of Frauds Precludes Enforcement of the Declaration as a Personal Contract

Because we are aware of no authority providing that a declaration recorded in the land records constitutes a contract creating personal liability under Maryland contract law, we turn to simple contract construction principles to determine whether the Declaration here created a personal contract between H.C. Utilities and Ms. Hwang.

“Generally, a contract is defined as ‘a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.’” *Maslow v. Vanguri*, 168 Md. App. 298, 321 (2006) (quoting 1 Richard A. Lord, *Williston on Contracts* § 1:1, at 2-3 (4th ed. 1990)). In Maryland, the Statute of Frauds requires certain contracts to be in writing and signed by the party to be charged in order to

be enforceable. *Forsyth v. Brillhart*, 216 Md. 437, 440 (1958). The Statute of Frauds is codified throughout the Maryland Code in various articles. Relevant here, Md. Code (1973, 2013 Repl. Vol.), § 5-901 of the Courts and Judicial Proceedings Article (“CJP”) provides:

Unless a contract or agreement upon which an action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or another person lawfully authorized by that party, an action may not be brought:

....

- (3) On any agreement that is not to be performed within 1 year from the making of the agreement.

Additionally, RP § 5-104 provides:

No action may be brought on any contract for the sale or disposition of land or of any interest in or concerning land unless the contract on which the action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or some other person lawfully authorized by him.

The Declaration here cannot impose personal contractual liability on Ms. Hwang because it violates at least two separate provisions of the Statute of Frauds.

First, the Declaration’s obligations cannot be completed in one year. The Declaration on its face states that Patriot Homes and its successors will recover the costs for the Water and Sewer Facilities “in annual installments over a period of forty (40) years.” CJP § 5-901(3) requires any agreement that cannot be performed within one year to be in writing and signed by the party to be charged. *See Gen. Fed. Constr., Inc. v. James A. Federline, Inc.*, 283 Md. 691, 700 (1978) (holding that, because terms of agreement contemplated services to be provided “for a period of one year *after* substantial completion

of the contract,” the contract “could not be performed within the period of one year[,]” and was therefore subject to the Statute of Frauds); *Adams v. Wilson*, 264 Md. 1, 9 (1971) (noting that “it is only when performance of the oral contract is impossible during the year period will this provision of the Statute of Frauds bar recovery”). Because performance of the terms of the Declaration cannot be completed in one year, absent a writing signed by Ms. Hwang as “the party to be charged,” the Statute of Frauds precludes H.C. Utilities from asserting a contract claim against her.

Second, the Declaration here concerns an interest in real property—namely, the covenant running with the Property requiring the owner to pay an annual assessment. Under RP § 5-104, however, any action sounding in contract and concerning an interest in real property must be in writing and signed by the party to be charged. Because the Declaration concerns an interest in real property, and because Ms. Hwang never signed the Declaration, the Statute of Frauds precludes H.C. Utilities from asserting that the Declaration imposes personal contractual liability on Ms. Hwang.

In summary, because H.C. Utilities has never presented any evidence of a writing signed by Ms. Hwang containing a contractual undertaking, we hold that the Statute of Frauds precludes H.C. Utilities from enforcing any personal liability against Ms. Hwang for breach of contract. Accordingly, we affirm.

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