Circuit Court for Harford County
Case No. C-12-CV-21-000105

UNREPORTED*

IN THE APPELLATE COURT**

OF MARYLAND

No. 6

September Term, 2022

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CRESCENT INVESTMENT GROUP, LLC

v.

THOMAS BURKE, ET AL.

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Wells, C.J.,
Graeff,
Berger,

JJ.

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Opinion by Berger, J.

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Filed: March 30, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal involves the enforceability of a restrictive covenant on real property in Harford County. After acquiring more than 100 acres of land stretching the north and south side of Nova Scotia Road and gaining approval to subdivide a portion of this land into a 15-lot development, Harold Smith ("Smith") drafted a Declaration of Covenants, Conditions, and Restrictions ("the Declaration") applicable to "Lot 15 and all other lands of Declarant on the south side of Nova Scotia Road." Thereafter, Appellants, Thomas Patrick Burke and Katherine Lynn Burke ("the Burkes") purchased Lot 15. Following Smith's death, his heirs sold the roughly 54-acre parcel on the south side of Nova Scotia Road ("the CIG Parcel") to Appellee, Crescent Investment Group, LLC ("Crescent"). When Crescent sought to build a 60-person house of worship on the CIG Parcel, and began using the land for such related activities, the Burkes filed an action for declaratory and injunctive relief, asserting Crescent violated the Residential Use Restriction in the Declaration. The Circuit Court for Harford County agreed and granted the Burkes' motion for summary judgment. Crescent filed a timely appeal to this Court.

Crescent presents one question for our review, which we rephrase as follows:[1]

[1] Crescent presents the following question for our review:

> 1. Did the circuit court err in granting Appellees' motion for summary judgment and finding that the residential use restriction in the Declaration was unambiguous and was applicable to the CIG Parcel?

The Burkes take Crescent's seemingly compound question and separate its component parts into three distinct questions, which we quote verbatim:

I. Whether the circuit court erred in determining that the Declaration was unambiguous and that the restrictive covenants applied to the CIG Parcel.

For the reasons explained herein, we affirm the circuit court's ruling.

## FACTS AND PROCEDURAL HISTORY

### *Origins of the Declaration and Covenants*

Smith purchased the real property containing the CIG Parcel in 1974. In 1976, he bought the adjacent real property containing Lot 15, where the Burkes now reside. Lot 15 borders the CIG Parcel. When Smith acquired the land, the CIG Parcel contained a 2.5-story farmhouse and additional "accessory structures" used for agriculture. The land is zoned "Rural Residential."

In 1994, Smith began subdividing the land. In 1995, the Harford County Department of Planning and Zoning approved Smith's plan for a "15[-]lot subdivision of rural residential lots, with single[-]family detached dwellings, and remaining lands." By 1997, Smith filed with the County's Land Record Department the final plat for the "Quail Creek Subdivision."

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1. Did the Circuit Court correctly conclude that the Declaration is unambiguous?

2. Did the Circuit Court correctly conclude that the residential use restriction applies to the subject property?

3. Did the Circuit Court correctly grant Appellees' motion for summary judgment?

Shortly after creating the subdivision, Smith contemplated encumbering Lots 1 through 15, but not the CIG Parcel, with restrictive covenants, but such an instrument was not executed and filed with Harford County at the time. On March 24, 2005, Smith drafted the Declaration containing the restrictive covenants governing use at issue in this case. He filed the Declaration with the County's Land Records Department on April 8, 2005.

***Covenant Provisions***

Amongst the Declaration's numerous provisions, we highlight those applicable to this dispute, discussing these provisions in greater depth, *infra*. Article III of the Declaration encompasses the covenants regarding use restrictions. Most germane to this dispute is Section 1, which provides that "[n]o Lot shall be used for any purpose other than residential use," excepting non-residential uses for activities related to the development and sale of the lot (the "Residential Use Restriction").

Article VI, Section 1 provides the Declarant the power to adopt rules and regulations binding on each Lot owner pertaining to maintenance, use restrictions, and improvements. Article II requires all structural plans to be submitted to the Declarant for approval. Article VII's General Provisions pertain to enforcing and amending the Declaration, endowing all owners and the Declarant with the right to the former, but requiring a super-majority of owners to achieve the latter, as well as recordation with Harford County.

Both the second and third paragraphs of the Declaration's opening stanza (the "Whereas Clause," and the "Therefore Clause," respectively) express the Declaration's applicability to "the property herein described as Lot 15 and all other lands of Declarant

on the south side of Nova Scotia Road." Further, the Therefore Clause provides that the subject lands are so encumbered for "the purpose of protecting the value and desirability of . . . the real property." As such, the covenants, conditions, easements, and restrictions "[s]hall run with the real property and be binding on all parties having any right, title or interest in the described properties," as well as upon those parties' "heirs, successors and assigns and shall inure to the benefit of each owner thereof."

***Sale of Land to the Burkes and Crescent***

Smith conveyed Lot 15 to Mary Kate Cleary on July 28, 2005. Michael T. Cleary was subsequently added to the title. After Michael Cleary filed for bankruptcy, the bankruptcy court issued an order granting Monique D. Almy, the Chapter 7 Trustee, the ability to sell Lot 15 free and clear "of all liens, claims, or encumbrances and all other interests in the property." On August 28, 2008, Almy conveyed Lot 15 to the Burkes, as tenants by the entirety. The deed conveying the land did not reference the Declaration.

At the time of the Burkes' purchase, Lots 1 through 14 had already been developed and improved with a single-family residence on each lot. Photos of the development entered into the record show lone houses sitting on otherwise sparse lots, with trees interspersed and a wooded area behind the homes. Following their purchase of the land, the Burkes built the home in which they now reside. In so doing, the Burkes did not submit their plans for preapproval by Smith, or his assigned, as required by Article II of the Declaration, and certain aspects of the home's exterior did not comply with the specific mandates of the Declaration.

Smith died testate on January 15, 2006. A year to the day later, Smith's personal representative conveyed all remaining land owned by Smith, including the CIG Parcel, to Ronald B. Smith and Mark Kindley Fielder, the trustees under the last will and testament of Harold Smith. In 2019, Smith's heirs sought to sell the CIG Parcel. The real estate listings provided in the record make no mention of the Declaration or any encumbrances. Dr. Mohammed Murtaza Kamal Chaudry, an officer in Crescent, testified during his deposition that no one discussed any potential use restrictions or similar encumbrances with Crescent personnel prior to the sale.

On August 16, 2019, Smith's heirs conveyed by deed to Crescent the 54.377-acre CIG Parcel for $845,000. The deed made no mention of the Declaration or any encumbrances. The CIG Parcel adjoins Lot 15 and comprises the "lands seized and possessed by Smith on the southerly side of Nova Scotia Road," as referenced in the Declaration. Prior to the conveyance to Crescent, the portions of the CIG Parcel were being used to grow corn, and the farmhouse was rented as a residence.

***Crescent's Proposed House of Worship***

On February 5, 2020, Crescent submitted plans to Harford County to create an 11.87-acre lot, identified as Lot 16, on the CIG Parcel and to convert the existing buildings into a 60-seat house of worship. CIG submitted a revised plan on April 9, 2020 that no longer sought to carve out "Lot 16" from the larger parcel, instead proposing to keep the entire CIG Parcel intact and to use it as the site of the 60-seat house of worship. The County approved the plans, subject to conditions, on July 14, 2020.

After acquiring the property and planning to convert existing structures into the house of worship, Crescent entered a lease with the Harford Islamic Center ("HIC") so the group could hold meetings, events, religious services, and similar activities on the CIG Parcel.[2] HIC began holding such events and bringing HIC congregants and their guests onto the CIG Parcel, as Crescent worked on its plan to convert the existing structures into the 60-seat facility. HIC also began making improvements to the existing structures on the CIG Parcel.

Dr. Chaudry testified that upon acquiring the property, he and other Crescent members had conversations with personnel from the County's Health Department, the seller's real estate agent, engineering firms, "several neighbors," and the man who farmed the land prior to Crescent's purchase regarding plans to utilize the CIG Parcel for HIC's services. Dr. Chaudry said that no one involved with the sale of the property or in these subsequent conversations mentioned the restrictive covenants.

***Ensuing Court Proceedings***

On March 4, 2020, the Burkes sent a letter to the Harford County Department of Planning and Zoning expressing concerns regarding Crescent's plan to develop the house of worship on the CIG Parcel, asserting numerous concerns as to how such a plan would affect the character of the neighborhood, the use and enjoyment of the land, and the Burkes' safety and general welfare, as well as that of the other residents on nearby lots. The Burkes

[2] Several members of the Crescent Investment Group, LLC are members of the Harford Islamic Center, as well.

sent a letter to Crescent's attorney on March 23, 2020 requesting that Crescent cease its current use of the land for HIC services and informing Crescent that the Burkes bought their property with the expectation that the covenants running with the land would be enforced. Crescent's attorney responded on April 7, 2020, representing that he would review the covenants and discuss the matter with his client. No further response followed, and Crescent continued to allow HIC to use the CIG Parcel for activities related to the house of worship.

On February 15, 2021, the Burkes filed a complaint in the Circuit Court for Harford County, seeking declaratory and injunctive relief.[3] The Burkes sought the court to declare that the Declaration and its covenants restricting use of the land solely for residential purposes encumbered the CIG Parcel and to enjoin Crescent from pursuing such non-residential development. Because the Burkes' house sits within 200 feet of structures housing HIC activities, they claimed that the use and enjoyment of their land has been severely impacted, and that such continued use and the conversion of the structures into a permanent house of worship would further degrade the Burkes' use and enjoyment of their land while also affecting its potential resale.

[3] The Burkes' neighbors assisted in financing the suit. *See Burke v. Crescent Invest. Grp., LLC*, No. C-12-CV-21-105, slip op. at 15 (Harford Cnty. Cir. Ct. Feb. 14, 2022). The circuit court expressed no concern with this arrangement, reasoning that the neighbors "had an interest in maintaining the residential nature of the neighborhood." *Id.* Nevertheless, these homeowners could not join the suit as they lacked standing to enforce the Declaration. *Id.* The circuit court judge noted that "this power lies solely with the Burkes as the owners of Lot 15." *Id.*

Crescent filed its answer on March 26, 2021, denying the Declaration encumbered its use of the CIG Parcel. On April 22, 2021, Crescent filed counterclaims, seeking declaratory relief requesting the court to declare that the use restrictions did not apply to the CIG Parcel and did not restrict Crescent's right to use the land for a house of worship. On October 11, 2021, the Burkes and Crescent each filed motions for summary judgment. The circuit court conducted a hearing on the competing summary judgment motions on November 8, 2021.

On February 14, 2022, the circuit court issued a Memorandum Opinion and Order granting the Burkes' motion for summary judgment and denying Crescent's motion. *Burke v. Crescent Inv. Grp., LLC*, No. C-12-CV-21-105, slip op. at 16–17 (Harford Cnty. Cir. Ct. Feb 14, 2022). The court ruled that the Declaration was unambiguous, and that its clear language expressed Smith's intention to encumber *both* Lot 15 and the CIG Parcel with the Residential Use Restriction. *Id.* at 9. Further, the court determined that no actions taken by Smith or the Burkes waived the enforceability of the covenants, nor that "equitable grounds" warranted the nonenforcement of the covenants. *Id.* at 14, 16. The court ordered CIG to immediately cease its use of the CIG Parcel as "a house of worship, community gathering center, any related uses, any non-residential uses, or any other use not permitted by the Declaration." *Id.* at 17. On March 2, 2022, Crescent appealed the circuit court's ruling to this Court.

## DISCUSSION

### Standard of Review

A court shall grant a motion for summary judgment, "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." Md. Rule 2-501(f). This court reviews a circuit court's grant or denial of summary judgment *de novo*. *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 330 (2014). Our review focuses on whether the circuit court was "legally correct." *RDC Melanie Dr., LLC v. Eppard*, 474 Md. 547, 564 (2021). We consider the facts, and the inferences drawn from them, in a light most favorable to the non-moving party. *Id.* If those facts and inferences support the party for whom judgment has been granted against, this Court will deem that ruling improper. *Id*.

"The interpretation of a restrictive covenant, including a determination of its continuing vitality," is also subject to the *de novo* standard of review "as a legal question." *RDC Melanie Dr., LLC*, *supra*, 474 Md. at 564–65 (quoting *Dumbarton Imp. Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55–56 (2013)). The covenant's interpretation "involves both the discovery of facts and the application of legal rules. Although this Court will only overturn a trial court's findings of fact when the findings are clearly erroneous . . . whether a covenant's language is ambiguous is an issue of law, which [an appellate court] reviews *de novo*." *Dumbarton v. Imp. Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55 (2013).

## I. The Circuit Court Did Not Err in Granting the Burkes' Motion for Summary Judgment and Denying CIG's Motion for Summary Judgment.

The circuit court found that, despite the use of the term "property" in the Therefore Clause and the use of "Lot" in the Residential Use Restriction, the Declaration was not ambiguous. Therefore, the circuit court did not need to look to any evidence outside of the Declaration itself to interpret the covenants and give them effect. In so doing, that court held that the Residential Use Restriction applied to both Lot 15 and "all other lands" owned by Smith "on the south side of Nova Scotia Road" -- a stretch of land that comprises the CIG Parcel. For the reasons that follow, we agree with the circuit court's legal conclusion.

### A. The contentions of the parties regarding the Declaration's ambiguity and interpretation.

#### 1. *Crescent seizes on the Declaration's use of "property" in the Therefore Clause and "Lot" in the Use Restrictions to establish that ambiguity exists. Further, the "property vs. lot" discrepancy, when read with the Declaration's other provisions, shows that Smith did not intend to encumber the CIG Parcel.*

Though Crescent argues in its brief that the circuit court erred by holding that the Declaration was unambiguous, this argument can more fairly be characterized as asserting the circuit court misread the Declaration. As to the existence of ambiguity, Crescent points to Smith's use of the term "property" in the Therefore Clause and in the Whereas Clause, but his use of the term "Lot" in the Residential Use Restriction, as well as in the other Use Restrictions in Article III of the Declaration. Moreover, Crescent asserts Smith's choice

to define "property," but his failure to do the same for "lot," makes the Declaration inherently ambiguous.[4]

Crescent does not dispute that the language of the Therefore Clause makes clear that the Declaration, and its "covenants, conditions, easements, and restrictions," apply to the CIG Parcel, as the CIG Parcel is among "the *property* herein described as Lot 15 and all other lands of Declarant on the south side of Novia Scotia Road." (Emphasis added). Further, Crescent does not dispute that Smith created the Declaration "for the purpose of protecting the value and desirability" of his land, as the Therefore Clause clearly provides. Nonetheless, Crescent asserts that Smith purposefully used "property" and "lot" in different provisions to grant himself the flexibility in developing his land and the efficiency in enacting such covenants without having to record multiple instruments to do so.

Crescent asserts that Smith's strategic use of "property" and "lot" in the Therefore Clause and the Use Restrictions, respectively, makes plain that Smith did not intend for these Use Restrictions to apply until *after* the land had been carved into lots for future conveyance. Crescent argues that this distinction aligns with Smith's professed purpose of protecting the value of his land because land apportioned and conveyed as lots would be most valuable if all such land was subject to the same covenants and part of the same scheme. According to Crescent, Smith could retain flexibility to utilize his land in the way he thought best by not encumbering the land *until* he began dividing it into lots. Crescent

[4] Article I, Section 2 of the Declaration provides, "Property shall mean and refer to all that certain real property described herein as Lot No. 15 and all property on the south side of Nova Scotia Road."

argues that if Smith wanted the covenants to apply to the CIG Parcel in its current state -- as contiguous, undivided real estate -- he would have used the term "property" in Article III's Use Restrictions, not "lot" and "lots."

In support of its interpretation, Crescent points to the exceptions in the Residential Use Restriction, which permit non-residential uses on lots "during the construction and sales period, on-site builder's construction offices, model homes, sales offices, and builder's storage areas." Crescent asserts that this underscores Smith's intention that the restrictions apply only once land has been divided into lots and conveyed, as these exceptions all relate to the development process. Further, Section 15 of the Use Restrictions requires owners to commence construction of a house within three years of conveyance of a lot, and to complete such construction within fifteen months. Section 19 makes owners responsible for any damage caused to common areas during the development of a lot. Section 20 provides Smith the power to make additional rules and regulations regarding the installation of amenities familiar to residential living, such as clotheslines, swimming pools, antennas, and patios. Section 21 allows Smith to grant variances to these rules. Article II instructs all owners to have plans and specifications for any alterations to the structures on their property approved by Smith.

In context, Crescent argues that these provisions demonstrate that Smith saw the Declaration's utility in controlling the *development process*. Thus, his intentional use of different terms in the Therefore Clause and the Use Restrictions supports an understanding that the Declaration applied to the CIG Parcel, but the Use Restrictions did not apply until

the land was divided into lots and conveyed during the process of residential development. As such, the Use Restriction would not apply to the CIG Parcel until the land is subdivided and conveyed as lots. Crescent maintains that since it does not seek to subdivide -- and instead will keep the parcel in its contiguous state -- it is not prohibited by the covenants from using the land for its planned house of worship.

*2. The Burkes argue that, when read as a whole, the Declaration unambiguously supports the conclusion that Smith intended to encumber both Lot 15 and the CIG Parcel with the Use Restrictions.*

The Burkes assert that the circuit court correctly concluded the Declaration is unambiguous in showing that Smith intended that the Residential Use Restriction, and all other covenants, apply to *both* Lot 15 *and* the CIG Parcel, regardless of further division or development of the land. The Burkes assert that because the Declaration lacks ambiguity, there is no need to consider extrinsic evidence to discern Smith's intent, and the covenant must be enforced as written.

The Burkes, as well as the circuit court, characterize the "property vs. lot" discrepancy in the Therefore Clause compared to the Residential Use Restriction as a strained interpretation of the language and a distinction without a difference when read in the context of the Declaration as a whole. As such, the Burkes assert that Smith clearly intended the Declaration and its covenants to apply to *both* the CIG Parcel *and* Lot 15, and, as a result, Crescent may not use its land for the non-residential purpose of a house of worship. Because our analysis largely aligns with that of the circuit court, we will spare the redundancy and expound upon this reasoning in the Discussion section, *infra*.

### B. The circuit court correctly ruled that the Declaration, and the covenants therein, unambiguously applied to both the CIG Parcel and Lot 15.

#### *1. The Court must first assess ambiguity, then move on to interpreting the Declaration.*

"There is . . . no question that the law of Maryland has long-recognized properly created restrictive covenants as permissible encumbrances on land." *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 678 (2007). "Principles of contract interpretation govern our review of a restrictive covenant." *RDC Melanie Dr., LLC*, *supra*, 474 Md. at 564–65. Because covenants are treated as "a species of contracts, [they] are to be enforced according to the objective intent of the original parties." *Dumbarton Imp. Ass'n, Inc.*, *supra*, 434 Md. at 52.

To do this, a court must determine from the language of the instrument, "what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Id.* (quoting *Calomiris v. Woods*, 353 Md. 425, 436 (1999)). If the language of the covenant is plain and unambiguous, our evaluation remains within the four corners of the document providing the covenants at issue. *See id.* at 53–54. If the covenant is deemed ambiguous, and its meaning cannot be derived from the language itself, extrinsic evidence may be used to resolve the ambiguity and divine the covenant's meaning. *See id.* at 54.

Thus, our evaluation of the Declaration requires a two-step process. First, we must determine if the language of the document is ambiguous. Our determination as to this question dictates our next step. If ambiguity exists, we move from the document to

extrinsic evidence that helps clarify the intentions of the drafting party. If no such ambiguity may be found, our interpretation remains squarely within the text of the Declaration, reviewing the circumstances of its creation only to reinforce our understanding.

*2. Crescent's strained attempt to establish ambiguity due to the "property vs. lot" discrepancy is unconvincing.*

"A covenant is ambiguous if its language is susceptible to multiple interpretations by a reasonable person." *Id.* at 53. "[A] covenant need not address every conceivable issue or potential outcome to avoid being ambiguous; it need only provide a clear answer for the matter in dispute." *Id.* at 57. "An ambiguity does not exist simply because a strained or conjectural construction can be given to a word." *Id.* at 53 (quoting *Belleview Const. Co. v. Rugby Hall Cmty. Ass'n, Inc.*, 321 Md. 152, 159 (1990)). "[A] lack of ambiguity in the application of the restrictive covenant may be gleaned or reinforced by other language in the instrument." *S. Kaywood Cmty. Ass'n v. Long*, 208 Md. App. 135, 145 (2012) (*Miller v. Bay City Prop. Owners Ass'n, Inc.*, 339 Md. 620, 638 (2006)). Further, "[t]his Court will 'not invalidate a plainly written covenant to save a party from what may prove to be a poor business decision.'" *Dumbarton Imp. Ass'n, Inc., supra*, 434 Md. at 61 (quoting *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 683 (2007)).

A potential circuity exists in our analysis of allegedly ambiguous provisions, in that a court often must utilize the portions of the instrument at issue to discern the intent of the drafter, while using those same provisions to dispel or establish ambiguity. Therefore, for the sake of brevity, we limit our discussion of ambiguity in the Declaration here to simply

address if the "property vs. lot" discrepancy alone is sufficient to establish ambiguity. We hold that it is not. Though Crescent's attempt to mine ambiguity from Smith's varying use of what appear to be synonymous terms is creative, we are unconvinced.[5] In our view, a reasonable person would not find multiple meanings of the Declaration's provisions based upon the use of the different, yet similar, terms "property" and "lot." *Id.* at 53.

In reviewing the language of an instrument providing a covenant, "the words used should be taken in their ordinary and popular sense, unless it plainly appears from the context that the parties intended to use them in a different sense, or that they have acquired a peculiar or special meaning in respect to the particular subject-matter." *RDC Melanie Dr., LLC, supra*, 474 Md. at 564–65 (quoting *Cnty. Comm'rs of Charles Cnty. v. St. Charles Assocs. Ltd. P'ship*, 366 Md. 426, 447–48 (2001)). Maryland courts routinely utilize dictionary definitions to provide the "ordinary and accepted" meaning of terms. *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 394 (2019). Looking to dictionaries available to Smith around the time of his drafting of the Declaration: "Lot" is defined as "a plot of ground." *Lot*, *Webster's New World Dictionary* (4th ed. 2003). "Property" is defined as "something owned, [especially] real estate." *Property, Webster's New World Dictionary*, *supra*. "Property" is recognized as a synonym for "lot," and "lot" is recognized as a synonym for "property." *See Lot*, Merriam-Webster.com Thesaurus, Merriam-

[5] The Burkes point to Crescent's original plan to cleave Lot 16 from the CIG Parcel and to place the house of worship on that lot, but then the revised plan keeping the CIG Parcel undivided and using all of it for the house of worship, as evidence Crescent knew the house of worship violated the Residential Use Restriction. The Burkes characterize the "property vs. lot" discrepancy as a clever theory that averts this issue.

Webster, https://www.merriam-webster.com/thesaurus/lot (last visited Mar. 21, 2023); *Property*, Merriam-Webster.com Thesaurus, Merriam-Webster, https://www.merriam-webster.com/thesaurus/property (last visited Mar. 21, 2023).

These resources are not dispositive as to the ultimate issue of ambiguity and interpretation. Nevertheless, they are sufficient to show that Crescent's "strained . . . construction" of the two distinct, yet similar, terms is insufficient to establish ambiguity. *Dumbarton Imp. Ass'n, Inc.*, *supra*, 434 Md. at 53. We cannot -- and will not -- find an ambiguity to "invalidate a plainly written covenant" just to save Crescent from its failure to become aware of covenants -- publicly recorded with the County -- that impede its desired use of the property. *See id.* at 61; *see also Schovee v. Mikolasko*, 356 Md. 93, 112–13 (1999) ("Absent some compelling circumstance, purchasers cannot be allowed to claim ignorance of that which is clearly set forth in a recorded instrument in the chain of title."). As discussed *infra*, the Declaration, as a whole, dispels further concerns of ambiguity and sufficiently clarifies Smith, the drafter, intended to encumber both Lot 15 and the CIG Parcel.

Additionally, because neither this Court, nor the circuit court, found the Declaration to be ambiguous, there is no need to weigh extrinsic evidence in the interpretation of the covenants. *MIE Props., Inc.*, *supra*, 398 Md. at 681 ("Extrinsic evidence is only utilized when the intent of the parties and the purpose of a restrictive covenant cannot be divined from the actual language of the covenant in question, necessitating a reasonable interpretation of the language in light of the circumstances surrounding its adoption.")

(quoting *Dumbarton Imp. Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 54 (2013)). The circuit court correctly articulated this process. *Burke*, *supra*, slip op. at 9 ("First, in order to consider extrinsic evidence, the Court must first find that the declaration containing the covenant is ambiguous.").

In so doing, the circuit court correctly rejected Crescent's attempts to influence the interpretation of the Declaration through the review of extrinsic evidence regarding Smith's use of the land at the time of drafting the Declaration. The circuit court further rejected Crescent's interpretation of the structures already existing on the land, the Declaration's absence from all deeds related to the conveyance of Lot 15 or the CIG Parcel, and the Burkes' own potential failure to adhere to all provisions of the Declaration. The court found "that the clear language contained in the covenant outlines the intent of Mr. Smith to encumber both the Burke lot and the CIG [Parcel] with restrictions." *Id.* slip op. at 9. In short, that court correctly limited its review to the provisions of the Declaration that yielded this conclusion. The trial court did not err in refusing to wade into the murky waters of extrinsic evidence.

*3. The Declaration as a whole supports the circuit court's ruling that Smith intended the covenants to apply to both Lot 15 and the CIG Parcel.*

We derive the intention of the original parties from the language of the instrument itself, "considered in connection with the object in view of the parties and the circumstances and conditions affecting the parties and the property." *Belleview Const. Co. v. Rugby Hall Cmty. Ass'n, Inc.*, 321 Md. 152, 157 (1990) (quoting *Levy v. Dundalk*

*Co.*, 177 Md. 636, 648, (1940)). As a grounding principle, courts will "avoid interpreting contracts in a way that renders [their] provisions superfluous." *Calomiris v. Woods*, 353 Md. 425, 442 (1999) (quotations omitted). Further, like contracts, we interpret covenants and the documents from which they are derived "as a whole, and all disputed terms are to be interpreted in context." *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 332 (2014).

As the circuit court determined, Smith's intention to encumber both Lot 15 and the CIG Parcel is found in the language of the Whereas Clause and the Therefore Clause. *See Burke, supra,* slip op. at 9–10. The Whereas Clause reads that the Declarant, Smith "desires to *adopt the covenants,* conditions and restrictions hereinafter *set forth for Lot 15 . . . and all other lands seized and possessed by the Declarant on the south side of Novia Scotia Road*."[6] (Emphasis added). The Therefore Clause follows with similar language, providing that "[L]ot 15 and all other lands of Declarant on the south side of Nova Scotia Road *shall be held, sold, and conveyed subject to the following covenants*, conditions, easements, and restrictions."[7] (Emphasis added). In both provisions, Smith clearly

[6] The Whereas Clause reads:

> WHEREAS, the Declarant desires to adopt the covenants, conditions and restrictions hereinafter set forth for Lot 15 as shown on a Plat entitled "Partial Revision – Final Plat Two – Lot 15, Quail Creek", which Plat is recorded among the Land Records of Harford County in Plat Book 118, folio 32, and all other lands seized and possessed by Declarant on the southerly side of Nova Scotia Road.

expresses that the covenants apply to both Lot 15 and all land south of Novia Scotia Road. The CIG Parcel is Smith's land south of Nova Scotia Road.

Returning to Crescent's "property vs. lot" discrepancy, the plain language of the Therefore Clause demonstrates that Smith intended the covenants to apply to the land while it was "held, sold, and conveyed," thus dispelling the idea put forth by Crescent that Smith wanted the covenants to apply only once the land was conveyed *as lots*. Further diluting the potency of Crescent's argument that Smith purposefully used of "property" and "lot" is the general inconsistency with which these terms appear in the Declaration. Despite using the term "Lot" throughout Article III's Use Restrictions, Smith appears to reference those same "Lots" as "Properties" within Article II's Architectural Control provision.[8] The

[7] The Therefore Clause reads:

> NOW, THEREFORE, Declarant hereby declares that the property herein described as Lot 15 and all other lands of Declarant on the south side of Nova Scotia Road shall be held, sold and conveyed subject to the following covenants, conditions, easements, and restrictions which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties, having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

[8] Article II's "Architectural Control[s]" provide:

> No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall

provision addressing the process to amend the Declaration provides the "Declaration shall run with and bind the *land*," while the Therefore Clause provides the covenants "shall run with the *real property*." (Emphasis added). This fluidity of terminology fails to distinguish what constitutes a "lot," "property," or "land," and thus undermines the argument that Smith only wanted the covenants to apply if the CIG Parcel could be characterized as a "lot" but not as "property" or "land."

This court need look no further than the plain words of the Therefore Clause to ascertain Smith's intention in drafting the Declaration. The covenants, conditions, easements, and restrictions were for the "purpose of protecting the value and desirability" of the land.[9] To achieve this, covenants "shall run with the real property and be binding on all parties having any right, title or interest in the described property." A plain reading of this provision would lead a reasonable mind to construe it to mean that the covenants run with the land of the CIG Parcel, and thus that the covenants encumber Crescent, a party having "right, title or interest" in the CIG Parcel. *See Dumbarton Imp. Ass'n, Inc.*, *supra*, 434 Md. at 53.

> have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant as hereinafter provided.

[9] Any qualms regarding Smith limiting the value of the land by encumbering it may be mitigated by noting that the Declaration applies *only* to Lot 15 and "all land on the south side of Nova Scotia Road;" thus, Smith maintained flexibility to use his property north of Nova Scotia Road as he desired.

The additional covenants ensuring a residential character reflect that the property would be most valuable when used for residential purposes. Article III, Sections 2 through 19 address similar restrictions regarding offensive uses of the land, accessory structures, landscaping, yard maintenance and appearance, masonry, mailboxes, antennas, garages and driveways, swimming pools, the square footage of residences, and the parking of trucks and commercial vehicles. Such prohibitions align with protecting a residential setting.

Pragmatically, the Declaration's purpose of protecting the "value and desirability" of the land by imposing these covenants, including the Residential Use Restriction, is only achieved if *both* Lot 15 *and* the CIG Parcel are subject to the same covenants. Smith achieves this uniform application through the Declaration's enforcement and amendment mechanisms. As the Therefore Clause provides, the covenants bind all parties holding right, title, or interest in Lot 15 and the CIG Parcel. Section 1 of Article VII's General Provisions also grants "[t]he Declarant and any Owner . . . the right to enforce . . . all restrictions, conditions, covenants, reservations, liens and charges" imposed by the Declaration, and that the failure of the Declarant or any Owner to enforce any covenants shall not be deemed waiver of their enforcement. Section 3 of this Article permits amendment of the Declaration only by an instrument signed by not less than seventy-five percent of the owners and recorded in the Department of Land Records.

Not only does this demonstrate Smith's intention to apply the covenant to both Lot 15 and the CIG Parcel, but it also makes clear that permitting a house of worship on the land does not align with his desired goals of creating a uniformly residential development,

in which any one owner cannot alter the residential setting. The Declaration's provision empowering "any Owner" with the right to enforce the covenants reinforces the imperative of protecting this residential character. Therefore, we find no error of law in the circuit court's ruling that Smith's unambiguous intention, as discerned from the words of the Declaration itself, was to impose *all of the covenants* on *both* Lot 15 and the CIG Parcel. As such, the circuit court correctly granted the Burkes' motion for summary judgment.

We, therefore, affirm the circuit court's ruling that the Declaration's Residential Use Restriction applies to both the CIG Parcel and Lot 15. As a result, Crescent may not utilize the CIG Parcel for a nonresidential purpose. Accordingly, we affirm the circuit court's granting of the Burkes' motion for summary judgment, and that court's denial of Crescent's motion for summary judgment.

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