Circuit Court for Howard County
Case No. C-13-CV-19-000983

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 235

September Term, 2021

ROXBURY VIEW, LLC, *et al.*

v.

EDWARD T. MCCAULEY, III, *et al.*

Fader, C.J.,
Arthur,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: April 12, 2022

This interlocutory appeal principally concerns the interpretation of an open space and conservation easement. On cross-motions for summary judgment, the Circuit Court for Howard County declared that the easement prohibited the landowner from constructing a residence on part of its property. Consequently, the court ordered the landowner and its principals to demolish the residence.

We shall reverse the order because the easement is ambiguous and because there are genuine disputes of material fact as to whether the easement prohibits the landowner from constructing this particular structure.

FACTUAL BACKGROUND

A. THE CHASE FARM

In 1949 George Howland Chase and Mary Hale Chase acquired approximately 285 acres of farmland in western Howard County. Although the property has been subdivided on many occasions since 1949, we shall refer to it, in its entirety, as the "Chase Farm."

B. THE EASEMENT

On May 10, 1978, the Chases conveyed an open space and conservation easement over the Chase Farm to the Maryland Environmental Trust (MET), one of the appellees in this case. The deed of easement recites that the Chases conveyed the easement for the purposes of "conserving the nature values of the property," "preserving the agricultural character of the property," and "preventing the use or development of the property for

any purpose or in any manner which would conflict with the maintenance of the property in its present scenic and natural condition[.]"

Paragraph 3 of the deed of easement is central to this case. It states:

> No building, facility, or other structure shall be erected or constructed on the property unless (a) such structure replaces one of the pre-existing structures, identified in Exhibit "C" attached hereto and made a part hereof, with one of similar size, bulk, height or floor area; or (b) such structure is in the form of a structural addition to one of the pre-existing structures, identified in Exhibit "C" attached hereto and made a part hereof; or (c) such structure is a new structure which is necessary for and directly related to the continued agricultural use of the property; or (d) such structure is one which is designed or utilized to serve the residents of a residence now existing or one erected or constructed pursuant to subparagraph (a) of this paragraph 3. Structures which may be erected or constructed pursuant to subparagraph (d) of this paragraph 3 include, but need not be limited to, a tool shed, gazebo, tennis court, swimming pool or garage.

In other words, paragraph 3 prohibits the construction or erection of a "building, facility, or other structure" on the Chase Farm unless it satisfies at least one of the following conditions:

- it replaces one of the pre-existing structures identified in Exhibit C to the deed of easement, and is of "similar size, bulk, height or floor area" to the structure that it replaces;
- it is a "structural addition" to one of the pre-existing structures identified in Exhibit C;
- it is "necessary for and directly related to the continued agricultural use of the property"; or
- it is "designed or utilized to serve the residents of" one of the permitted residences, as for example, a "tool shed, gazebo, tennis court, swimming pool or garage" might be.

Exhibit C to the deed of easement lists the pre-existing structures on the Chase Farm. They are the main residence, the guest house, a swimming pool near the main residence, the farm house, the tenant house, a large barn with two silos, a loafing shed,[1] a herringbone milking parlor,[2] and two machine storage sheds.

Paragraph 9 of the deed of easement "expressly reserved" certain "rights" to the Chases and their successors and assigns. Among other things, in paragraph 9(a), the Chases (for themselves and for their successors and assigns) reserved the right to "[c]ontinue uses of the property which are not inconsistent with" the easement. In case the Chases or their successors or assigns were ever "in doubt as to whether a use is not inconsistent with" the easement, paragraph 9(a) obligated them "to confer with [MET], or its successors or assigns."

In paragraph 9(b) of the deed of easement, the Chases reserved the right to "[c]ontinue the agricultural uses of the property as woodland or farmland, including, but not limited to, (i) the growing and harvesting of all types of grains, foods, fruits, vegetables and other natural products; and (ii) maintenance of a herd of dairy cattle and other domestic animals[.]"

[1] A loafing shed is a three-sided structure in which livestock can take shelter from the elements.

[2] A herringbone milking parlor is a structure for milking cows, in which the cows stand at a 45 degree angle to the barrier between the cows and the operator, in a herringbone pattern.

Finally, in paragraph 10 of the deed of easement, the parties agreed that "monetary damages would not be an adequate remedy for breach of any of the terms, conditions, or restrictions[.]" "Therefore," the parties agreed, if the Chases or their successors or assigns breached any term, condition, or restriction in the deed of easements, MET could, after notice, institute a civil action to enjoin the breach "and to require the restoration of the property to its prior condition."

C. THE SUBDIVISION OF THE CHASE FARM

In 1979 the Chases conveyed about 261 acres of the Chase Farm to Charles and Linda Zepp. The Zepp property became known as Lot 1; the remainder of the Chases' property became known as Lot 2. The main residence and the guest house, two of the pre-existing structures mentioned in Exhibit C to the deed of easement, were on Lot 2, which the Chases retained. All of the other pre-existing structures were on Lot 1.

In 1994 appellants Charles and Denise Sharp purchased Lot 1. In anticipation of the purchase, the Sharps had sought and obtained MET's approval to reconstruct the tenant house on Lot 1, which apparently was no longer standing. The Sharps did not rebuild the tenant house.

By 1995 Stephen and Catherine Klein had acquired Lot 2. They sought MET's approval to reconstruct the guest house, which had been destroyed in a fire. MET permitted the Kleins to construct a replacement structure no larger than 4,000 square feet in size, provided that it was located on Lot 2. Neither the Kleins nor their successors in interest have constructed a replacement for the guest house.

In 1996 the Sharps, who owned Lot 1, subdivided that tract into three lots. The new lots were identified as Lots 3, 4, and 5. Lot 1 ceased to exist.

Also in 1996, the Sharps requested and obtained MET's approval to replace the farm house, which had been on Lot 1, but was now on what had become new Lot 4. The Sharps did not construct a replacement for the farm house.

In 2012 the Sharps conveyed Lots 3, 4, and 5 to Sharp's Wild Horse Meadow LLC ("Sharp's Meadow"), a limited liability company of which they were the sole members. In 2017 Sharp's Meadow subdivided Lots and 3 and 5 into new Lots 6, 7, and 8. Lots 3 and 5 ceased to exist.

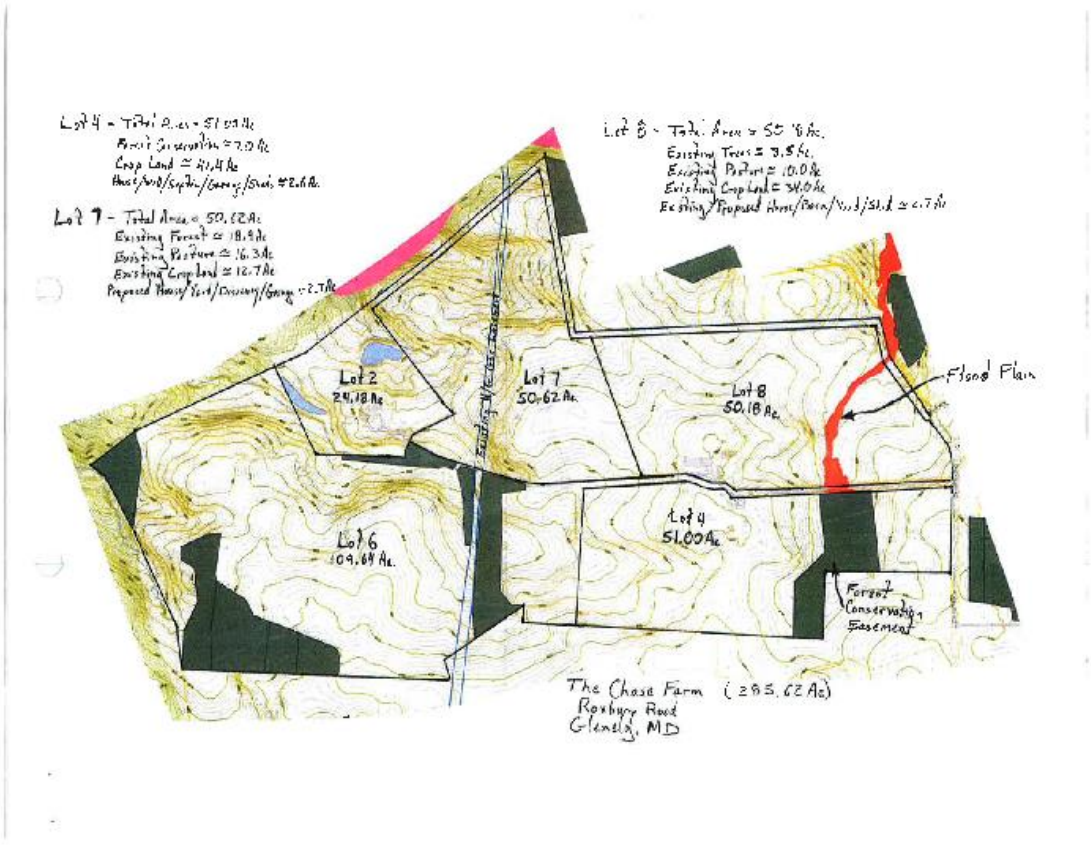
On October 26, 2017, appellees Edward T. McCauley III and Leslie L. McCauley purchased Lot 2 from the Kleins.

On May 31, 2018, Sharp's Meadow sold Lots 4, 7, and 8 to appellant Roxbury View, LLC, a limited liability company owned by appellants Gina and Dean Dubbé. Sharp's Meadow retained Lot 6.

In summary, by the middle of 2018, the Chase Farm had been subdivided into five existing lots: Lot 2, Lot 4, Lot 6, Lot 7, and Lot 8. The McCauleys owned Lot 2, which consisted of about 24.1 acres. The Dubbés' LLC, Roxbury View, owned Lots 4, 7, and 8, which consisted of about 51 acres, 109.6 acres, and 50.1 acres, respectively. Sharp's Meadow owned Lot 6, which consisted of about 50.6 acres. Lot 2, owned by the McCauleys, is the site of the main residence and the former guest house. Lot 4, owned by Roxbury View, is the site of the farm house and the former tenant house. A barn, the

milking parlor, a silo, and the loafing shed are located on Lot 8, also owned by Roxbury View.

A map, showing the configuration of the various lots as of early 2018, appears below:



D. ROXBURY VIEW'S REQUEST TO CONSTRUCT NEW HOUSES

In January 2018, Roxbury View as the contract purchaser of Lots 4, 7, and 8, had requested MET's approval for the construction of a total of three replacement dwellings on those lots. More specifically, Roxbury View sought:

- to replace the farm house, which was on Lot 4, "with a principal dwelling not exceeding 4,000 square feet of living area excluding garages, basements, and attics on Lot 4";

- to replace the former tenant house, which had been on Lot 4, "with a principal dwelling not exceeding 4,000 square feet of living area excluding garages, basements, and attics" on Lot 8; and

- to replace the guest house, which had been on Lot 2 (which Roxbury View had *not* contracted to purchase), "with a principal dwelling not exceeding 3920 square feet of living area excluding garages, basements, and attics" on Lot 7.

Roxbury View asserted that Sharp's Meadow, the record owner of Lots 4, 7, and 8, joined in the request. On March 8, 2018, Sharp's Meadow, as the record owner, submitted a formal request to MET for the approvals that Roxbury View sought.

According to Roxbury View, the request to replace the tenant house (and to move it from Lot 4 to Lot 8) "supersede[d]" the Sharps' request to construct a replacement for the tenant house on Lot 4. MET had approved the Sharps' request in 1996.

In its request, Roxbury View expressed its view that the easement does not require replacement dwellings to be placed in the exact location of the dwellings that they replace. In addition, Roxbury View asserted that "[t]he right to replace the existing dwellings on the Property does not run with the land." In this regard, Roxbury View contended that "[t]here was no privity of contract between the original Grantor and the McCauley's [sic] by which this right" – apparently referring to the "right to replace existing dwellings" – "had been assigned to them." Roxbury View observed that the McCauleys' predecessors-in-title (the Kleins) did not replace the guest house after they had received permission to do so in 1995. From these premises, Roxbury View appears

to have concluded the McCauleys' consent was not required for Roxbury View to replace the guest house, which had been on the McCauleys' property, with a new dwelling on Roxbury View's property.

Two months later, on March 22, 2018, Roxbury View withdrew its request for permission to replace the guest house with a new residence on Lot 7.

On April 2, 2018, MET approved the construction of the replacement farm house on Lot 4, conditioned "on the demolition of the existing residence or written agreement to never use the structure as a residence again." At the same time, MET approved Roxbury View's request to build a replacement for the tenant house on Lot 8 instead of what was now Lot 6, as the Sharps had previously been allowed to do. MET, however, conditioned that approval on an:

> acknowledgement that once the previously approved residence right is moved from Lot 6 to Lot 8 that [sic] Lot 6 no longer has a right for a residence, and that if in the future it is requested to move a right from a parcel containing a residence to another parcel, that the right may be moved between parcels only if the existing residence associated with that right is razed or otherwise rendered unusable as a residence.

In approving the construction of the replacement for the tenant house on Lot 8, MET stated that "the total number of primary and accessory residences permitted on Lots 4, 6, 7, and 8 is two." (Emphasis in original.) Two paragraphs later MET cited past opinions from the Office of the Attorney General, which, MET said, "confirm that a total of four residences are permitted on the property" (apparently meaning the entire Chase Farm).

Less than two months later, Roxbury View acquired fee simple title of Lots 4, 7, and 8.

Following its purchase of those lots, Roxbury View leased parts of its property to two independent agricultural operations. Roxbury View and the Dubbés assert that they support those operations by providing a farm manager – their son Logan Dubbé.

E. THE CONSTRUCTION OF THE "FARM TENANT HOUSE" ON LOT 7

Although Roxbury View had abandoned its efforts to obtain approval to construct a new dwelling on Lot 7, the Dubbés wrote to MET on August 27, 2018, to "indicate that [they were] in the process of filing for a building permit to construct a farm tenant house on Lot 7 on the property." The letter stated that the Dubbés intended to construct a "farm tenant house" "for the purposes of operation of the farm" on Lot 7, on which they had previously sought to construct a replacement for the guest house. The Dubbés added that they intended to build a "principal residence" on Lot 4 "in the next three years" and that a "principal residence may be built" on Lot 8 "in the next 5-7 years."

To support the position that they were entitled to build the new farm tenant house, the Dubbés attached a letter from the Howard County Department of Planning and Zoning, stating that the building of the structure was permissible on Lot 7. In addition, they cited paragraph 3(c) of the deed of easement, which permits the construction of a new "structure" if it is "necessary for and directly related to the continued agricultural use of the property[.]"

On October 3, 2018, MET responded that the construction of a new house on Lot 7 would violate the terms of the easement because a dwelling "is not a farm structure."

On May 2, 2019, MET's stewardship manager received a call from Mr. McCauley, the owner of Lot 2, who reported that framing was being erected for a structure on Lot 7. Mr. McCauley called again on May 7, 2019, to report that additional construction was taking place.

In accordance with paragraph 10 of the deed of easement, MET sent written notice to Roxbury View, Sharp's Meadow, and the McCauleys on June 4, 2019. The letter stated that MET considered the residential construction on Lot 7 by Roxbury View to be in violation of the express prohibitions of the easement. MET gave Roxbury View until June 18, 2019, to cure the violations. Despite the notice from MET, the construction of the farm tenant house continued to completion.

After completing the construction of the farm tenant house, Roxbury View leased the house to the Dubbés' son, Logan, the farm manager. The lease details the farm manager's responsibilities, which include maintaining a watch over the property to preclude trespass and unlawful entry; maintaining a watch over the livestock and alerting the owner if any livestock escapes from a fenced pasture; making routine inspections of the fencing surrounding the livestock pastures and informing the owner of the need for any repairs; and managing and overseeing the lease of the pastures, the lease of crop land, and the use of the property for hunting.

PROCEDURAL BACKGROUND

On October 18, 2019, the McCauleys filed a complaint for declaratory and injunctive relief against the Dubbés, Roxbury View, the Sharps, Sharp's Meadow, and MET. Among other things, the complaint requested that the court enjoin Roxbury View and the Dubbés from completing the construction of the farm tenant house on Lot 7; enjoin Roxbury View, the Dubbés, Sharp's Meadow, and the Sharps from building a replacement for the guest house (which had been on Lot 2) on any of their lots; and enjoin Roxbury View, the Dubbés, Sharp's Meadow, and the Sharps from using a certain right-of-way.

A few months later, the McCauleys filed a 24-count, 67-page amended complaint. The amended complaint reiterated the core allegations of the original complaint, added Logan Dubbé as a defendant, and asserted more than a dozen tort claims against the Dubbés, Logan Dubbé, Roxbury View, the Sharps, and Sharp's Meadow.

Roxbury View and Gina and Dean Dubbé filed a counterclaim on December 12, 2019. Among other things, the counterclaim repeated the assertion that Roxbury View may construct the farm tenant house on Lot 7 because it "is necessary for and directly related to the continued agricultural use of the property," within the meaning of paragraph 3(c) of the deed of easement. The counterclaim requested that the circuit court declare that the easement permitted the construction of the farm tenant house on Lot 7.

On February 26, 2020, MET filed a cross-claim against the McCauleys, Roxbury View, and Sharp's Meadow. MET requested a declaration that the easement prohibited

the construction of dwellings on the Chase Farm unless they replace one of the four dwellings listed on Exhibit C (the main residence, the guest house, the farm house, and the tenant house). Thus, MET requested a declaration that Roxbury View had violated the easement by constructing the farm tenant house on Lot 7. MET also requested a declaration that there can be no more than two dwellings on the lots owned by Roxbury View (Lots 4, 7, and 8), that no dwellings may be constructed on the lot owned by Sharp's Meadow (Lot 6), and that the replacement for the guest house must be built on Lot 2 (which is owned by the McCauleys) unless the owner of Lot 2 conveys that right. Finally, MET requested a decree of specific performance requiring Roxbury View to remove the farm tenant house or to convert it to a nonresidential use.

All parties in the case moved for summary judgment. The McCauleys also moved to dismiss the counterclaim filed by Roxbury View and the Dubbés.

In their motion, Roxbury View and the Dubbés set out to establish that the farm tenant house was "necessary for and directly related to the continued agricultural use of the property," within the meaning of paragraph 3(c) of the deed of easement. To this end, they attached affidavits from Logan Dubbé, the farm manager, and from the two farmers who lease portions of Roxbury View's property to raise crops and cattle.

In his affidavit, Logan Dubbé detailed his duties and explained how his residence on the farm assisted him in the performance of those duties. Mr. Dubbé also explained that the location of the farm tenant house – "at a high point on Chase Farm" – served to deter trespassers and allowed him to watch out for trespassers and other malefactors and

to see when cattle escape from their pastures. Mr. Dubbé's lease requires him to "provide an average of 40 hours of farm services per month."

In a second affidavit, one of the farmers testified that because Mr. Dubbé resides on the farm, he is able to provide "critical and necessary security" for the farmer's expensive machinery and equipment and to deter trespassers, thieves, and vandals. He noted increased crop yields since Mr. Dubbé moved onto the property and began hunting the deer that damage the crops.

In another affidavit, the other farmer, who said that he visits the farm only a few days a week and only for a few minutes at a time, testified about the value of Mr. Dubbé's assistance in watching over the herd of cattle from his house "at a high point on Chase Farm" and informing him when cattle escape, when a calf is being born, or when other problems arise. The farmer also testified that Mr. Dubbé's overnight presence is "critical" to provide security in case of a fire in the barn in which the farmer stores his tractor, hay, and other equipment.

MET's motion included an excerpt from the deposition of Gina Dubbé. In that excerpt, Ms. Dubbé testified that even before she and her husband bought Lots 4, 7, and 8 they had intended build one house on each of the three lots: one for the Dubbés themselves and one for each of their two children.

The circuit court conducted a hearing, granted MET's motion for summary judgment on its cross-claim, and denied all other motions. In a written order that was docketed on March 25, 2021, the circuit court declared that under the easement no

"residential dwelling structures" may be constructed on the Chase Farm unless they are replacements for one of the four "residential dwelling structures" listed in Exhibit C. The court also declared that "no residential dwelling structure" may be constructed on Lot 6 (which is currently owned by Sharp's Meadow) and that the right to replace the guest house "must be exercised on Lot 2" (which is currently owned by the McCauleys), unless the owner Lot 2 conveys the right to the owner of another lot. The court declared that Roxbury View and the Dubbés had violated the easement by erecting an "impermissible, residential dwelling structure on Lot 7." The court ordered Roxbury View and the Dubbés to "remove and demolish the residential dwelling on Lot 7" within six months of the date of the court's order.

The Dubbés, Roxbury View, the Sharps, and Sharp's Meadow noted appeals from this interlocutory order. This Court has stayed the order requiring Roxbury View to remove the structure on Lot 7 "pending the issuance of this Court's opinion and mandate."

QUESTIONS PRESENTED

Roxbury View and the Dubbés raise two questions on appeal:

1. Whether the Circuit Court erred in issuing an Order a) restricting the location of residences on Chase Farm and b) prohibiting certain property owners from transferring "residential development rights" between lots when it is undisputed that the Conservation Easement at issue does not restrict the location of residences or give the Maryland Environmental Trust authority to review and approve the location of residences?

2. Whether the Circuit Court erred in granting the Maryland Environmental Trust's Motion for Summary Judgment and ordering the

> razing and removal of the Farm Manager's House on Lot 7 when Paragraph 3(c) of the conservation Easement permits the construction of any "new structure" that is "necessary for and directly related to the continued agricultural use of the property" and does not contain an exclusion on residential structures?

Sharp's Meadow raises the following question:

> Whether the Circuit Court erred in granting summary judgment in favor of the Maryland Environmental Trust holding that "no residential dwelling structure of any size or type may be constructed on Lot 6 shown on the Plat[,]" when the Maryland Environmental Trust Deed of Easement providing the basis for this action does not grant such authority to Maryland Environmental Trust.

For the reasons below, we shall dismiss Sharp's Meadow's appeal, but shall reverse the interlocutory order insofar as it concerns the construction of the farm tenant house on Lot 7. We shall remand this case for further proceedings.

JURISDICTIONAL ISSUES

As a preliminary matter, we must examine the extent, if any, to which we have jurisdiction to consider the issues on appeal.

In general, a party may appeal only from a final judgment. Maryland Code (1974, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("CJP"). To qualify as a final judgment, an order "must be 'so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.'" *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 299 (2015) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)) (emphasis in original); *accord Huertas v. Ward*, 248 Md. App. 187, 200 (2020). Ordinarily, an order "that adjudicates fewer than all of the

claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action . . . is not a final judgment[.]" Md. Rule 2-602(a).

It is beyond any serious dispute that the order at issue in this case is not a final judgment. Much of the case, including the numerous tort claims for damages in the McCauleys' amended complaint as well as the dispute about the use of the right-of-way, remain pending in the circuit court. The circuit court has made a decision concerning a few legal issues, but it has not rendered a final judgment. Under Rule 2-602(a), the court's ruling "does not terminate the action as to any of the claims or any of the parties[.]" The order is interlocutory, in that it "is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties." Md. Rule 2-602(a).

Recognizing that Roxbury View and the Dubbés have not appealed from a final judgment, the McCauleys have moved to dismiss that appeal. Even if they had not moved to dismiss the appeal, however, we would have the right and the obligation to inquire into whether we have appellate jurisdiction to decide the case. "[W]e can raise the issue of finality on our own motion." *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 172 (2015).

In response to the McCauley's motion, Roxbury View and the Dubbés assert that they have the right to appeal under CJP § 12-303(1), which permits an appeal from an

interlocutory order "entered with regard to the possession of property with which the action is concerned." We disagree that § 12-303(1) authorizes an appeal from the interlocutory order in this case.

An order entered with regard to the possession of property 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, 521 n.2 (1977); *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010).

For example, in *Bledsoe v. Bledsoe*, 294 Md. at 185, the Court of Appeals entertained an interlocutory appeal from a use and possession order in a domestic case that gave sole possession of the marital home to one spouse during pendency of litigation. Similarly, in *City of Baltimore v. Kelso Corp.*, 281 Md. at 517, the Court of Appeals heard an appeal from an interlocutory order that dismissed the City's quick-take condemnation claim and divested the City of the right to immediate possession, which it had acquired under the quick-take ordinance. In *Bussell v. Bussell*, 194 Md. App. at 147, this Court recognized that "a *pendente lite* order granting use and possession of a family home, though not a final judgment . . ., is immediately appealable as an interlocutory order, pursuant to C.J.P. § 12-303." In each of these cases, the orders in question adjudicated the possessory rights to the property.

By contrast, this Court has repeatedly held that § 12-303(1) does not authorize an appeal from an interlocutory order that merely relates in some way to rights in property, but does not concern the right to possess property. *See, e.g.*, *Abner v. Branch Banking &*

Trust Co., 180 Md. App. 685, 692-93 (2008) (holding that § 12-303(1) did not authorize an appeal from an interlocutory order that dismissed a fraudulent conveyance claim based on the allegation that the proceeds of an asset sale should have gone to the plaintiff); *Rustic Ridge, LLC v. Washington Homes, Inc*., 149 Md. App. 89, 96, 98-99 (2002) (holding that § 12-303(1) did not authorize an appeal from an interlocutory order that declared that one party was the rightful owner, but did not address possession); *McCormick Constr. Co., Inc. v. 9690 Deerco Rd. Ltd. P'ship*, 79 Md. App. 177, 181 (1989) (holding that § 12-303(1) did not authorize an appeal from an interlocutory order that stayed a mechanic's lien action pending arbitration even though the imposition of a mechanic's lien might result in a right of possession).

The order in this case dictates what Roxbury View may or may not do while possessing its property, but the order does not divest Roxbury View of a possessory right in the property. Roxbury View continues to possess its property; it is simply prohibited from constructing a residence on Lot 7 (and is required to raze the residence that it has constructed on that lot). Therefore, the order is not immediately appealable as "[a]n order entered with regard to the possession of property," within the meaning of § 12-303(1).

Our analysis, however, does not end there. CJP § 12-303(3)(i) authorizes an immediate appeal from an interlocutory "order granting . . . an injunction." The circuit court's order is in the nature of an affirmative injunction: it requires Roxbury View and the Dubbés to demolish the structure on Lot 7. MET's cross-claim, which asked the court to order the demolition of the structure, disclosed the injunctive nature of the

requested relief in characterizing it as a decree of specific performance. Accordingly, we conclude that we have appellate jurisdiction, under CJP § 12-303(3)(i), to consider the interlocutory appeal brought by Roxbury View and the Dubbés. *See Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 384-87 (2005) (determining that a trial court's order directing how the Baltimore City Public Schools was permitted to manage its deficit constituted an order in the nature of an injunction and thus was immediately appealable); *Comm'n on Med. Discipline v. Stillman*, 291 Md. 390, 398 (1981) (determining that a trial court's order restricting the actions of the Commission on Medical Discipline constituted an order in the nature of an injunction and thus was immediately appealable); *Jackson v. Jackson*, 15 Md. App. 615, 623 n.3 (1972) (determining that a trial court's order prohibiting a defendant from leaving the State constituted an order in the nature of an injunction and thus was immediately appealable).

Nonetheless, it does not follow that we have appellate jurisdiction to consider the interlocutory appeal brought by Sharp's Meadow. Although an appeal from a final judgment ordinarily means that every interlocutory order is open for appellate review (*see* Md. Rule 8-131(d)), the situation is quite different in the case of a permitted appeal from an interlocutory order. The rule that every previous interlocutory order is generally open to review "only applies to appeals from final judgments in the usual sense." *Snowden v. Baltimore Gas & Elec. Co.*, 300 Md. 555, 559 n.2 (1984). In the case of a permitted appeal from an interlocutory order, by contrast, the only issues before the appellate court are the correctness of the order itself and its underpinnings. *See Maryland State Bd. of*

Educ. v. Bradford, 387 Md. at 386-87. Consequently, unless there is some separate basis for an immediate appeal of the aspect of the interlocutory order by which the Sharps and Sharp's Meadow are aggrieved, we have no power to consider their appeal.

The order identifies a limitation on Sharp's Meadow's ability to use its property, but it does not explicitly require Sharp's Meadow to do or to refrain from doing something with the property. In that regard, this part of the order is quite different from the part that requires Roxbury View and the Dubbés to demolish the farm tenant house. Because the order does not require Sharp's Meadow to do or to refrain from doing anything, Sharp's Meadow does not have the right to appeal under CJP § 12-303(3)(i), on the premise that the order grants an injunction.

At oral argument, counsel for the Sharps and Sharp's Meadow seemed to suggest that we have the discretion to consider their appeal under Rule 8-602(g). MET echoed those arguments. We disagree that we have the discretion to consider the appeal under Rule 8-602(g).

Rule 8-602(g) allows an appellate court to "enter a final judgment on its own initiative" if it "determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b)." Thus, the appellate court's power to "enter a final judgment on its own initiative" under Rule 8-602(g) depends on whether the circuit court had the "discretion to direct the entry of a final judgment pursuant to Rule 2-602(b)."

Rule 2-602(b) provides as follows:

> If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:
>
> (1) as to one or more but fewer than all of the claims or parties; or
>
> (2) pursuant to Rule 2-501(f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

This case does not involve "a claim seeking money relief only," and the circuit court's order awards no money damages – and thus does not award "some but less than all of the amount requested." Therefore, subsection (2) of Rule 2-602(b) does not apply.

Nor did the court dispose of all of the claims against one or more but fewer than all of the parties. Although the order granted MET's motion for summary judgment and granted the relief that MET requested, MET is still a party to the case (as a defendant in the McCauleys' amended complaint and in the counterclaim filed by Roxbury View and the Dubbés). In fact, there are just as many parties after the order as there were before.

Nor does the court appear to have disposed of one or more but fewer than all of the "claims" in the case, as Maryland's appellate courts have interpreted that term. "'[A] complaint and counterclaim constitute all one claim if they involve the same facts or the same cause of action . . . .'" *Carl Messenger Serv., Inc. v. Jones*, 72 Md. App. 1, 5 (1987) (quoting *East v. Gilchrist*, 293 Md. 453, 461 (1982)); *accord Washington Sub. San. Comm'n v. Frankel*, 302 Md. 301, 308 (1985). "[A] single set of operative facts gives rise to only one claim." *Carl Messenger Serv., Inc. v. Jones*, 72 Md. App. at 5.

"[A]n order that merely resolves *an issue within a claim* rather than an entire claim may not be certified pursuant to Rule 2-602(b)." *Id.* at 4 (emphasis in original).

The McCauleys' amended complaint, Roxbury View's counterclaim, and MET's cross-claim each arise from a single set of operative facts. By MET's own admission, its cross-claim "concern[ed] the same occurrences and real property put at issue by the Complaint filed by [the McCauleys]." Consequently, the trial court's order did not adjudicate an "entire claim" when it granted summary judgment in favor of MET on the issues of the easement violation and the easement interpretation disputes. It follows that the circuit court had no discretion to transform that ruling into a final judgment under Rule 2-602(b) and, thus, that this Court, too, has no discretion to transform that ruling into a final judgment under Rule 8-602(g).

In conclusion, CJP § 12-303(3) gives us the power to consider the appeal by Roxbury View and the Dubbés from the injunction or decree of specific performance that requires them to demolish the farm tenant house. We have no power, however, to consider the appeal by the Sharps and Sharp's Meadow from the interlocutory order that declares "that no residential dwelling structures of any size or type may be constructed on Lot 6."

We shall dismiss the appeal by the Sharps and Sharp's Meadow. The only issues before us are whether paragraph 3(a) of the deed of easement permits no more than four residences on what was once the Chase Farm and whether the farm tenant house on Lot 7 is "necessary for and directly related to the continued agricultural use of the property"

within the meaning of paragraph 3(c). Although the parties debate whether the circuit court erred in allowing MET to specify where replacement structures may be located on a given lot and in allocating residential development rights among the individual lots, those issues are not before us, because they do not bear on the propriety of the injunction requiring Roxbury View and the Dubbés to demolish the farm tenant house.[3]

STANDARD OF REVIEW

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

The issue of whether a trial court properly granted summary judgment is a question of law. *See, e.g.*, *Butler v. S & S P'ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct. *See, e.g.*, *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This

[3] At oral argument, counsel for Roxbury View and the Dubbés confirmed that they do not challenge (1) the circuit court's declaration that the replacement for the guest house must be built on Lot 2 (which is owned by the McCauleys) unless the owner of Lot 2 conveys that right or (2) the circuit court's declaration that Roxbury View and the Dubbés cannot transfer development rights from Lots 4 or 8. Consequently, those questions are not before us either.

> Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

"Evidentiary matters, credibility issues, and material facts which are in dispute cannot properly be disposed of by summary judgment." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 93 (2000).

Maryland courts rely on "basic principles of contract interpretation" in interpreting easements. *Miller v. Kirkpatrick*, 377 Md. 335, 351 (2003). "'A court faces a conceptually difficult task in deciding whether to grant summary judgment on a matter of contract interpretation.'" *Cochran v. Norkuna*s, 398 Md. 1, 16 n.8 (2007) (quoting *Washington Metro. Area Transit Auth. v. Potomac Investment Props., Inc.*, 476 F.3d 231, 235 (4th Cir. 2007)). "'Only an unambiguous writing justifies summary judgment without resort to extrinsic evidence, and no writing is unambiguous if susceptible to two reasonable interpretations.'" *Id.* (quoting *Washington Metro. Area Transit Auth. v. Potomac Investment Props., Inc.*, 476 F.3d at 235).

The easement at issue in this case was created by deed. "We interpret an easement created by deed, an express grant, through a 'proper construction of the conveyance by which the easement was created.'" *Long Green Valley Ass'n v. Bellevale Farms, Inc*., 432 Md. 292, 314 (2013) (quoting *Maryland Agric. Land Preserv. Found. v. Claggett*, 412 Md. 45, 62 (2009)). The "primary consideration in construing the scope of an

express easement is the language of the grant." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 143 (1999). We focus on the "'language of the agreement itself,' seeking to discern 'what a reasonable person in the position of the parties would have meant at the time it was effectuated.'" *Long Green Valley Ass'n v. Bellevale Farms, Inc*., 432 Md. at 314 (quoting *Maryland Agric. Land Preserv. Found. v. Claggett*, 412 Md. at 62-63. "If the language of [an easement] contract is unambiguous, we give effect to its plain meaning and do not contemplate what the parties may have subjectively intended by certain terms at the time of formation." *Cochran v. Norkuna*s, 398 Md. at 16.

"[T]he determination of ambiguity is one of law, not fact, and that determination is subject to *de novo* review by the appellate court." *Calomiris v. Woods*, 353 Md. 425, 434 (1999); *accord Ocean Petroleum Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010); *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 416-17 (2014); *see also Emerald Hills Homeowners' Ass'n, Inc. v. Peters*, 446 Md. 155, 162 (2016) (stating that "[t]he interpretation of plats, deeds, easements and covenants has been held to be a question of law"). Under the objective view of contracts, "a written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning." *Calomiris v. Woods*, 353 Md. at 436; *accord Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 53 (2013); *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 418.

Nonetheless, "'[a]n ambiguity does not exist simply because a strained or conjectural construction can be given to a word.'" *Dumbarton Improvement Ass'n, Inc.*

v. Druid Ridge Cemetery Co., 434 Md. at 53 (quoting *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n, Inc.*, 321 Md. 152, 159 (1990)); *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 419. Nor does an agreement become ambiguous merely because two parties, in litigation, offer different interpretations of its language. *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 751 (2007); *accord 4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 29, *cert. denied*, 495 Md. 655 (2020); *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 419.

ANALYSIS

In the circuit court, the parties agreed that the easement is unambiguous and asked the court to declare what it meant. On appeal, the parties continue to agree that the easement is unambiguous – they simply have varying interpretations of what they say it unambiguously means.

In our judgment, the easement is not unambiguous. Moreover, the admissible evidence in the record, viewed in the light most favorable to Roxbury View and the Dubbés, could entitle a reasonable jury to find that the easement does not prohibit the construction of the farm tenant house. Accordingly, we shall reverse the circuit court's declaration to the contrary and the associated injunction or decree of specific performance.

Stripped to its essentials, this case involves two questions. First, does paragraph 3 of the deed of easement unambiguously limit the number of dwellings on the Chase Farm

to four (the number that existed in 1978)? Second, if paragraph 3 does not unambiguously limit the number of dwellings on the Chase Farm to four, is there a genuine dispute of a material fact as to whether the farm tenant house "is necessary for and directly related to the continued agricultural use of the property," within the meaning of paragraph 3(c)?

To reiterate, paragraph 3 provides as follows:

> No building, facility, or other structure shall be erected or constructed on the property unless (a) such structure replaces one of the pre-existing structures, identified in Exhibit "C" attached hereto and made a part hereof, with one of similar size, bulk, height or floor area; or (b) such structure is in the form of a structural addition to one of the pre-existing structures, identified in Exhibit "C" attached hereto and made a part hereof; or (c) such structure is a new structure which is necessary for and directly related to the continued agricultural use of the property; or (d) such structure is one which is designed or utilized to serve the residents of a residence now existing or one erected or constructed pursuant to subparagraph (a) of this paragraph 3. Structures which may be erected or constructed pursuant to subparagraph (d) of this paragraph 3 include, but need not be limited to, a tool shed, gazebo, tennis court, swimming pool or garage.

The "pre-existing structures, identified in Exhibit 'C,'" included the main house, the guest house, the farm house, and the tenant house.

MET asserts that "paragraph 3(a) of the Conservation Easement prohibits the landowners from erecting any residential dwelling on any lot – including Lot 7 – that is not a replacement dwelling for one identified in Exhibit C to the easement." That is not what paragraph 3(a) says. Paragraph 3(a) permits the landowner to replace the "structure[s]" that were in place in 1978 – i.e., the "pre-existing structures" (including the residences) that are listed in Exhibit C. By its terms, however, paragraph 3, does not

clearly address whether a landowner may or may not construct another residence in addition to one that replaces one of the four pre-existing residences. To determine whether a landowner does or does not have that right, one must look elsewhere in the document.

To support its contention concerning the meaning of paragraph 3(a), MET looks beyond paragraph 3(a) itself to other provisions of the deed of easement. For example, MET cites the recitals, which state what MET calls the "conservation purposes" of the easement. It cites paragraph 6, which generally prohibits "changes in the general topography of the property." It cites paragraph 9, which reserves various rights to the grantors and their successors, but requires them to confer with MET in case of doubt about whether a use is "not inconsistent" with the easement. It cites paragraph 10, which generally entitles MET to injunctive relief in case of a breach. Finally, it cites paragraph 11, which states that the deed of easement should be "construed to effectuate its purposes."

Reading these provisions in conjunction with paragraph 3(a), a reasonable person might well conclude that paragraph 3 should be interpreted to preclude a landowner from constructing a residence that does not replace one of the four pre-existing residences. For the reasons discussed below, however, these provisions do not compel the conclusion that paragraph 3(a) unambiguously prohibits the landowners from constructing a residence unless it is a replacement for one of the four residences listed in Exhibit C.

Paragraph 3 of the deed of easement addresses the "building[s], facilit[ies], or other structure[s]" that a landowner may construct on the property. Paragraph 3(a) permits the owner to erect a "structure" that replaces one of the pre-existing "structures" listed in Exhibit C. The "structures" listed in Exhibit C include residences. Therefore, within the meaning of paragraph 3, the term "structure" clearly encompasses a residence.

Paragraph 3(c) of the deed of easement goes on to say that the owner may erect a "structure" if it is a "new structure which is necessary for and directly related to the continued agricultural use of the property." Because the term "structure" includes residences, a reasonable person could interpret paragraph 3 to mean that an owner may erect a new residence if the residence "is necessary for and directly related to the continued agricultural use of the property."

In short, paragraph 3 is ambiguous in that it is reasonably susceptible to multiple interpretations: it can reasonably be read to prohibit the construction of a new residence that does not replace one of the four pre-existing residences, and it can reasonably be read to permit the construction of a new residential "structure" if it "is necessary for and directly related to the continued agricultural use of the property."[4]

[4] If an agreement is ambiguous, a court may look to extrinsic evidence to resolve the ambiguity. *Cochran v. Norkuna*s, 398 Md. at 16 n.8 (quoting *Washington Metro. Area Transit Auth. v. Potomac Investment Props., Inc.*, 476 F.3d at 235). Furthermore, if the extrinsic evidence is undisputed, a court may interpret the agreement as a matter of law and dispose of the case on summary judgment. *Id.* (quoting *Washington Metro. Area Transit Auth. v. Potomac Investment Props., Inc.*, 476 F.3d at 235). In this case, MET adduced extrinsic evidence of the meaning of the deed of easement, including the affidavit of a preeminent attorney who was a member of the MET board at the time. It is doubtful, however, whether the circuit court considered any of the extrinsic evidence in

The finding of ambiguity, however, does not end the analysis. Even assuming that the easement is reasonably susceptible to multiple interpretations, Roxbury View and the Dubbés could avoid summary judgment only by creating a genuine dispute of material fact as to whether the new farm tenant house "is necessary for and directly related to the continued agricultural use of the property."

On this record, we are satisfied that Roxbury View and the Dubbés did enough to discharge that burden. Roxbury View and the Dubbés came forward with affidavits from their tenant farmers, who testified that the farm manager's around-the-clock presence is "necessary" and "critical" to their farming operations. If believed, that testimony could support a finding that the farm manager's house "is necessary for and directly related to the continued agricultural use of the property."

The McCauleys argue the farm manager's house is not "necessary for and directly related to the continued agricultural use of the property," because previous owners have successfully conducted farming operations without the advantages that the farm manager's house allegedly affords. They baldly assert that a property of this size (50 acres, they say) does not require a full-time, on-site manager. A jury might well find that argument persuasive in evaluating whether the farm manager's house is "necessary for

reaching its decision, as MET does not rely on it in arguing that we should uphold the grant of summary judgment. Consequently, the extrinsic evidence is not properly before us. *See, e.g., River Walk Apts., LLC v. Twigg*, 396 Md. 527, 541-42 (2007) (stating that, "[o]n appeal from an order entering summary judgment, we review 'only the grounds upon which the trial court relied in granting summary judgment'") (quoting *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006)). Upon motion, the circuit court may consider the extrinsic evidence on remand.

and directly related to the continued agricultural use of the property." A jury, however, would not be compelled to find that the owner must continue to conduct its farming operations exactly as it has in the past. Nor would a jury be compelled to find that the owner is prohibited from adopting new methods and techniques if they are necessary for the successful operation of the farm. A lay jury would certainly not be compelled to find that it is unnecessary to have a full-time, on-site manager to oversee a 50-acre property with livestock, crops, barns and other structures, and expensive equipment.

The McCauleys also argue that the rationale for the farm manager's house is, in their words, a "thin disguise" for what they see as the Dubbés' longstanding plan to build a family compound consisting of three residences – one for themselves, and one for each of their children. They cite the Dubbés' aborted effort to relocate the guest house from Lot 2 (which the McCauleys own) to Lot 7 (where the farm manager's house is now located). They observe that the concept of a farm manager's house came about only after MET had stated that "the total number of primary and accessory residences permitted on Lots 4, 6, 7, and 8 is two." (Emphasis in original.) They point to Ms. Dubbé's deposition testimony, in which she acknowledged that even before she and her husband bought Lots 4, 7, and 8 they had intended to build one house on each of the three lots.

In view of this evidence, a jury could well conclude that the farm manager's position, and thus the farm manager's house itself, are just a pretextual, *post hoc* rationale to evade the limitations in the deed of easement. "[C]redibility issues," however, "cannot

properly be disposed of by summary judgment." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. at 93.

The court erred, therefore, in granting MET's cross-motion for summary judgment, in declaring (as a matter of law) that Roxbury View and the Dubbés had violated the easement, and in requiring Roxbury View and the Dubbés to demolish the farm tenant house.

CONCLUSION

There are genuine disputes of material fact about whether paragraph 3 of the deed of easement prohibits the construction of the farm manager's house on Lot 7 of the Chase Farm. Accordingly, we reverse the trial court's summary judgment determination and remand the case for further proceedings consistent with this opinion.

APPEAL OF APPELLANTS SHARP'S WILD HORSE MEADOW, LLC, DENISE D. SHARP, AND CHARLES A. SHARP DISMISSED; MOTION TO DISMISS THE APPEAL OF APPELLANTS ROXBURY VIEW, LLC, GINA DUBBÉ, AND DEAN DUBBÉ DENIED; JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY THE APPELLEES.