Circuit Court for Baltimore County
Case No.: 03-C-13-007086

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 371

September Term, 2015

DANIEL BAHR, et ux.

v.

STEVEN HUGHES, et al.

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: February 27, 2018

Daniel and Carol Bahr ("the Bahrs"), appellants, filed suit in the Circuit Court for Baltimore County against Steven Hughes and Barbara Dillow Hughes ("the Hugheses"), William R. Myers ("Myers"), Myers Tree Services, Inc. ("Myers Tree Services"), Shannon Bane ("Bane"), and Bane's Firewood, Inc. ("Bane's Firewood"), all appellees. The Bahrs alleged that their next-door neighbors (the Hugheses) had hired Myers and Myers Tree Services to remove trees that were partly on the Bahrs' property, and partly in an area that was protected as a Forest Buffer conservation area. Myers, in turn, had enlisted the aid and participation of Bane and Bane's Firewood to assist in removing the trees. After extensive discovery proceedings, the case was disposed of on procedural grounds. This appeal followed.

QUESTIONS PRESENTED

The Bahrs present three questions for our review, which we have reordered as follows:

> 1. Did the Circuit Court err in dismissing Appellants' claims *sua sponte* under Rule 2-322(e) on the grounds that they had filed an amendment by interlineation and without a comparison copy?
>
> 2. Did the Circuit Court err in dismissing Appellants' negligence claims brought under the theory of Respondeat Superior on the basis that "Respondeat Superior is not a separate cause of action in Maryland?"
>
> 3. Does the grantor of a Declaration of Restrictive Covenants that binds *inter alia* grantor's land and an adjacent parcel and creates a Forest Buffer thereon have standing to assert a claim for damages against the owners of the adjacent parcel in the event they clear the Forest Buffer on their land?

Because we conclude that the Circuit Court for Baltimore County did not commit reversible error in striking the Bahrs' amendment to their complaint, we will affirm the judgment.

I. BACKGROUND

When this litigation began, the Bahrs and the Hugheses owned adjacent property in Gunpowder Estates, a residential subdivision in the Perry Hall area of Baltimore County. The Bahrs and Hugheses shared a common boundary. Portions of both the Bahrs' and the Hugheses' properties are subject to restrictions as a Forest Buffer area, for which Baltimore County has enforcement powers. Article 33, Title 3, § 105(1) (2003, 2012 Supp.) of the Baltimore County Code.

In April 2012, the Hugheses entered into a contract with Myers Tree Services, Inc. and William Myers (the principal of Myers Tree Services, Inc.), to pull down a number of trees on the Hugheses' property. A "Proposal/Invoice" signed by Myers indicated that the job was to take three to four days, and further indicated that Myers would leave the downed trees and accompanying debris on the ground at the side and rear of the Hugheses' home. The Bahrs allege that, on April 18, 2012, they expressly denied the Hugheses' request to permit Myers to traverse the Bahrs' property to access the trees on the Hugheses' property.

Because several of the trees were very large, Myers asked his friend Bane to help with the tree removal by bringing Bane's heavier equipment to the jobsite, and Bane did so. Bane and Myers had worked together cooperatively on similar projects in the past. Despite the fact that the "Proposal/Invoice" for the job stated that all downed trees were to

remain on site, Myers and Bane cut up and loaded several large trees onto Bane's equipment and hauled the cut trees away, utilizing a nearby trail. Although another neighboring property owner who is not a party to this case purported to give Myers's crew permission to use the trail during the tree-removal operation, the trail was not on that neighbor's property.

The Bahrs alleged that Myers's and Bane's crews "cleared a haul road more than 600' long . . . into the Hughes-Dillow Property and through the areas of both Properties designated as Forest Buffer," and "hauled the merchantable lumber off both Properties through the Bahr Property, but left large piles of debris, including logs, stumps in the ground, enormous root balls and stumps uprooted, and huge piles of cut limbs, logs, roots, and leaves in the Forest Buffer."

The Hugheses self-reported to Baltimore County the fact that there had been a violation of the Forest Buffer restrictions. The Baltimore County Department of Environmental Protection and Sustainability notified the Hugheses by letter dated August 15, 2012: "A forest buffer easement (FBE) exists on your property. The FBE was established at the time of subdivision development in accordance with State and County regulations. The FBE is a 'non disturbance' area that was created for subdivision approval and to comply with Article 33 of the Baltimore County Code." As a consequence of the disturbance of the Forest Buffer by Myers Tree Service and Bane's Firewood, the County ordered the Hugheses to plant ten trees within the Forest Buffer easement, and to post signs at 50 foot intervals to delineate the boundaries of the Forest Buffer.

II. PROCEDURAL HISTORY

The record from the Circuit Court for Baltimore County is spread over more than 1900 pages. The file is replete with notices of discovery requests, motions for protective orders, motions to compel discovery, discovery rulings, and motions for reconsideration. The bulk of that mass of paper is only tangentially relevant to this appeal. The complicated procedural history is perhaps best explained by this timeline of significant events:

June 20, 2013. Daniel and Carol Bahr file their **Complaint for Monetary and Injunctive Relief and Prayer for Jury Trial**. The defendants are Stephen M. Hughes, Barbara D. Dillow [elsewhere referred to as "Barbara D. Hughes"], William Myers, and Myers Tree Services, Inc.

The complaint is 20 pages long. The seven counts were as follows: Count I (Against Defendants Hughes and Dillow) (Respondeat Superior); Count II (Against All Defendants) (Intentional Trespass); Count III (Against Defendants Hughes and Dillow) (Breach of Restrictive Covenants); Count IV (Against All Defendants) (Negligence); Count V (Against All Defendants) (Negligence – Violation of Statutory Duty); Count VI (Against All Defendants) (Intentional Nuisance Per Se); and Count VII (Against Defendants Hughes and Dillow) (For Injunctive Relief). [This initial complaint would be superseded by an Amended Complaint filed December 11, 2013.]

August 5, 2013. **Answer** filed by William R. Myers and Myers Tree Services, Inc.

August 9, 2013. **Answer** filed by Steven M. Hughes and "Barbara D. Hughes." The Hugheses also file on August 9, 2013, a **Cross-claim Against Defendants Myers and Myers Tree Services, Inc.**, seeking indemnity or contribution in the event the Hugheses were found liable to the Bahrs.

August 14, 2013. **Scheduling order** issued. The order provided, inter alia, that discovery was to be completed by January 26, 2014, and all motions (other than motions in limine) were due by February 10, 2014.

August 27, 2013. **Myers Tree Service, Inc**., and William Myers file their **Answer** to the Hughes Cross Claim; and simultaneously **Myers Tree Service, Inc.,** files a **Cross Claim** against the Hughes defendants.

December 11, 2013. Bahrs file an **Amended Complaint**, and a comparison copy as required by Maryland Rule 2-341(e). This first amended complaint adds two new defendants: **Shannon T. Bane, Sr., and Bane's Firewood, Inc**. The amended complaint is 24 pages long, and the eight counts are as follows:

> Count I (Against Defendants Hughes and Dillow) (Respondeat Superior)
>
> > It is alleged that "Defendants Myers and Myers Tree Services acted within the scope of their employment or agency for . . . their principals, Defendants Hughes and Dillow," and that "Defendants Hughes and Dillow are responsible for all the wrongful acts committed by Defendants Myers and Myers Tree Services, within the scope of their employment." Plaintiffs requested compensatory and punitive damages.
>
> Count II (Against Defendants Hughes, Dillow, Myers, and Myers Tree Service) (Respondeat Superior)
>
> > It is alleged that "Defendants Bane and Bane's Firewood were acting as agents and servants of and within the course and scope of their employment with Defendants Myers and Myers Tree Services and Defendants Hughes and Dillow, and under their express direction and control," and the latter were therefore "responsible for all the wrongful acts committed by Defendants Bane and Bane's Firewood within the scope of their employment." Plaintiffs requested compensatory and punitive damages.
>
> Count III (Against All Defendants) (Intentional Trespass)
>
> > It is alleged that "[u]nder the direction of Defendants Hughes and Dillow, Defendants Myers, Myers Tree Services, Bane, and Bane's Firewood" entered upon the Bahrs' property and cut and destroyed "merchantable trees," and dumped debris. Plaintiffs request compensatory and punitive damages.
>
> Count IV (Against Defendants Hughes and Dillow) (Breach of Restrictive Covenants)
>
> > It is alleged that Hughes and Dillow violated the Covenants by directing Myers, Myers Tree Services, Bane, and Bane's Firewood "to

disturb existing vegetation within the Forest Buffer on both properties." Plaintiffs requested compensatory damages.

Count V (Against All Defendants) (Negligence)

It is alleged that Hughes and Dillow owed a duty to correctly advise Myers and Myers Tree Service of the property boundary, and owed a duty to stop any violation of the Bahrs' property rights after becoming aware of the boundary violation. Additionally, plaintiffs alleged that Myers, Myers Tree Service, Bane, and Bane's Firewood all owed a duty to the Bahrs to be aware of the property line and the Forest Buffer, and to avoid doing anything upon the Bahrs' property and the Forest Buffer. Plaintiffs requested compensatory damages.

Count VI (Against All Defendants) (Negligence – Violation of Statutory Duty)

It is alleged that all defendants owed a duty to comply with the Baltimore County Code relative to protecting vegetation within a Forest Buffer (citing Baltimore County Code § 33-3-112). Further, that Myers and Bane, as licensed Forest Products Operators, and Myers also being a licensed tree expert, owed a duty under COMAR § 08.07.07.01 and § 08.07.08.03 not to disturb private property without the owner's permission; and Bane also owed the Bahrs duties pursuant to COMAR §§ 08.07.07.01 and 08.07.08.03 Further, all defendants owed the Bahrs duties under Maryland Code, Natural Resources Article, § 5-409(a), for cutting or destroying merchantable trees or timber on the Bahrs' property. The plaintiffs requested compensatory damages.

Count VII (Against All Defendants) (Intentional Nuisance Per Se)

It is alleged that Hughes and Dillow unreasonably directed Myers, Myers Tree Services, Bane, and Bane's Firewood to cut trees and clear vegetation on the Bahrs' property, and that the cutting of trees and clearing of vegetation "within the Forest Buffer on the Hughes-Dillow Property" was wrongful and "substantially disturbed and interfered with Plaintiffs' use and enjoyment of their home." Plaintiffs requested compensatory and punitive damages.

Count VIII (Against Defendants Hughes and Dillow) (For Injunctive Relief)

> Plaintiffs requested "a final injunction restraining and enjoining Defendants Hughes and Dillow from further disturbing of the portions of the Hughes-Dillow property designated as Forest Buffer . . . as well as any areas of the Hughes-Dillow property within 10 feet of said Forest Buffer, and requiring that Defendants Hughes and Dillow replant the area of said Forest Buffer that was cleared." Plaintiffs also requested compensatory damages.

December 30, 2013. Scheduling Order entered. As requested in Joint Motion to Amend Scheduling Order filed by the parties *other than Bane defendants* on December 17, 2013, the discovery deadline is revised to March 26, 2014, and motions deadline is revised to April 11, 2014.

January 6, 2014. Answer to Amended Complaint filed by **Steven M. Hughes and Barbara D. Hughes.**

January 8, 2014. Answer to Amended Complaint filed by **William R. Myers and Myers Tree Services, Inc.**

January 13, 2014. Answer to Amended Complaint filed by **Shannon T. Bane, Sr., and Bane's Firewood, Inc.**

January 30, 2014. Scheduling Order modified. Discovery deadline is extended to May 16, 2014, and the "deadline for filing dispositive motions is extended to May 23, 2014."

February 12, 2014. Cross Claim filed by **Shannon T. Bane and Bane's Firewood** against **Steven Hughes and Barbara Hughes,** and **William R. Myers and Myers Tree Service, Inc.**

February 21, 2014. Answer of William R. Myers and Myers Tree Service, Inc., to **Cross Claim** of **Shannon T. Bane and Bane's Firewood, Inc.**

February 26, 2014. Answer of Steven Hughes and Barbara Hughes to **Cross Claim** of **Shannon T. Bane and Bane's Firewood, Inc.**

May 20, 2014. Scheduling Order entered.

May 23, 2014. Motion for Partial Summary Judgment filed by **Steven Hughes and Barbara Hughes.** The Hugheses seek summary judgment as to Counts I (respondeat superior for conduct of Myers defendants), II (respondeat superior for conduct of Bane defendants), IV (violation of Forest Buffer restrictions), and VIII (injunctive relief). In the

motion, the Hugheses argued that they were entitled to summary judgment on the claims of respondeat superior liability for the conduct of the tree service contractors because the type of relationship necessary to create vicarious liability did not exist. The Hugheses argued that they were entitled to summary judgment on the claims relative to violation of the Forest Buffer because the Bahrs did not have standing to enforce the restrictions, and Baltimore County, which had exclusive enforcement authority, had already taken enforcement action. The Hugheses argued that they were entitled to summary judgment on the claim for injunctive relief because the Bahrs were seeking to enjoin "future acts [that are] not even contemplated or threatened."

May 23, 2014. Motion for Partial Summary Judgment filed by **Shannon T. Bane, Sr. and Bane's Firewood, Inc.** The Bane defendants requested summary judgment as to only Count IV ((Breach of Restrictive Covenants) and Count VI (Negligence – Violation of a Statutory Duty). The Bane defendants asserted that the Baltimore County Code and COMAR provisions referenced in the Amended Complaint do not provide for private causes of action.

May 23, 2014. Motion for Partial Summary Judgment filed by **William Myers and Myers Tree Service, Inc.** The Myers defendants requested summary judgment as to Counts II (Respondeat Superior) and VI (Negligence – Violation of a Statutory Duty). The Myers defendants asserted that there was no evidence that they employed the Bane defendants, and there was no private cause of action for the alleged violations of statutes.

Settlement conference held. Trial scheduled for April 20, 2015.

June 27, 2014. Plaintiffs' Opposition to Defendants' Motions for Summary Judgment filed. Plaintiffs argue that all of the defendants' motions for partial summary judgment should be denied. [A supplement to the plaintiffs' opposition was filed August 18, 2014.]

July 23, 2014. Plaintiffs' Amendment of Complaint by Interlineation filed, stating that the plaintiffs "hereby amend their Amended Complaint by Interlineation by adding the following Count X . . . ." Count X requests "a judgment declaring the rights and responsibilities of the parties" to the restrictive covenants that created the Forest Buffer.

August 18, 2014. Plaintiffs file an "Errata" paper relative to their Opposition to Defendants' Motions for Summary Judgment with additional exhibits, and also file **Plaintiffs' Supplemental Memorandum of Law in Opposition to Defendants' Motions for Summary Judgment.** Plaintiffs cite Restatement (Second) of Torts §§ 410-429 as pertinent legal authority for liability of independent contractors, and urge the court to deny the motions for partial summary judgment as to Counts 1, 2, 4, 6, and 8.

August 18, 2014. Defendants' [Joint] Motion to Strike Plaintiffs' Amendment of Complaint by Interlineation. Defendants argue that plaintiffs have added "a new cause of action to this case nearly two months after discovery has closed and dispositive motions have been filed."

August 22, 2014. Plaintiffs' Opposition to Motion to Strike (the Amendment by Interlineation).

August 28, 2014. Hearing notice: hearing on motions set for November 21, 2014.

November 21, 2014. Hearing held before Judge Jan R. Alexander. Motions for Partial Summary Judgment Granted. Judge Alexander orally grants the motions for summary judgment as to Counts I and II (Respondeat Superior), Count IV (Forest Buffer restrictions), Count VI (Violation of Statutory Duty), and Count VIII (Injunction). At that point, the three surviving counts were: Count III (Against All Defendants) (Intentional Trespass), Count V (Against All Defendants) (Negligence), and Count VII (Against All Defendants) (Intentional Nuisance Per Se).

December 1, 2014. Plaintiffs' Second Amendment of Complaint by Interlineation filed, stating that Plaintiffs were "amend[ing] their Amended Complaint by Interlineation by adding the following Counts XI and XII . . . ." Count XI was captioned: "(Against Hughes Defendants) (Negligence – Respondeat Superior)." Count XII was captioned: "(Against Defendants Hughes, Dillow, Myers, and Myers Tree Service) (Negligence – Respondeat Superior)." The pleading also included a statement of counsel certifying that "a Maryland Rule 2-341(e) Comparison Copy is not possible because the foregoing Amendment by Interlineation does not modify any text of the Amended Complaint, but rather adds entirely new Counts XI and XII."

December 15, 2014. "Motions Ruling" of Judge John F. Fader II dated December 11, 2014, docketed December 15, 2014, ruling as follows:

> The Defendants['] Motion to Strike Plaintiff[s'] Amendment Of Complaint by Interlineation filed 8/18/2014 is **MOOT** considering the rulings by Judge Alexander on 11/21/2014 and the fact that the **Plaintiff[s'] Second Amendment of Complaint by Interlineation was filed on 12/1/2014. With that filing and without a comparison copy as required by the Rules, the only cause[s] of action remaining in this case are Count[s] XI & XII. Any other causes of action not incorporated in an amended complaint have fallen by the wayside.**
>
> There is really no such thing anymore allowing an amendment by interlineation. . . . The Rule [2-341(e), requiring] a comparison copy . . . is

> applicable to the full complaint so that the trial judge and other attorneys in the case can see in one document what is before the court.

(Emphasis added.)

December 17, 2014. Defendants' Motion to Strike Plaintiffs' Second Amendment of Complaint by Interlineation filed. Defendants argued that the newly asserted counts were filed well after the close of discovery and after the scheduling order's deadline for dispositive motions, and also appeared to be an effort to revive claims as to which Judge Alexander had granted summary judgment.

January 5, 2015. Plaintiffs' Opposition to Motion to Strike Plaintiff' Second Amendment to Complaint by Interlineation.

February 4, 2015.[1] Clerk enters on docket a **"Motions Ruling"** by Judge Fader dated January 26, 2015, and filed February 1, 2015. In this ruling, **the court "[o]n its own initiative pursuant to Rule 2-322(e) . . . strikes the Plaintiff[s'] Second Amendment of Complaint by Interlineation filed on 12/[1]/2014 to which there is a Response filed. There is no compliance with the provisions of Rule 2-341(e) [requiring a comparison copy]."** In the same Motions Ruling, the court declared "**MOOT**" the following motions: "The Hughes Motion for Partial Summary Judgment filed 5/23/2014"; "[t]he Myers Motion for Summary Judgment filed 5/23/2014"; "[t]he Plaintiff[s'] Motion to Reconsider filed 2/19/2014" [addressing a discovery ruling]; and "[t]he Defendants' Motion to Strike Second Amendment of Complaint by Interlineation[,] filed 12/17/2014."

February 9, 2015. Plaintiffs file **Plaintiffs' Third Amendment of Complaint by Interlineation.** This pleading again adds Counts XI and XII, but this filing is accompanied by a comparison copy of the Amended Complaint.

February 11, 2015. Plaintiffs file **Plaintiffs' Motion for Partial Summary Judgment.** In the motion (and supporting memorandum), Plaintiffs "ask the Court to enter Partial Summary Judgment that Defendant Shannon Bane was in fact at all relevant times acting as an employee of Bane's Firewood and further that both Defendants Shannon Bane and Bane's Firewood were in fact at all relevant times acting as agents and servants of and within the course and scope of their engagement with Defendants Myers and Myers Tree Services, and under their express direction and control."

February 18, 2015. Plaintiffs file **Plaintiffs' Rule 2-534 Motion to Alter or Amend,** "pursuant to Maryland Rules 2-311, 2-341(e), 2-534, and 2-535," asking the court to "alter

[1] As will be explored in more detail in this opinion, the Motions Ruling docketed on February 4, 2015, was of critical importance to this litigation.

and/or amend its Ruling filed on December 15, 2014 and its Ruling filed on February 4, 2015[.]" The motion represents that "lead counsel" for plaintiffs did not receive a copy of the Motions Ruling that had been docketed on December 15, 2014, until February 9, 2015. Plaintiffs urge the court to retract its rulings relative to the amendments by interlineation. Plaintiffs' counsel also wrote a letter to Judge Kathleen G. Cox, requesting that the trial, which was then scheduled for April 20, 2015, be continued until after the court had ruled on the Plaintiffs' Motion to Alter or Amend.

February 25, 2015. Defendants jointly file a paper captioned "**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND, and DEFENDANTS' MOTION FOR JUDGMENT, MOTION TO STRIKE PLAINTIFFS' THIRD AMENDMENT OF COMPLAINT BY INTERLINEATION, and OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** and REQUEST FOR HEARING."

March 16, 2015. Plaintiffs file **Plaintiffs' Reply to Defendants' Opposition.** While urging court to alter the Motions Rulings of December 15, 2014, and February 4, 2015, Plaintiffs indicate agreement with the Defendants' assertions that the effect of those orders, if left undisturbed, would be to eliminate all of the Plaintiffs' causes of action.

March 18, 2015. "**MOTIONS RULING**" from Judge Fader, ruling that Plaintiffs' Motion to Alter or Amend (filed 2/18/2015) became moot when the Plaintiffs filed a Third Amended Complaint on February 9, 2015. On March 18, 2015, Judge Fader also directed that a hearing be scheduled on three then-pending motions. (These documents from Judge Fader were not entered on the docket until **April 3, 2015.**)

March 31, 2015. Motions hearing conducted by Judge Alexander. Defense counsel states that the parties are in agreement that, as a result of Judge Fader's rulings, all claims have been disposed of, and the court should enter a final judgment. The court grants the Defendants' motion for judgment and motion to strike third amendment of complaint; and the court denies the plaintiffs' motion for partial summary judgment as moot.

April 10, 2015. Plaintiffs file **Notice of Appeal.**[2]

[2] Although the Bahrs filed their notice of appeal on April 10, 2015, before the order entering final judgment was docketed on April 16, 2015, the notice of appeal was nevertheless timely pursuant to the savings provision of Maryland Rule 8–602(d). "Under that rule, a notice of appeal that is filed after a trial court announces or signs a ruling, but before the ruling is docketed, is deemed to have been filed on the same day, but after the entry of the ruling on the docket." *Hiob v. Progressive American Ins. Co*., 440 Md. 466, 484 (2014).

April 16, 2015. Judgment Entered in favor of Defendants "on all claims."

III. APPELLATE ARGUMENTS

A. Appellees' Motion to Dismiss

As a preliminary matter, appellees contend that we should dismiss this appeal because, according to appellees, the Bahrs waived their right to appeal by consenting to the entry of a final judgment in favor of appellees on each of the Bahrs' claims. In support of this contention, appellees cite the transcript of the March 31, 2015, hearing and the text of the judgment order entered on April 16, 2015.

At the motions hearing before Judge Alexander on March 31, 2015, counsel placed the following statements on the record:

> [COUNSEL FOR BANE]: . . . I think the parties are all in agreement, Your Honor, that at this point in light of Judge Fader's three rulings, there are no viable causes of action remaining in this case and we would all request that a final judgment be entered and the third amendment to the complaint be struck and that the [plaintiffs'] motion for summary judgment be denied.
>
> [COUNSEL FOR BAHRS]: I would correct that. I think the motion for summary judgment was moot the minute it hit the Court. It was falling into an empty case. It was mooted for judgment on counts that didn't exist. And the Third Amended Complaint or amendment by interlineation, same thing. The minute it hit the court it was already dead, it was already moot. Just doesn't exist.
>
> * * *
>
> [BY THE COURT]: I am going to grant the motion for judgment filed by the Defendants in light of Judge Fader's rulings, I think that is the correct ruling of the case.

In the order entered on the docket on April 16, 2015, the circuit court stated: "Upon consideration of the Pleadings and the pending Motions in this action, and argument by all parties in open Court on March 31, 2015, and of the agreement of all parties that, as a result of this Court's Rulings of December 15, 2014, February 4 and March 18, 2015, there are no issues remaining for resolution in this action, . . . the Court hereby grants Judgment in favor of all Defendants and against Plaintiffs on all claims."

Although the Bahrs' comments made to Judge Alexander at the motions hearing on March 31, 2015, may have waived any objection to the entry of final judgment, their consent to the entry of a final judgment was clearly given "in light of" the circuit court's rulings of December 15, 2014, February 4, 2015, and March 18, 2015, as to which the Bahrs did not waive their right to appeal.

In *Franzen v. Dubinok*, 290 Md. 65 (1981), the Court of Appeals explained that "the 'right to an appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.'" *Id.* at 68 (citing *Rock v. Brosius*, 241 Md. 65, 68 (1981)). But the record of the March 31, 2015, hearing does not indicate that the Bahrs willingly acquiesced in the adverse rulings of Judge Fader or expressed agreement with those prior rulings in the case. The Bahrs *did agree* that a final judgment should be entered so that an appeal could proceed, and they cannot now complain that Judge Alexander entered such an order. But they did not thereby lose all rights to challenge all other previous

rulings that had been made in the case. Accordingly, we will deny appellees' motion to dismiss this appeal.

B. Amendments to Plaintiffs' Complaint

The term "pleading" is defined in Maryland Rule 2-302 to be only: the complaint and answer, as well as any counterclaim, cross-claim, or third-party complaint, and answers to any counterclaim, cross-claim, or third-party complaint. "No other pleading shall be allowed except that the court may order a reply to an answer."

Maryland Rule 2-341 addresses amendments to pleadings. Subsection (e) now requires the filing of a "comparison copy" whenever a party files an amended pleading. Rule 2-341(e) states:

> Unless the court orders otherwise, a party filing **an amended pleading** also **shall file** at the same time **a comparison copy of the amended pleading** showing by lining through or enclosing in brackets material that has been stricken and by underlining or setting forth in bold-faced type new material.

(Emphasis added.) We note the rule's use of the mandatory language "shall file," and the requirement that the comparison copy show the manner in which the amended pleading differs from the previously filed pleading.

When the Bahrs filed their Amended Complaint (adding the Bane defendants) on December 13, 2013, they also filed a comparison copy as required by Rule 2-341(e). But, when the Bahrs next amended their Amended Complaint, they did not file a comparison copy. On July 23, 2014, the Bahrs filed Plaintiffs' Amendment of Complaint by Interlineation, stating that the plaintiffs "hereby amend their Amended Complaint by Interlineation by adding the following Count X . . . ." This document did not include a

copy of the complete Amended Complaint, and was not accompanied by a comparison copy showing the complete Amended Complaint as then further amended.

The appellees moved to strike the amendment by interlineation because it was filed after the close of discovery. By the time Judge Fader issued a "Motions Ruling" that addressed the appellees' motion to strike the Bahrs' first amendment by interlineation, the Bahrs had already filed a Second Amendment of Complaint by Interlineation on December 1, 2014. As a consequence of the December 1 filing, Judge Fader declared the appellees' previously filed motion to strike to be moot. In a "Motions Ruling" dated December 11, 2014, filed December 15, 2014, Judge Fader stated:

> The Defendant's Motion to Strike Plaintiff's Amendment Of Complaint by Interlineation filed 8/18/2014 is **MOOT** considering the motions ruling by Judge Alexander on 11/21/2014 [granting appellees' motions for partial summary judgment] and the fact that the Plaintiff's Second Amendment of Complaint by Interlineation was filed on 12/1/2014. **With that filing and without a comparison copy as required by the Rules** . . . the only causes of action remaining in this case are Count XI & Count XII. **Any other causes of action not incorporated in an amended complaint have fallen by the wayside.**
>
> There is really no such thing anymore allowing an amendment by interlineation. **The whole thrust of the present Rule is that everything that the Plaintiff wants to survive must be stated in any pleading and the latest pleading filed and a comparison copy filed.** Rule 2-341 makes no provision for interlineation without full compliance with the Rules. **The Rule of a comparison copy** is not applicable only to a particular cause of action – it **is applicable to the full complaint so that the trial judge and the other attorneys in the case can see in one document what is before the court.**

(Emphasis added.)

The Bahrs' "lead counsel" later represented to the court that he did not learn of Judge Fader's December 15 Motion Ruling until February 9, 2015. It appears, however,

that a copy of the December 15 ruling was mailed to another counsel of record for the Bahrs.

On December 17, 2014, appellees filed Defendants' Motion to Strike Plaintiffs' Second Amendment of Complaint by Interlineation. The Bahrs filed an opposition to the motion on January 5, 2015. Although lead counsel for the Bahrs denies knowing of Judge Fader's ruling before February 9, 2015, the Plaintiffs' Opposition to Motion to Strike Plaintiff' Second Amendment to Complaint by Interlineation, filed on January 5, 2014, states in footnote 1: "In their Motion [to Strike], Defendants reference their earlier Motion to Strike filed on August 15, 2014, which was ruled Moot by the Court on December 15, 2014."

On January 26, 2015, Judge Fader issued another "Motions Ruling." In the first section of this ruling, Judge Fader struck the Plaintiffs' Second Amendment of Complaint by Interlineation for failing to comply with the comparison copy mandate of Rule 2-341(e). In the second section of this ruling, Judge Fader ruled that a number of other pending motions — including the Defendants' Motion to Strike Second Amendment of Complaint by Interlineation — were therefore moot. This Motions Ruling was noted in a docket entry made on February 4, 2015. More fully, the February 4 Motions Rulings stated:

> **ONE:**
>
> On its own initiative pursuant to Rule 2-322(e) the court strikes the Plaintiff[s'] Second Amendment of Complaint by Interlineation filed on

12/17/2014[3] to which there is a Response filed. There is no compliance with the provisions of Rule 2-341(e) [requiring the filing of a comparison copy] . . . .

> **Rule 2-322. Preliminary Motions**.
>
> (e) *Motion to Strike*. On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or **on the court's own initiative at any time, the court may order** any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order **any pleading that is late or otherwise not in compliance with these rules stricken in its entirety**.

The attempted filing on 12/1/14 of a new complaint was as to two causes of action: XI [Negligence] and XII [Negligence]. The violation of Rule 2-341(e) is all the more important here where Judge Alexander ruled to strike two causes of action labeled *respondeat superior* and the Motion to Strike the Second Amendment of Complaint by Interlineation has a focus on whether the claim of entitlement to a cause of action involving the doctrine of *respondeat superior* cannot be properly visualized against what Judge Alexander struck.

TWO:

The following motions are **MOOT**:

1. The Hughes Motion for Partial Summary Judgment filed 5/23/2014 to which there is a Response filed.
2. The Myers Motion for Summary Judgment filed 5/23/2014.
3. The Plaintiff's Motion to Reconsider [a discovery ruling] filed 2/19/2014 to which there is a Response filed.
4. The Defendants['] Motion to Strike Second Amendment of Complaint by Interlineation filed 12/17/2014 to which there is an opposition filed.

[3] "Plaintiffs' Second Amendment of Complaint by Interlineation" was actually filed on December 1, 2014, not December 17, 2014. But appellees' motion to strike *was* filed on December 17, 2014.

On February 9, 2015, the Bahrs filed "Plaintiffs' Third Amendment of Complaint By Interlineation." The counts included in the third amendment of complaint by interlineation were Count XI, labeled "Negligence - Respondeat Superior" against the Hugheses, and Count XII, "Negligence – Respondeat Superior" against the Myers defendants as well as the Hugheses. With this third amendment, the Bahrs also filed a copy of the full amended complaint which had the word "Comparison" displayed diagonally across each page. The new counts were in bold-face type.

On February 11, 2015, the Bahrs filed a motion for partial summary judgment, asking the court to rule as a matter of law that Bane was acting as an employee of Bane's Firewood, and that both of the Bane defendants were acting as agents and servants of Myers and Myers Tree Services, under their express direction and control.

On February 18, 2015, the Bahrs filed a motion to alter or amend the rulings Judge Fader had made that were filed on December 15, 2014, and February 4, 2015. Although the motion indicated that it was being filed pursuant to Maryland Rule 2-534, the motion clearly was not filed within ten days of the filing of the December 15 order the court was being asked to alter or amend. The later of the two orders was docketed February 4, 2015, and the tenth day thereafter fell on a holiday weekend, which extended the time for filing to February 17, 2015. But, it appears that the Circuit Court for Baltimore County was closed because of snow on February 17, 2015. Accordingly, even though the motion was not filed until February 18, 2015, it met the ten-day limit for motions that rely upon Rule 2-534.

As noted above, in the interim between the time Judge Fader's ruling was filed on February 4 and the date when the Bahrs' motion to alter or amend was filed on February 18, 2015, the Bahrs had filed yet another amendment "by interlineation," namely, Plaintiffs' Third Amendment of Complaint by Interlineation, which, unlike the two previous amendments by interlineation, was accompanied by a copy of the amended complaint labelled with a watermark that said "Comparison." (As will be discussed below, Judge Fader did *not* strike this third amendment by interlineation.)

On February 25, 2015, Defendants jointly filed a multi-part response and motion captioned "DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND, and DEFENDANTS' MOTION FOR JUDGMENT, MOTION TO STRIKE PLAINTIFFS' THIRD AMENDMENT OF COMPLAINT BY INTERLINEATION, and OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT and REQUEST FOR HEARING."

On March 16, 2015, the Bahrs responded to the appellees' opposition to their motion to alter or amend, filing Plaintiffs' Reply to Defendants' Opposition. While urging court to alter the Motions Rulings of December 15, 2014, and February 4, 2015, the Bahrs asserted that the effect of those orders, if left undisturbed, would be to eliminate all of their causes of action. In their March 16 reply, the Bahrs stated: "Unless this Court grants Plaintiffs' Motion to Alter or Amend the Rulings [of Judge Fader], Plaintiffs will join Defendants in asking this Court to enter a Final Judgment compliant with Rule 2-602." The Bahrs further stated in the reply:

> The posture of this action is in a confused state in part because Plaintiffs did not receive a copy of the December 15th Ruling until February 9th, the day they filed their Third Amendment. By then, because the Rulings had, as agreed, "eliminated all of the Plaintiffs' causes of actions" there was nothing left to amend. Thus, **Plaintiffs' Third Amendment**, Defendants' Motion to Strike it, Plaintiffs' Motion for Summary Judgment pertaining solely to the claims of the Third Amendment, and Defendants' Opposition thereto **are all moot**.

(Emphasis added, footnote omitted.)

On March 18, 2015, Judge Fader issued another "Motions Ruling." In this ruling, Judge Fader indicated in a footnote that, despite the Bahrs' citation of Rule 2-534, the court would view the Bahrs' motion to alter or amend as "one addressed to the inherent authority of the court to modify any order/judgment entered prior to the entry of a final judgment in the case." But the court nevertheless declined to address the merits of the Bahrs' request for amendment of the order striking the Second Amendment of Complaint by Interlineation because the court noted that "[a] Third Amended Complaint has been filed[,] and with that filing comes the death of the immediate prior pleading and all attacks or motions to modify regarding that prior pleading." The court quoted *Gonzales v. Boas*, 162 Md. App. 344, 355 (2005), in support of its conclusion that "'the filing of an amended complaint supersedes the initial complaint, rendering the amended complaint the operative complaint.'" Accordingly, the court declared the Bahrs' motion to alter or amend "MOOT." But the court also directed the assignment clerk to schedule a motions hearing to address the Defendants' Motion to Strike Third Amended Complaint, and two other pending motions. Clearly, Judge Fader did not view his prior motions rulings as dispositive of the issues presented by those motions, or else he would have simply ruled that those motions were

also moot. (This March 18 Motions Ruling was not docketed until April 3, 2015.) The three motions were scheduled for a hearing on March 31, 2015.

As noted above, however, the Bahrs had already filed a reply on March 16, 2015, indicating that they would be joining in the appellees' request for a final judgment if their motion to alter or amend was not granted, and when the parties appeared before Judge Alexander on March 31, 2015, for a hearing on pending motions, counsel for the Bahrs did not contest the Bane defendants' counsel's statement that "there are no viable causes of action remaining in this case." In response to the apparent agreement of all counsel, Judge Alexander entered a final judgment in the case "on all claims."

In this Court, the Bahrs argue that Judge Fader exceeded his authority by granting the motion to strike the Second Amendment of Complaint by Interlineation in the Motions Ruling filed February 4, 2015.[4] They do not contend that they complied with the requirement of filing a comparison copy when they filed their Second Amendment of Complaint by Interlineation on December 1, 2014. And they concede that Maryland Rule 2-322(e) "does permit trial courts to act *sua sponte*" under some circumstances. But they

[4] Although the Bahrs also complain about the impact of the Motions Ruling entered December 15, 2014, that ruling merely declared the Defendants' Motion to Strike Plaintiffs' [First] Amendment of Complaint by Interlineation (filed August 18, 2014) to be "MOOT." The court also included commentary about Rule 2-341, but the only *ruling* in the December 15 document was to declare a motion filed by the defendants to be moot. The court neither "struck" nor "dismissed" any claims. As explained more fully above, Judge Fader also did not strike the Bahrs' Third Amended Complaint, but instead, directed that a hearing be scheduled to address the appellees' motion to strike that complaint. That motion was granted by Judge Alexander based upon the concessions made by the Bahrs in their written reply and at the hearing on March 31, 2015.

contend that their violation of Rule 2-341(e) was not sufficiently egregious to warrant the court striking the amendment.

The Bahrs make a tortured argument about the wording of Rule 2-322(e), urging us to construe that rule so as to permit a court to act "on its own initiative" only "if no responsive pleading is required." They assert: "**Rule 2-322(e) empowers a court to act on its 'own initiative' *only* 'if no responsive pleading is required by these rules**.' . . . Thus, **because a responsive pleading was required** by Rules 2-321(a) & 323, **the Judge had no power to act on its own initiative**." (Emphasis added.)

We do not agree with the Bahrs' restrictive reading of the court's power to act on its own initiative pursuant to Rule 2-322(e), but, even if we did accept their interpretation, it would not help them in this case because Rule 2-341(a) expressly contemplates that an opposing party is *not required* to file an answer in response to every amendment. Rule 2-341(a) states: "If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment."

In our view, in this case, Rule 2-322(e) authorized the court to act "on the court's own initiative at any time" to "order any pleading that is . . . not in compliance with these rules stricken in its entirety." *See also Prince of Peace Lutheran Church v. Linklater*, 421 Md. 664, 668 n.1 (2011) (Referring to "a good deal of flotsam and jetsam" in a 51-page complaint, the Court of Appeals stated: "Our review of this Complaint prompts us to remind the bench and bar that Maryland Rule 2–322(e), in pertinent part, provides that 'on the court's own initiative at any time, the court may order ... any pleading that is late or

otherwise not in compliance with [the Maryland Rules of Procedure] stricken in its entirety.'").

We review such rulings for abuse of discretion. *Hendrix v. Burns*, 205 Md. App. 1, 45 (2012). The term "abuse of discretion" was described as follows by Judge Irma Raker in *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005):

"Abuse of discretion" has been described aptly as follows:

> "'Abuse of discretion' is one of those very general, amorphous terms that appellate courts use and apply with great frequency but which they have defined in many different ways . . . . [A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective. That, we think, is included within the notion of 'untenable grounds,' 'violative of fact and logic,' and 'against the logic and effect of facts and inferences before the court.'"

North v. North, 102 Md. App. 1, 13-14, 648 A.2d 1025,1031-1032 (1994).

The specific question for us is whether it was an abuse of discretion for the court to strike the amendment by interlineation that was filed without a comparison copy by the Bahrs on December 1, 2014. Although that action (*i.e.*, striking an amendment *sua sponte* due to the lack of a comparison copy) may not have been the response that every judge — or even most judges — would have taken in a case like this, in order for us to find an abuse of discretion, we would need to conclude that, under the circumstances facing this judge,

striking the amendment was unreasonably harsh and "beyond the fringe of what [we deem] minimally acceptable" judicial conduct. *Id*.

We note that this amendment was filed late in the litigation, well after discovery had closed and the deadline for dispositive motions had passed. The court's file had become voluminous. (Undoubtedly, the files of trial counsel were even larger because they included discovery requests and responses, whereas the court's file contained only notices of discovery filings. *See* Maryland Rule 2-401(d)(2).) Between the time the first Amended Complaint had been filed and the time when the Second Amendment of Complaint by Interlineation was filed by the Bahrs on December 1, 2014, over 1500 pages had been filed with the circuit court in this case. In a case with so many filings, the need for a comparison copy was exacerbated. We conclude, therefore, that it was not an abuse of discretion for Judge Fader to rule, upon his own initiative, that the amendment that was filed without a comparison copy on December 1, 2014, would be struck.

Although it is not at all clear that the other questions presented by the Bahrs survive their consent to the entry of final judgment, in the interest of completeness, we will address those two questions.

C. Summary Judgment on Counts I and II (Respondeat Superior)

The Bahrs contend they were prejudiced when Judge Alexander granted the appellees' motions for partial summary judgment as to Counts I and II, both of which were captioned "Respondeat Superior." At the motions hearing before Judge Alexander, counsel for the Hugheses argued that the relationship between the Hugheses and the Myers

defendants was clearly that of a party entering into a contract for services from an independent contractor, and it was the Myers defendants who solicited the participation of the Bane defendants. But counsel for the Hugheses further argued: "I also don't believe that a respondeat superior count is a cause of action. I believe that it would fit itself within the negligence count . . . ." "The allegations [of the Bahrs] in opposition are ['Jyou failed to do X, Y and Z[,'] which, again, fits within a separate count of the complaint which we are not moving for summary judgment on because there are many questions of disputes of fact as relates to negligence."

Counsel for the Myers defendants made similar arguments:

> With respect to the issue of the issue of [sic] respondeat superior, as Your Honor said, this is more of a theory of liability than it is a separate cause of action. . . . **[N]one of the defendants are looking to get rid of the negligence count against us.** We're looking to clean this up. We do not believe that a claim of respondeat superior is a separate cause of action.

(Emphasis added.)

In a colloquy with the Bahrs' counsel at the motion hearing, Judge Alexander made similar observations: "What is the separate cause of action? Respondeat superior, as I recall, is a theory of liability. It is not a cause of action. . . . [I]sn't the cause of action negligence as opposed to the cause of action of being merely that A employed B?" And in granting the motion for summary judgment as to Counts I and II, the court explained: "I think I have made it abundantly clear that I don't believe that is a cause of action, that is a theory of liability **which would be encompassed in the negligence claim.**" (Emphasis added.)

In urging the court to grant partial summary judgment on Counts I and II, none of the defendants argued that the Bahrs would be, or should be, precluded from arguing their vicarious liability for negligence based upon principles of respondeat superior. And the court ruled that the respondeat superior theory of liability "would be encompassed in the negligence claim" as to which the defendants conceded they were not seeking summary judgment. Given the court's explanation that the Bahrs would be able to argue the respondeat superior theory of liability under their claims for negligence, we see no prejudice in the court's grant of summary judgment on Counts I and II.

D. Enforcement of the Forest Buffer restrictions

Finally, the Bahrs assert that the circuit court erred in granting the appellees' motions for partial summary judgment relative to Count IV of the Amended Complaint, in which the Bahrs sought compensatory damages for the appellees' disturbance of vegetation within the Forest Buffer. The appellees argued that the Bahrs lacked standing to assert a claim for damages to the Forest Buffer zone because both the Declaration that created the restricted area and the Baltimore County Code provide that enforcement would be performed by Baltimore County. The circuit court agreed with appellees. The Bahrs contend that the circuit court erred in ruling that they lacked standing to pursue personal claims for damages based upon violations of the restrictive covenants.

The Forest Buffer was established by a Declaration of Covenants recorded among the Land Records of Baltimore County in 1995. The Declaration provided, in pertinent part:

WHEREAS, in order to protect the environmental quality of the areas of the property designated on the plat as Forest Buffer areas (the "Forest Buffer") the Declarants desire to protect said Forest Buffer by imposing covenants, conditions, and restrictions which will bind the lots and the present and future owners thereof. **The County shall have the legal right to enforce the covenants, conditions, and restrictions as set forth herein together with the enforcement rights referenced in Section 5**.

NOW, THEREFORE, in consideration of the benefits derived by the Declarants and his successors in interest, the said Declarants, for themselves, their successors and assigns, does [sic] hereby agree as follows:

1. a. Existing vegetation with the Forest Buffer shall not be disturbed, except as provided pursuant to Baltimore County Code, 1988, as amended (hereafter referred to as "the Code"), § 14-342;

b. Soil disturbance shall not take place within the Forest Buffer by grading, stripping of topsoil, plowing, cultivating, or other practices;

c. Filling or dumping shall not occur within the Forest Buffer;

* * *

5. Miscellaneous.

a. **Enforcement shall be pursuant to the Enforcement Procedures of § 14-345 of the Code.** Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

b. Any failure by any party entitled to enforce any of the covenants, restrictions, and conditions herein contained, shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior to, or subsequent thereto.

c. These covenants shall run with and be binding upon the Property and shall inure to the benefit of and be binding upon the Declarants, its successors and assigns. These covenants and the rights and liabilities arising hereunder are governed by and shall be determined in accordance with the laws of the State of Maryland.

(Emphasis added.)

The appellees emphasize that both the Declaration that created the Forest Buffer and the Baltimore County Code indicate that the County shall carry out enforcement of the restrictions; appellees state in their brief:

> The Declaration expressly states "The County shall have the legal right to enforce the covenants, conditions, and restrictions as set forth herein together with the enforcement rights referenced in Section 5." (E.49) (emphasis added). Section 5.a. [of the Declaration] provides, in relevant part, "Enforcement shall be pursuant to the Enforcement Procedures of County Code Ann. § 14-345." (E.50) [In the County Code that was in effect at the time the Declaration was recorded,] § 14-345(a) of the Baltimore County Code (1988) provided "The director of the department is authorized and empowered to enforce these regulations in accordance with the procedures of this section." The current version of the Code provides "The Director may enforce the provisions of this title in accordance with Article 3, Title 6 of the Code." Id. § 33-3. (APX 20) Nowhere does the Code or the Declaration provide for a private right of action to enforce the Declaration.

The Bahrs assert that, because they were signatories of the Declaration, and own land that is subject to and affected by the restrictive covenants in the Declaration, they necessarily have standing to sue to redress a violation of the restrictions. But we agree with the appellees that the plain language of the Declaration that created the restrictions and the Baltimore County Code specify that the County has the legal right to enforce the restrictions imposed by the Declaration, and that "**[e]nforcement *shall be* pursuant to the Enforcement Procedures of § 14-345 of the Code."** (Emphasis added.) Neither that section of the Baltimore County Code nor the more current iteration of that code provision authorizes a private enforcement action. Accordingly, the circuit court did not err in granting the motions for partial summary judgment.

APPELLEES' MOTION TO DISMISS THIS APPEAL IS DENIED.
JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.