Circuit Court for Baltimore City
Case No. 24-C-16-006977

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2124

September Term, 2022

STATE CENTER, LLC, et al.,

v.

DEPARTMENT OF GENERAL SERVICES, et al.

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: April 30, 2024

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

This case involves another battle in the long-running dispute between the State of Maryland and the developer of the State Center project in Baltimore City.

The Circuit Court for Baltimore City directed the entry of partial summary judgment against the developer on 17 of the 35 counts in its counterclaim and third-party complaint. The developer moved for reconsideration of the decision on six of those 17 counts. The circuit court denied the motion for reconsideration, and the developer took this interlocutory appeal.

Because we lack appellate jurisdiction, we shall dismiss the appeal.

I. BACKGROUND

A. The Request for Qualifications

In 2005, the Maryland Department of General Services ("DGS") envisioned developing a "transit-oriented, mixed-use community of office, retail, and residential space" to replace the aging State-owned buildings and parking facilities that covered more than 20 acres in midtown Baltimore City. Acting on behalf of the State of Maryland, DGS issued a request for qualifications from interested developers. State Center LLC ("the Developer") submitted the winning response, thereby earning the "exclusive initial right to negotiate" agreements with DGS to develop the property. The parties engaged in preliminary discussions before entering into a Master Development Agreement in June of 2009.[1]

[1] For a thorough discussion of the background of the State Center project, see *State Center LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 475-83 (2014).

B. The Master Development Agreement

The Master Development Agreement ("MDA") outlined the process by which the State Center project would proceed. Under the MDA, the parties agreed that the project's development was contingent on many things, including the completion of an Approved Concept Plan. The parties also agreed that the project would be broken down into phases. The parties anticipated that, at each phase, they would enter a "phase ground lease," under which the State would lease the ground associated with the phase to the Developer. The phase ground leases would grant the Developer the right to develop the portions of the property associated with that phase. The Developer would own the buildings that it constructed during that phase and would lease space back to State agencies, among other tenants, by means of "occupancy leases."

In the MDA, the parties included a provision for what they called the Alternative Ground Lease ("AGL"). The AGL provision states that, if the parties fail to reach certain goals, including finalizing the phase ground leases and occupancy leases and agreeing to their terms, the Developer could tender an "AGL Notice." In the AGL notice, the Developer would propose a "general concept plan" that identified the parcel to be developed and the Developer's plans for development. If DGS did not find the AGL concept plan to be acceptable, it could purchase the Developer's development rights and terminate the MDA. In that event, the State would be required to reimburse the Developer for the "commercially reasonable costs" that it had "actually incurred" during a specified time period. The Developer describes the AGL provision as an "off-ramp"

that allows it to recoup some of its investment if the project does not go forward to completion.

C. The Phase Ground Leases

The MDA repeatedly refers to the "Approved Concept Plan," which the State[2] calls "the lynchpin of the project." Yet, as the parties negotiated the phase ground leases in 2009 and 2010, they had not yet reached agreement on the Approved Concept Plan.

On July 28, 2009, the Board of Public Works[3] approved phase ground leases for two parcels: Parcel G, which would contain an underground parking garage that the State would own and largely finance; and Parcel I-2, on which the Developer would construct offices for two State agencies. Because the parties had yet to agree on the Approved Concept Plan, the phase ground leases stated that they were "holding lease[s]" and that the State would "not deliver possession" of the leased property until "the full execution and delivery of a Component Lease by DGS."[4]

[2] Here, we use the term "the State" to refer to the State of Maryland and to the State agencies and State officials named as counter-defendants and third-party defendants by the Developer in this case. For a complete list of those agencies and officials, see nn. 8 & 9, below.

[3] "The Board of Public Works is the highest administrative body in the Maryland state government." Alan M. Wilner, *The Maryland Board of Public Works: A History* (1984), at ix. "Consisting of the Governor, the Comptroller of the Treasury, and the Treasurer, the Board of Public Works has the constitutional authority to 'hear and determine such matters as affect the Public Works of the State, and as the General Assembly may confer upon them the power to decide.'" *State v. Merritt Pavilion, LLC*, 230 Md. App. 597, 601-02 (2016) (quoting Md. Const. Art. XII, § 1).

[4] As the Developer puts it, the phase ground leases "contemplate giving the Developer possession of two parcels of the State Center property."

Under the phase ground leases, the Developer had no obligation to pay rent "until the Commencement Date of the First Component Lease." If the component leases were not executed by a certain date (extended by the parties to December 1, 2016), the phase ground leases would be terminable at DGS's discretion.

In the Developer's words, the phase ground leases "provided that no one other than the Developer could be granted possession of the two parcels on which the Developer would be building." The State agrees that the phase ground leases "would preserve the Developer's role in the project and govern the parties as they contemplated their next steps."

Section 1.3.2 of each of the phase ground leases provides as follows:

> Except for decisions of the [Board of Public Works] and except as specifically provided, any and all approvals, consents, permission or authorization contemplated in this Lease shall not be unreasonably withheld, delayed or conditioned and shall be subject to any reasonable conditions contained in the consent or approval given.

The parties executed the phase ground leases on September 1, 2009. The leases became effective on that date.

The phase ground leases did not convey any possessory interest in property. Nor did they convey any rights to receive rent from property.

D. The First Amendment to the MDA

On July 28, 2010, the day when the Board of Public Works approved the two phase ground leases, DGS and the Developer executed the First Amendment to the MDA. The Board of Public Works approved the amendment on that same day.

In the amendment, the parties agreed that the State would finance and construct the "Phase One garage," contributing up to $28.3 million to the project. The parties also agreed that the State "need not" close on the financing of the garage, commence the construction of the garage, or execute any component lease—the lease by which the State would deliver possession—until several conditions had been met.

These conditions included the parties' agreement upon and memorialization of all exhibits to the occupancy leases for the space that State agencies would lease in the buildings that the Developer planned to construct. The conditions also included the parties' agreement upon and memorialization of the "Outside Rental Commencement Date"—the date on which the tenant-agencies would be required to begin paying rent—and the collateral that would secure the liquidated damages that the State could pursue if the Developer's affiliate did not substantially complete the first phase in accordance with the terms of the document. And the conditions included Baltimore City's approval of a payment-in-lieu-of-taxes agreement, agreeable in form and substance to both parties, for the two parcels.

E. The Occupancy Leases

Also on July 28, 2010, the Board of Public Works approved what the Developer calls "occupancy leases" and the State calls "occupancy lease forms." Without taking sides in the dispute over nomenclature, we shall, in the interest of brevity, refer to those documents as the "occupancy leases."

The occupancy leases did not include various exhibits and addendums, did not specify when rental payments were to commence, did not name the agencies that were to be the prospective tenants, and were not signed by the prospective tenants. In the ensuing discussions between the parties, the Developer's lawyer asserted that these documents were "meaningless" without the addendum, supplement or amendment . . . that addresses such critical points as [Net Usable Square Footage], the absolute rent start date, excess fitup and fine-tuning of the DGS specs."

The occupancy leases provided that, once they had been executed, the tenant would be required to pay rent beginning on a date certain—the "Outside Rental Obligation Commencement Date"—even if the Developer had not completed the construction and could not deliver the premises. To protect the agencies in case of the Developer's delay, the occupancy leases gave the agencies the right to pursue a claim for liquidated damages in the amount of the rent that they had been required to pay. Under the leases, the Developer's obligation to pay liquidated damages must "be secured by other collateral acceptable to [the agency]," which was to be "memorialized" by the parties "in an appropriate document." The record contains no evidence that the parties ever agreed on or executed any such document.

F. The Supplements to the Occupancy Leases

On December 15, 2010, DGS and the Developer asked the Board of Public Works to approve supplements to the three occupancy leases that it had already approved, as well as a fourth occupancy lease. The supplements amended some of the terms of the

documents that the Board of Public Works had previously approved, but did not finalize all of the terms.

On the afternoon before the Board of Public Works met to consider the documents, the Developer's attorney wrote that he "realize[d] that exhibits, and certain documents, w[ould] be finalized after BPW approval." He created a checklist identifying 18 categories of documents that needed to be finalized.[5]

DGS's attorney responded that even if the Board approved the supplements and the fourth occupancy lease, "the project" would "remain contingent on the satisfactory completion of the various exhibits to the Occupancy and Component Leases, Garage financing, etc., as set out in those documents and/or the MDA as amended." (Emphasis in original.)

The Developer argues that, in asserting that "the project" would "remain contingent" on the satisfaction of certain conditions, the DGS attorney was trying to buttress the State's position in an impending lawsuit by a group of downtown property owners. The Developer observes that, despite the caveats expressed by the DGS attorney, the Secretary of DGS later wrote to "reaffirm the full commitment" of his agency "to the [State Center] project and to supporting the efforts of [the Developer's] team to proceed with Phase 1 as expeditiously as possible."

[5] Counting each of the individual documents within each of the 18 categories, the State asserts that the checklist identifies a total of 54 unfinished agreements and exhibits.

G. The Property Owners' Lawsuit

On December 17, 2010, a group of downtown property owners filed suit to enjoin the State Center project and for a declaration that the "formative contracts" for the project were void. *State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 474 (2014).[6] The property owners alleged that the project violated State procurement laws and that the project should not have been awarded to the Developer. *Id.* at 483-84.

Although the Circuit Court for Baltimore City ruled in the property owners' favor, Maryland's highest court, then known as the Court of Appeals, ultimately held that laches barred the property owners' claims. *Id.* at 610. By the time the Court ruled, however, more than three years had passed.[7]

H. The Aftermath of the Property Owners' Lawsuit

During the three years of litigation with the property owners, the State Center project was stalled.

The State asserts that, when the litigation finally came to an end in the spring of 2014, the economics of the project had changed. Most notably, the cost of the 928-space

[6] The "formative contracts" appear to have been the MDA, the First Amendment to the MDA, and the phase ground leases. *Id.* at 490.

[7] Both sides attempt to exploit aspects of the property owners' lawsuit. As the State points out, the Developer argued that the occupancy leases had "not yet been awarded . . . and executed" and that they were "subject to additional contingencies" before the agencies would be required to execute them. On the other hand, the Developer cites the Court's statement that "[t]he MDA, First Amendment, and ground and occupancy leases were entered into by the parties . . . ." *State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. at 506.

underground parking garage had increased. The increased costs fell on the Developer, because the State had agreed to contribute only $28.3 million for the construction of the garage.

Asserting that it could not afford to bear the additional costs, the Developer proposed a smaller, less costly garage in August 2014. But in January 2015, after the State had begun to seek internal approval for a smaller garage with only 580 spaces, the Developer returned to the concept of a 928-space garage.

For its part, the Developer contends that by 2014 the Maryland Department of Transportation "wanted to scuttle the State Center project or, at least, to extract its sub-agency—the Maryland Transit Authority—from having to move to State Center." The Developer bases its charge on confidential internal documents that it obtained in discovery, over the State's claim of executive privilege.

I. A New Administration

In January 2015, a new Governor took office. In February 2015, the new administration instructed the relevant State officials to take no action on the State Center project until after the completion of a comprehensive review.

The parties met on several occasions in 2015, but the meetings were unproductive. The Developer claims that the new administration "found Baltimore an unworthy candidate for State investment."

On April 29, 2016, the Developer formally asserted that the State had defaulted on its obligations under the MDA. As the basis for its assertion, the Developer wrote that

the State had failed to deliver executed copies of the occupancy and component leases, even though in the Developer's view, it had already met all the prerequisites to the occupancy leases being completed. The Developer also asserted that the State had "engag[ed] in an extended period of inaction and delay with respect to executing the leases."

J. Recission of the Leases and the State's Complaint

On December 21, 2016, a few weeks after DGS acquired the right to terminate the phase ground leases at its discretion, the agency asked the Board of Public Works to rescind its approval of the phase ground leases and occupancy leases. The Board voted unanimously to rescind the leases.

On that same day, six State agencies filed this suit in the Circuit Court for Baltimore City.[8] Among other things, their complaint requested a declaration that the occupancy leases are invalid and unenforceable; that the component leases are invalid and unenforceable; that the State was not in default of the MDA, the occupancy leases, the phase ground leases, or the component leases; and that the Developer's sole remedy for any alleged breach was to declare the MDA null and void. The State amended its complaint twice.

[8] The six agencies are DGS, the Department of Transportation, the Maryland Transit Administration, the Department of Health and Mental Hygiene (now known as the Department of Health), the Department of Planning, and the Department of Information Technology.

Over the course of the litigation, the State has altered its position on damages. The State now argues that the Developer is limited to the amounts recoverable under the AGL provision.

K. The Counterclaim and AGL Notice

The Developer answered the complaint and filed a counterclaim and third-party complaint.[9] In the Developer's operative pleading, 17 of the 35 counts sounded in contract. The remaining 18 counts alleged equitable claims, tort claims, State and federal constitutional claims, and statutory claims.

On June 21, 2017, the Developer notified DGS that it was exercising its AGL rights. The Developer asserts that it invoked its AGL rights in response to the State's denial of any liability on any contract. The Developer says that it views the AGL remedy as an alternative to its contractual claims.

[9] In the Developer's second amended counterclaim and third-party complaint, it named the following parties as third-party defendants: the State of Maryland; Governor Lawrence Hogan; Treasurer Nancy Kopp; Comptroller Peter Franchot; the Maryland Board of Public Works; Ellington Churchill Jr., Secretary of DGS; the Maryland Military Department; Major General Linda Singh; the Maryland Department of Labor, Licensing and Regulation; Kelly Schultz, Secretary of the Maryland Department of Labor, Licensing and Regulation; Peter Rahn, Secretary of the Maryland Department of Transportation; David Garcia, Secretary of the Maryland Department of Information Technology; Dennis Schrader, Secretary of the Maryland Department of Health and Mental Hygiene (now known as the Department of Health); Paul Comfort, Administrator and CEO of the Maryland Transit Administration; Wendi Peters, Secretary of the Maryland Department of Planning; and the Maryland Stadium Authority.

On August 18, 2017, the State responded that it was exercising its buyout rights based on the AGL clause. Among the claims still being litigated in the circuit court is the question of which of the Developer's costs are recoverable under the AGL clause.

L. Summary Judgment

After years of litigation, the parties filed opposing motions for partial summary judgment on the Developer's contractual claims. On those claims alone, the Developer asserted that it was entitled to more than $254 million in damages: over $37 million in lost rental payments through the date of the motion, and another $217 million in lost rental payments for the remainder of the terms of the occupancy leases.

On August 1, 2022, the circuit court held that the State had the authority to rescind its prior approval of the occupancy leases because the parties had not reached agreement on many of the important terms. The circuit court also held that the State properly terminated the phase ground leases and that the parties had never reached agreement on the component leases that would give the Developer a possessory interest in the property. Consequently, the circuit court granted summary judgment in the State's favor on the contractual claims in counts 1 through 17 of the Developer's counterclaim and third-party complaint.

In an accompanying document, the court declared, among other things, that the occupancy leases and component leases are not enforceable contracts; that the phase ground leases are not in force; that the State is not in default of the MDA, the phase

ground leases, the occupancy leases, or the component leases; and that the Developer's only contractual remedy is under the AGL provision.

The court has yet to determine how much the Developer can recover under the AGL provision. Nor has the court decided any of the other remaining counts in the Developer's counterclaim and third-party complaint.

M. Motion for Reconsideration and Appeal

The Developer moved for reconsideration of the grant of partial summary judgment on October 4, 2022. It argued that, even if the State had properly terminated the phase ground leases, there was a genuine dispute of material fact about whether the State had breached the phase ground leases by unreasonably withholding approvals *before* those leases were terminated.[10] In addition, the Developer argued that there was a genuine dispute of material fact concerning whether the parties had mutually assented to be bound by the occupancy leases. According to the Developer, the court had erroneously placed undue emphasis on the communications between the parties' lawyers, when they discussed and commented on the import of the uncompleted exhibits to the leases.

After a hearing, the circuit court denied the motion for reconsideration by order entered on December 30, 2022.

[10] As the Developer puts it, the "State officials were wiggling out of the Project in bad faith, based on latent misgivings about the Project and a lack of desire to help Baltimore."

Within 30 days of that order, the Developer filed a notice of appeal. The State has moved to dismiss the appeal on the ground that it is not authorized by law.

II. QUESTIONS PRESENTED

The Developer presents two questions on appeal.[11] Because we lack appellate jurisdiction, we shall not consider those questions. Instead, we shall grant the motion to dismiss.

III. DISCUSSION

Our power to decide appeals is derived solely from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020

[11] The Developer posed the following questions:

1. Did the Circuit Court err by granting summary judgment against the Developer's claims that the State breached the Phase Grounds [sic] Leases and their accompanying covenants of good faith and fair dealing, including by:

a. Holding that, because the leases were properly terminated in December 2016, the Court need not decide whether they were breached while in force;

b. Improperly resolving disputed issues of material fact regarding whether the State (among other things) unreasonably withheld approvals and consents to move the Project forward and exercised any discretionary right to terminate the leases in good faith; and

c. Potentially holding that the 75-page leases contained no meaningful obligations for the State?

2. Did the Circuit Court err by deciding disputed issues of material fact on summary judgment regarding whether the parties had mutually assented to be bound by the Occupancy Leases and whether they were otherwise finalized and enforceable contracts?

Repl. Vol.) ("CJP"). Under CJP section 12-301, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court."

Section 12-301 expresses "a long-standing bedrock rule of appellate jurisdiction, practice, and procedure that, unless otherwise provided by law, the right to seek appellate review in [the Maryland appellate courts] ordinarily must await the entry of a final judgment that disposes of all claims against all parties." *Silbersack v. ACandS, Inc*., 402 Md. 673, 678 (2008); *accord Carver v. RBS Citizens, N.A.*, 462 Md. 626, 633 (2019); *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 220-21 (2010); *Grier v. Heidenberg*, 255 Md. App. 506, 516 (2022); *Remson v. Krausen*, 206 Md. App. 53, 71 (2012). "The purpose of requiring parties to await [the entry of a] final judgment before taking an appeal is to avoid 'piecemeal appeals,' which may result in disruption and inefficiency." *Huertas v. Ward*, 248 Md. App. 187, 200 (2020) (citing *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 457 Md. 1, 42-43 (2017)).

"In general, an order is not a final judgment unless it fully adjudicates all claims in the case by and against all parties to the case." *Huertas v. Ward*, 248 Md. App. at 200 (citing Md. Rule 2-602(a)). "An interlocutory order, i.e. any order that is not a final judgment, ordinarily is not appealable." *Id.* (citing *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 383 (2014)).

The Developer has appealed from an order in which the circuit court declined to reconsider part of an earlier order in which it granted partial summary judgment against

the Developer on 17 of the 35 counts of its amended counterclaim and third-party complaint. At present, more than half of the counts in the Developer's pleading remain to be adjudicated. In these circumstances, no one could or does dispute that the circuit court has yet to enter a final judgment.

In civil litigation, there are three exceptions to the general rule that a party can appeal only from a final judgment that disposes of all claims against all parties: (1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings allowed under the collateral order doctrine. *See*, *e.g.*, *In re C.E.*, 456 Md. 209, 221 (2017).

The Developer does not contend that it has the right to appeal under Rule 2-602(b) or the collateral order doctrine.[12] Instead, it contends that its right to appeal is conferred by statute—specifically, by CJP section 12-303(1).

[12] The Developer correctly abstains from any argument that the order is appealable under the Rule 2-602(b) or the collateral order doctrine. Rule 2-602(b) does not apply in this case, because the circuit court's order does not adjudicate an entire "claim" within the meaning of the rule (*see Medical Mut. Liab. Soc'y v. B. Dixon Evander & Assocs., Inc.*, 331 Md. 301, 312-13 (1993); *East v. Gilchrist*, 293 Md. 453, 459 (1982)); because the circuit court did not "expressly determine[] in a written order that there was no just reason for delay" the entry of a final judgment; and because the circuit court did not actually direct the entry of a final judgment. The collateral order doctrine does not apply because the order involves the merits of the case—i.e., it is not "collateral" to or entirely separate from the merits. *See Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 286-87 (2014). Furthermore, the circuit court's order is not effectively unreviewable on an appeal from a final judgment. *See Osborn v. Bunge*, 338 Md. 396, 403 (1995).

Section 12-303(1) permits an appeal from an interlocutory order "entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order." Subsection (1) of section 12-303 is one of a number of provisions in that statute that authorize an appeal from "interlocutory orders in cases in which an appellant's rights might be lost or irreparably damaged" if the appellant "is unable to challenge an erroneous ruling until after the entry of a final judgment." *McLaughlin v. Ward*, 240 Md. App. 76, 85 (2019); *see Della Ratta v. Dixon*, 47 Md. App. 270, 284 (1980) (quoting *Flower World of America, Inc. v. Whittington*, 39 Md. App. 187, 192 (1978)) ("'[t]he common denominator of the exceptions [listed in section 12-303] is the irreparable harm that may be done to one party if he had to await final judgment before entering an appeal'").

The Developer asserts that it has the right to an immediate appeal under section 12-303(1) because, it says, the court's orders "dispose of the [Developer's] contractual right to possess and collect rent from parcels of the State Center property . . . . " Insofar as the orders purportedly "dispose of the [Developer's] contractual right to possess . . . parcels of the State Center property," the Developer asserts that it has appealed from an order "entered with regard to the possession of property with which the action is concerned . . . or the refusal to modify, dissolve, or discharge such an order." Insofar as the orders purportedly "dispose of the [Developer's] contractual right to . . . collect rent from parcels of the State Center property," the Developer asserts that it has appealed

from an order "with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order."

The Developer argues that the language of the statute—encompassing orders "entered *with regard to* the possession of property" and orders "entered *with reference to* the receipt or charging of the income, interest, or dividends" from property—is "broad" and "sweeping." In fact, the language is so broad that has been deemed to be ambiguous. *See Eubanks v. First Mt. Vernon Indus. Loan Ass'n, Inc.*, 125 Md. App. 642, 650 (1999). Maryland courts have construed the ambiguous statute more narrowly than the Developer does.

We first consider whether the Developer has appealed from an order "entered with regard to the possession of property with which the action is concerned," or an order refusing to "modify, dissolve, or discharge such an order." It has not.

According to the cases, an order "entered with regard to the possession of property with which the action is concerned" is one that divests a party of a possessory right to the property. *See Bledsoe v. Bledsoe*, 294 Md. 183, 185 n.1 (1982); *City of Baltimore v. Kelso Corp.*, 281 Md. 514, 517 n.2 (1977); *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010); *see also Eubanks v. First Mt. Vernon Indus. Loan Ass'n, Inc.*, 125 Md. App. at 650 (stating that "[t]he statute apparently grants to an aggrieved litigant the right to take an immediate appeal from an interlocutory order that is injunctive in nature and decides on an interim basis the right to possession or the income from property"). The possessory right in question must be "present," *McCormick Constr. Co. v. 9690 Deerco Rd. Ltd.*

P'ship, 79 Md. App. 177, 181 (1989), or "immediate." *Rustic Ridge, L.L.C. v. Washington Homes, Inc.*, 149 Md. App. 89, 98 (2002) (citing *Lewis v. Lewis*, 290 Md. 175, 184 (1981)).

The paradigm of an order "entered with regard to the possession of property with which the action is concerned" is an order awarding the use and possession of the family home to one spouse during the pendency of divorce litigation. *See Bledsoe v. Bledsoe*, 294 Md. at 185 n.1; *Bussell v. Bussell*, 194 Md. App. at 147; *see also Pittsenberger v. Pittsenberger*, 287 Md. 20, 24 n.3 (1980). Such an order divests the other spouse of the immediate right to possess the family home at least until the litigation is over. Section 12-303(1) authorizes an immediate appeal because the aggrieved spouse may suffer irreparable harm if they must wait until a final judgment on the merits before they can contest the ruling.

Another example of an order "entered with regard to the possession of property with which the action is concerned" is an order that dismisses a local government's quick-take petition in a condemnation action. *See City of Baltimore v. Kelso Corp.*, 281 Md. at 517 n.2. Such an order divests the local government of title to and possession of the property that it had acquired through the quick-take procedure. *Id.* at 517. The condemnation action may continue, but in the meantime, the local government will have lost its right to possess the property.

By contrast, if an order "has no direct bearing on the possession of property" it is not appealable under section 12-303(1) even if it relates in some way to an interest in property. *Rustic Ridge, L.L.C. v. Washington Homes, Inc.*, 149 Md. App. at 98-99.

For example, in *Lewis v. Lewis*, 290 Md. 175, 179 (1981), the circuit court held that it lacked jurisdiction to determine whether a husband's military retirement pay was part of the marital estate subject to division. *Id.* at 179. The wife took an interlocutory appeal from that decision, but her appeal was dismissed. *Id.* at 184. In explaining why the wife did not have the right to an immediate appeal under section 12-303(1), the Court wrote: "Had the order here ousted Mrs. Lewis pendente lite from the possession of the home she was then occupying in Montgomery County, we would have an example of '[a]n order entered with regard to the possession of property with which the action is concerned.'" *Id*. But although the order generally addressed the types of property in which the wife might have an interest, the Court held that it "in no way c[ould] be said to be one 'entered with regard to the possession of property.'" *Id*.

Similarly, in *McCormick Construction Co. v. 9690 Deerco Road Ltd. Partnership*, 79 Md. App. at 179-80, McCormick, a subcontractor, appealed from an interlocutory order that stayed its petition to establish a mechanic's lien while the dispute proceeded in arbitration. McCormick premised its appeal on section 12-303(1). *Id.* at 180. This Court rejected the premise:

> We think the legislative intent in enacting [section 12-303(1)] was to permit an appeal of an interlocutory order where a controversy exists over the right to possession of property or the benefits generated therefrom during the pendency of the litigation. Clearly, McCormick has no present right to

> possession[,] and whether any such right may ultimately exist is purely speculative.

Id. at 181.

This Court recognized that, after the foreclosure of a mechanic's lien, "someone will eventually possess the property[.]" *Id.* In this Court's view, however, that eventuality did not transform an order staying a mechanic's lien action into an "order 'entered with regard to the possession of property with which the action is concerned.'" *See id.* "The trial court's order, staying the proceedings pending the outcome of arbitration, simply [did] not address any issue of possession." *Id.* Consequently, this Court held that "McCormick ha[d] not established a right to appeal under § 12-303 of the Courts Article[.]" *Id.* at 182.

In *Rustic Ridge, L.L.C. v. Washington Homes, Inc.*, 149 Md. App. at 91, Rustic Ridge claimed to have a contractual right to purchase a property that the sellers had conveyed to Washington Homes. In granting partial summary judgment on Washington Home's claim for declaratory relief, the circuit court declared that Washington Homes was "the proper and rightful owner[.]" *Id.* at 96. Rustic Ridge took an interlocutory appeal, invoking section 12-303(1), among other provisions. *Id.* at 95-96.

This Court found no merit in Rustic Ridge's reliance on section 12-303(1). We wrote that: "The trial court merely declared that Washington Homes was the rightful owner of the property; it did not address whether Washington Homes had the present right to possess the property as well." *Id.* at 96. We added:

> In any event, there can be no dispute that Rustic Ridge had no right to possess the property. Rustic Ridge claimed only a contractual interest in the property. That claimed interest might or might not have led eventually to a transfer of title and corresponding right of possession.

Id. at 96-97.

In short, "the ruling from which Rustic Ridge [sought] to appeal ha[d] no direct bearing on the possession of the property." *Id.* at 98-99. Consequently, this Court held that "[t]he case [did] not fall within the ambit of § 12-303(1)." *Id.* at 99. "[F]or § 12-303(1) to apply, the possessory interest involved must be immediate." *Id.* at 98. Rustic Ridge had no immediate possessory interest.

In this case too, the Developer had no possessory interest, let alone any immediate possessory interest, in any part of the State Center site. Nor did the Developer seek the immediate possession of any part of the site. Thus, in entering partial summary judgment against the Developer, the circuit court did not divest the Developer of an immediate possessory interest. Instead, the court adjudicated a set of contractual claims concerning whether the State was obligated to enter into additional agreements through which the Developer might acquire a possessory interest in the site.

As in *Rustic Ridge*, the Developer "claimed only a contractual interest in the property." *Id.* at 96. And as in *Rustic Ridge*, the Developer's contractual claims "might or might not have led eventually to . . . corresponding right of possession." *Id.* at 96-97. That hypothetical possibility, however, does not bring an order disposing of those contractual claims within the ambit of section 12-303(1). *Id.* at 98-99. Because the circuit court "simply d[id] not address any issue of possession" when it entered partial

summary judgment against the Developer on its contractual claims, the court's order is not an "order entered with regard to the possession of property with which the action is concerned." *McCormick Constr. Co. v. 9690 Deerco Rd. Ltd. P'ship*, 79 Md. App. at 181.

We turn to the question of whether the Developer has appealed from an order "with reference to the receipt or charging of the income, interest, or dividends" from the property with which the action is concerned, "or the refusal to modify, dissolve, or discharge such an order." Again, it has not.

Section 12-301(1) permits an interlocutory appeal from an order "with reference to the receipt or charging of the income, interest, or dividends" during the pendency of the litigation. *Eubanks v. First Mt. Vernon Indus. Loan Ass'n, Inc*., 125 Md. App. at 656 (holding that, in an action against forcible detainer, a pendente lite order requiring the defendant to make monthly rent payments into escrow "was an appealable interlocutory order under CJ § 12-303(1)"); *see McCormick Const. Co. v. 9690 Deerco Rd. Ltd. P'ship*, 79 Md. App. at 181 (stating that "the legislative intent in enacting the section was to permit an appeal of an interlocutory order where a controversy exists over the right to possession of property or the benefits generated therefrom during the pendency of the litigation"); *see also Burnett v. Spencer*, 230 Md. App. 24, 30-31 (2016) (holding that a party had the right to take an immediate appeal under section 12-303(1) from an order denying a post-judgment motion to release income-producing property from levy).

The statute has its roots in legislation that permitted interlocutory appeals from orders pendente lite regarding the possession of property or income. *Eubanks v. First Mt. Vernon Indus. Loan Ass'n, Inc*., 125 Md. App. at 651 (citing Md. Code (1957), art. 16 § 129). Under the earlier legislation, "courts of equity had broad power . . . to pass orders determining interim rights to property or the income derived therefrom pending a trial on the merits of the claim, but any exercise of this power was subject to immediate appellate review." *Id.* at 651-52.

In the early 1960s, this right to immediate appellate review was expanded, first by rule and later by statute, to similar decisions by courts of law. *See id.* at 653-54 (citing Md. Rule 532 (1961); Md. Code (1957, 1968 Repl. Vol.), art. 5, § 1A); *see also Della Ratta v. Dixon*, 47 Md. App. at 282. The statute assumed its current form in 1973, when the General Assembly combined separate statutes concerning interlocutory appeals from courts of law and equity into a single enactment concerning interlocutory appeals from the circuit courts. *Della Ratta v. Dixon*, 47 Md. App. at 283. At the time of that enactment, the only substantive change was a recognition "that some of the distinctions between law and equity, once sharp, had become blurred over time—that as a result various types of traditionally equitable remedies such as injunctions, could, in certain circumstances, be fashioned or provided by law courts as well as equity courts." *Id.* at 284.

This history demonstrates that section 12-301(1) is intended to relieve litigants of the obligation to await the entry of a final judgment on the merits before they may appeal

a *pendente lite* order, equitable in nature, that dictates who will receive the "income, interest, or dividends" from the "property with which the action is concerned" or how the "income, interest, or dividends" from that property will be charged. The statute does not authorize an interlocutory appeal of an order that grants partial summary judgment on a claim at law for money damages for unpaid rent.

In this case, the State Center property was generating no "income, interest, or dividends." Thus, in entering summary judgment against the Developer on its contractual claims, the circuit court did not enter a pendente lite order determining who would receive the "income, interest, or dividends" from the property. It follows that this case does not involve "the receipt or charging of the income, interest, or dividends" from the "property with which the action is concerned," as Maryland courts have interpreted that phrase. Instead, it involves a set of contractual claims in which the Developer asserts that it would have been entitled to income from the property but for the State's alleged breach. There is simply no authority for the proposition that section 12-301(1) permits an interlocutory appeal of an order that rejects a litigant's contractual claim for damages at law for unpaid rent.

The Developer complains that if it cannot take an interlocutory appeal of the order in which the circuit court declined to reconsider the grant of partial summary judgment on 17 of the 35 counts in the operative pleading, then it will be required to participate in what it calls a "wasteful" "penalty lap" and a "pointless trial" before it can obtain a remedy for the circuit court's allegedly erroneous decision. The short answer to the

Developer's contention is that the remaining proceedings in the circuit court are neither "wasteful" nor "pointless," nor are they a "penalty lap." Interlocutory appeals, like the one in this case, are wasteful. *See*, *e.g.*, *Brewster v. Woodhaven Bldg. & Dev., Inc.*, 360 Md. 602, 616 (2000); (stating "that the purpose of the final judgment rule is to avoid piecemeal appeals . . . and [that] the reason for avoiding piecemeal appeals is the promotion of judicial efficiency"); *id.* (stating that "'[r]epeated interruptions of the trial court process . . . may require wasteful losses of familiarity with the case by court and perhaps counsel as well'") (further citation omitted). And far from imposing a "penalty" on the Developer, the remaining proceedings will occur only because of the unadjudicated claims for relief that the Developer itself has asserted. Contrary to the Developer's assertion, the remaining proceedings are not "pointless"; their point is to resolve the remaining claims that the Developer has asked the court to resolve.

In summary, the circuit court's interlocutory order does not qualify as an order appealable under CJP section 12-303(1), because it concerned neither the possession of property nor the receipt or charging of income derived from property. Therefore, this Court lacks jurisdiction to consider the merits of this interlocutory appeal.[13]

MOTION TO DISMISS GRANTED; APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANTS.

[13] Because we have no power to decide the appeal, we express no opinion about the merits of the circuit court's decision to grant partial summary judgment or its decision not to reconsider parts of its ruling.