Circuit Court for Talbot County
Case No. 20-C-16-009519

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0403

September Term, 2017

ANSTALT ALMEGA

v.

SEASIDE HOLDINGS, LLC

Meredith,
Leahy,
*Woodward, Patrick L.,

JJ.

Opinion by Leahy, J.

Filed: July 2, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Appellant, Anstalt Almega ("Almega"), appeals from the grant of summary judgment in favor of appellee, Seaside Holdings, LLC ("Seaside") on Seaside's complaint for declaratory judgment filed in the Circuit Court for Talbot County on June 24, 2016.

In 2005, Almega sold Seaside a portion (169+ acres) of a larger parcel that Almega owned. Almega retained 500+-acres, and the parties recorded cross-easement agreements. Seaside sought a declaration from the circuit court on the single question of whether, as the dominant estate, Seaside could construct a private roadway in the easement area on Almega's parcel without Almega's consent.

On appeal, Almega challenges the trial court's declaration that Seaside can build the roadway, and may use the area described in the "exclusive and perpetual" easement "for any lawful purpose without having to obtain the permission of the holder of the servient estate[.]" Almega also contests the court's determination that a justiciable controversy existed between the parties such that declaratory relief was authorized under Maryland Code (1973, 2013 Repl. Vol., 2016 Supp.), Courts and Judicial Proceedings Article ("CJP"), §§ 3-406 or 3-409.

We hold that the trial court declared correctly that, because Seaside was expressly granted an "exclusive, perpetual easement for Seaside[]'s use for any lawful purpose," Seaside may improve the easement area with a roadway, without Almega's permission, if Seaside is able to obtain the requisite permits for the road.

BACKGROUND

The evidence before the circuit court on consideration of the underlying cross-motions for summary judgment established the following facts.

The Easement

Anstalt Almega is a foreign corporation formed under the laws of the Principality of Liechtenstein. In 1993, Almega purchased a large parcel in the Tunis Mills area of Talbot County from Allen & Company, Inc. The property was largely agricultural and included tracts known as "Cross Coats Farm" and "Four Hundred Farm."

On December 27, 2005, for consideration in the amount of Eight Million Dollars ($8,000,000.00), Almega conveyed 169.96 acres of the land to Seaside (the "Seaside Parcel") and retained approximately 501.194 acres (the "Almega Parcel"). The conveyance was by special warranty deed, which was recorded in the land records of Talbot County at MAS Liber 1406, folio 453. On the same date, in a document entitled, "Easement Agreement," Almega granted Seaside an easement over a 100-feet wide and 5,276-feet-long strip of land along the eastern boundary of the Almega property ("Easement Area"). In accordance with the regional sales contract signed prior to the Easement Agreement, Seaside paid Almega $100,000 for the Easement Area at settlement. The easement created a "flagpole" or "pipestem" running from the southeasterly end of the Seaside property and extending down to Todd Corner Road. The Easement was also recorded in the land records at MAS Liber 1406, folio 459.

The Easement Agreement provided, in pertinent part:

1. Recitals. The recitals set forth above are hereby incorporated in this Agreement as substantive provisions hereof.

2. Declaration of Easement. The Almega Owner, as owner of Almega Parcel, does here grant and convey unto the Seaside Owner, as owner of Seaside Parcel, an exclusive, perpetual easement for Seaside Owner's use for any lawful purpose, in the area designated on Exhibit C attached hereto and by this reference made

a part hereof as (the "Easement Area").

3. Indemnity. The Seaside Owner hereby agrees to indemnify and hold harmless the Almega Owner from any loss, cost, damages or liability incurred of suffered against the Almega Owner relating to or arising out of the use of the Easement Area by the Seaside Owner, his agents, employees or invitees.

4. Duration of Easement. Except as expressly set forth herein, the grant of the easement, rights, privileges and agreements set forth herein shall continue in perpetuity. At such time as a deed is recorded conveying the Easement Area from Almega Owner to Seaside Owner, this Agreement shall be null and void and of no further force or effect. . . .

Contemporaneously, Seaside also executed an easement agreement in favor of Almega over the Seaside Parcel. The language of the cross-easement agreements executed by the parties is identical, save for the exhibits describing the easement areas.

Raising the Stakes

In March 2016, Seaside applied to the Talbot County Roads Department for access onto Todds Corner Road along the Easement Area. Around that time, Seaside placed several stakes in the Easement Area to mark a proposed culvert and plans for the construction of a road. Almega's attorney wrote to B. Francis Saul, II, a principal of Seaside, warning that:

> It has been brought to our attention that certain flags and stakes have been placed upon the portion of the Property owned by my client. . . .
>
> * * *
>
> . . . In 2005, my client granted you an easement to use [a] small strip of land on the eastern border of my client's portion of the Property, extending from Todd Corner Road to the portion of the Property that you own (the "Easement Area"). However, my client retains all ownership rights in the Easement Area, and you are not permitted to install or construct anything in the Easement Area without my client's consent. Please remove all stakes, flags and any other items placed upon my client's portion of the Property immediately.

Seaside's attorney responded in letter dated May 12, 2016, stating,

> The existence of those flags and/or stakes will not be disrupted. . . . While it is correct that your client still holds fee simple title to the underlying ground within the Easement Area, that fee ownership is the only right that your client has retained. All other rights to use the Easement Area for ***any lawful purpose*** were granted to Seaside Holdings LLC on an ***exclusive*** and ***permanent*** basis. I know of no basis on which the placement of flags or stakes on property of this type could be considered to be unlawful. Furthermore, whether an activity might be considered lawful or unlawful, there was no reservation by your client of a right of approval or consent and no such approval or consent is required. . . .

(Emphasis in original). On May 31, 2016, Almega's attorney replied, advising that, although Almega agreed Seaside had the right to use the Easement Area,

> when the rights granted pursuant to an easement are general in nature, as they are here, the holder of the easement is not permitted to take any action that would cause an undue burden on the owner of the fee interest. While the placement of stakes and/or flags is not unlawful, it causes an undue burden by restricting my client's ongoing and continued use of its property. My client has been utilizing its property on a regular and consistent matter since the easement was granted. . . .

The letter warned that if the stakes and flags were not removed, they may be destroyed. Seaside temporarily halted the engineering work for the roadway and filed the underlying action seeking declaratory relief.

Complaint for Declaratory Relief

On June 24, 2016, less than a month after receiving the letter from Almega's attorney, Seaside filed a complaint for declaratory judgment pursuant to CJP §§ 3-406 and 3-409 in the Circuit Court for Talbot County. Seaside stated in the complaint that it had paid Talbot County the required fee for the installation of an access culvert on Todd's Corner Road at the entrance of the Seaside Easement Area, and for the installation of two

"Hidden Entrance" road signs to be placed at Todd's Corner Road. Attached to the complaint was a photograph of the access culvert that had been installed by the Talbot County Department of Roads. Seaside also averred that it had paid Lane Engineering, Inc. to "survey and mark the [] Easement Area with stakes and flags in preparation of the construction of a roadway for ingress and egress from Todd's Corner Road to the Seaside Parcel."

After relating and attaching as exhibits the easement documents and the correspondence between counsel, along with the standing demand to remove the stakes and flags, Seaside requested a declaratory judgment for the purpose of determining the rights and liabilities of the parties with respect to the Seaside Easement Area. Seaside asked the court to enter an order "[d]etermining and adjudicating specifically that the owner of the Seaside Parcel has the exclusive and perpetual right to use the Seaside Easement Area for any lawful purpose without seeking or obtaining the consent or permission of the owner of the Almega Parcel;" and "that Seaside's construction of a private roadway in the Seaside Easement Area, . . . and the preparatory installation of an access culvert, surveying, flagging and staking of the Seaside Easement Area and private roadway, are exclusive and perpetual rights of use of the Seaside Easement Area for a lawful purpose[.]"

Cross Motions for Summary Judgment

After filing an answer and preliminary discovery, on November 7, 2016, Almega filed a Motion for Summary Judgment. Attached to the motion were photographs showing farming and undisturbed woodlands in the Easement Area. Also attached was a copy of Seaside's responses to interrogatories, including No. 21, stating "plans are uncertain" in

response to Almega's request to "describe in detail the planned 'roadway' . . . referenced in the complaint."[1] Finally, Almega attached correspondence dating back to 2008 to show that the County had opposed Seaside's past efforts to gain access to Todd's Corner Road via the Easement Area based on traffic safety and negative environmental impacts given the significant land development potential of the Seaside property.

Almega argued that its motion should be granted for two reasons. First, Almega maintained that there was no justiciable issue under CJP §§ 3-406 and 3-409 upon which the court may enter a declaratory judgment. Almega asserted that Seaside failed to demonstrate that an actual controversy existed between the parties because the complaint only recited what had occurred, "not what Seaside actually plans to do[,]" and, in response to interrogatories, Seaside failed to provide any "plan, timeline or other details regarding the construction of a roadway." As a result, Almega urged, Seaside's request that the court adjudicate its right to construct a private roadway in the Easement Area was nothing more than a "theoretical question." Also, Almega contended that Seaside was not entitled to

[1] Almega attached copies of correspondence dating back to February and March, 2008 regarding Seaside's "Waiver Request—Line Revision Plat on the lands of Seaside Holdings LLC and Anstalt Almega." Apparently, Seaside had pending a minor lot line revision for property located on Todd's Corner Road, and along with that revision had put in a request to waive the Department of Public Work's requirement for a plat note stating that "Direct access to Todd's Corner Road is denied." The waiver request was denied in a letter dated March 10, 2008, which contained the proviso:

> If in the future, circumstances change or standards are amended, allowing this parcel to meet access criteria at this location; to include sight distance and environmental approvals, a revision plat can be pursued to modify the access restriction. The revision plat process as defined in the Talbot County Code allows for corrections to plats of changes to plat notations."

relief under CJP § 3-406[2] because the complaint failed to set out any "issue of construction or validity arising under the instrument," — here, the deed and Easement Agreement.

Second, Almega argued that if the circuit court were to determine that a justiciable controversy existed, then Seaside's requested relief would violate the terms of the Easement Agreement because it would constitute an expansion of the easement and an undue burden on Almega's servient estate. Almega relied principally on the test used to determine whether a change in use is so substantial such that it constitutes an undue burden on the servient estate, as articulated in *Chevy Chase Land Co. v. United States*, 355 Md. 110 (1999), and *Bassett v. Harrison*, 146 Md. App. 600 (2002).

Seaside responded to Almega's motion and filed its own cross-motion for summary judgment on December 2, 2016. Seaside clarified that, among the essential terms of the bargain between the parties was,

> The conveyance to Seaside in fee simple of Parcel 2 [the Easement Area] and conveyance to Almega of Parcel 3, require[d] a lot line revision or other approval from Talbot County. Pending the approval, the parties agreed to execute and record at closing on Parcel 1 cross-Easement Agreements granting to Seaside an easement in Parcel 2 and Almega an easement in Parcel 3. The cross-Easement Agreements, as subsequently drafted by the parties['] respective counsel and approved by the parties, granted to Seaside in Parcel 2 and Almega in Parcel 3 "an exclusive, perpetual easement for the . . . Owner's use for any lawful purpose . . ." The intent of this language

[2] CJP § 3-406 provides as follows:

> Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

> was to grant to the respective easement owner a broad, unfettered interest, for any lawful use, as close to fee simple as possible.

Seaside argued that "[t]he construction of a private roadway over [the Easement Area] is what Seaside and Almega bargained for when Seaside paid Almega One Hundred Thousand Dollars ($100,000.00) for the Seaside Easement Agreement[.] . . . That use, the construction of a private roadway for ingress and egress to [the Seaside Parcel], is still the intended use by Seaside today."[3] Seaside also challenged Almega's assertion that the County had repeatedly opposed Seaside's efforts to gain access to Todd's Corner Road.[4]

Motions Hearing

The Circuit Court, the Honorable Stephen Kehoe presiding, held a hearing on the cross-motions for summary judgment on March 1, 2017. Almega's attorney launched into the argument that "the predicate for the suit no longer exists and the plans for a road do not exist[,]" thus the complaint must be dismissed. Seaside's attorney responded, pointing out

[3] Seaside pointed out, however, that if anything, the potential burden on the servient estate "ha[d] lessened" since the original easement grant. Seaside estimated that it could have "lawfully" build a private road over the Easement Area servicing up to eight lots for development on the Seaside Parcel under the existing zoning regulations. However, 18 months after Seaside purchased the Seaside Parcel, Seaside entered into a Deed of Conservation Easement with the Maryland Environmental Trust and Eastern Shore Land Conservancy as Grantees, which is recorded among the land records at Liber 1559, Folio 438. According to Seaside, the conservation easement limits development on the Seaside Parcel to one primary residence and one accessory residence.

[4] Among the exhibits attached to Seaside's memorandum in support of its motion was the affidavit of Zebulon Stafford, III. Mr. Stafford was the real estate broker that represented Seaside in the acquisition of the Seaside Parcel. In his affidavit, he affirms that the pipestem easement was intended to provide a means for alternative ingress and egress to the Seaside Parcel from Todd's Corner Road over the Almega Parcel. Mr. Stafford also details his efforts, on behalf of Seaside, to obtain permission from Talbot County to establish the private roadway in the Easement Area.

that in their letter on May 31, 2016, Almega

> demand[ed] that [Seaside] remove the stakes and flags and t[old] us that if they're not removed they may be destroyed by my client's continued use of the property. Now that sounds like an actual dispute and a controversy to me and as a result of that letter my client filed this declaratory judgment action in June of 2016. . . . We also asserted that the rights granted to Seaside, under the Seaside easement agreement, for any lawful purpose being exclusive and perpetual do not require the consent o[r] permission of Anstalt Almega. Almega denied that. That is the controversy which is before the court. . . .

Counsel added that Seaside's response at the time to "the interrogatory that [counsel for Almega] has repeatedly referenced . . . was, the plan is uncertain but [Seaside] asserts the right to construct any lawful roadway and to use the Seaside easement area for any other lawful purpose." Counsel admitted that his client was currently in "an administrative battle" with the County about the road but urged that Seaside "ha[s] the right to go through the Board of Appeals . . . and [has] other remedies[.] The road is not a moot issue."

In support of the complaint, Seaside's counsel, relying on *Miller v. Kirkpatrick*, 377 Md. 355 (2003), asserted that the grant of easement by deed is strictly construed against the grantor, and the grantor must expressly reserve any rights in such grant. In this case, Almega granted Seaside "an exclusive perpetual easement for any lawful purpose" and did not reserve the right to consent as a condition to such use. Almega's counsel, citing *Chevy Chase Land Co.* and *Bassett*, argued that the proposed road would unduly burden the servient estate because the change would be substantial from that which previously existed—unimproved agricultural farmland.

Opinion of the Circuit Court

The court issued a memorandum opinion ruling on the parties' motions for summary

judgment and granting declaratory judgment on April 12, 2017.[5] The court found that the facts surrounding the conveyance and physical description of the Easement Area were not in dispute. The court then noted the letters between counsel outlining their disagreement over the scope and purpose of the Easement Agreement, including the May 31, 2016, letter from Almega's counsel stating that Seaside was "not permitted to take any action that would cause an undue burden on the owner of the fee interest." The court observed that "the land comprising the Easement Area remains unimproved, and has only been used for agricultural purposes."

In regard to Almega's threshold challenge, the court observed that:

> Almega's suggestion that there is no justiciable controversy is contradicted by [Almega's counsel's] letter of May 9, 2016 to [Seaside's counsel]. In this

[5] The court did not, along with its memorandum opinion, enter its judgment on a separate document. To enter a final, appealable judgment—one that completely disposes of the matter in controversy and adjudicates every claim against every party to the suit—the trial court *must* "follow[] certain procedural steps when entering a judgment in the record." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017). One such step, set out in Maryland Rule 2-601(a), is the separate-document rule, which "requires the trial court to memorialize the judgment in a separate document that is signed by either the court clerk or the judge and entered in the docket." *Id.* at 65-66 (citing Md. Rule 2-601(a) and (b)). As the name of the rule suggests, the court must enter its judgment in a document that is "*separate* from an oral ruling of the judge, a docket entry, or a memorandum." *Hiob v. Progressive Ins. Co.*, 440 Md. 466, 478 (2014). The trial court's memorandum opinion and order in this case does not satisfy the separate-document requirement in Rule 2-601(a). Without a final judgment, the appeal is premature.

Although, ordinarily, this Court will dismiss a premature appeal, the Court of Appeals has ruled that dismissal is not required based on the trial court's failure to comply with the separate-document rule when the oversight is purely technical and not raised by the parties. *URS Corp*, 452 Md. at 68. The parties do, however, have the right to have the declaratory judgment entered in a written declaration "defining the rights of the parties under the issues made." *Case v. Comptroller*, 219 Md. 282, 288 (1959). To satisfy this right, and the mandatory requirement of a separate document, we will remand the case to the circuit court to "cure this defect by entering a brief declaratory judgment." *Bontempo v. Lare*, 444 Md. 344, 379 (2015).

> letter, [counsel] assert[ed], on behalf of Almega, that, notwithstanding Seaside's lawfully placing stakes upon the property, the Easement does not permit it to do anything that would burden Almega's use of that portion of the Almega Property covered by the Easement Area. . . . [A]nd [counsel's] letter of May 31 serves as further assertion of Almega's position. Clearly, these are antagonistic claims between the parties as to the scope of the Easement. Accordingly, there is a justiciable controversy about which the Court can issue a declaration.

Turning to the merits, the court, citing *Chevy Chase Land Co.* 355 Md. at 153, set out the difference between an exclusive easement versus a non-exclusive easement, and concluded that Seaside's easement over the Almega Parcel is exclusive and perpetual. "In this context," the court explained, "Seaside, as the holder of an exclusive easement, may use the property in a manner that interferes with Almega's occupancy of its servient estate. Almega, therefore, cannot insist that Seaside's use of the Easement is subject to its permission and may not interfere with its use of the Almega Property." The court noted that Seaside began the process of improving the Easement Area with a driveway or roadway by staking the area, and that "[i]f permitted by the appropriate regulatory authorities, this use of the Easement would be permitted by law." The court denied Almega's motion for summary judgment, granted Seaside's cross- motion, and issued the following declarations:

> **DECLARED**: that the holder [of] the dominant estate described in the Easement dated December 27, 2005 and found among the land records of Talbot County at MAS Liber 1405, folio 459 may use the area described in the Easement for any lawful purpose without having to obtain the permission of the holder of the servient estate and may use the area described in said Easement in a manner that is inconsistent with the use of the servient estate; and it is further
>
> **DECLARED**, that the holder [of] the dominant estate described in the Easement dated December 27, 2005 and found among the land records of

> Talbot County at MAS Liber 1405, folio 459 may improve the Easement Area for any lawful purpose without the consent of the holder of the servient estate[.]

Following a timely appeal on May 10, 2017, Almega presents the following questions:

1. "Did the Court commit reversible error in finding that a justiciable controversy exists between the parties, such that the Court could issue declaratory relief under [CJP §§ 3-406 and 3-409]?"

2. "Did the Court commit reversible error in finding that construction of a private roadway is a permissible use of the Easement Area under the Seaside Easement?"

We shall include additional facts as necessary in our discussion of the issues.

DISCUSSION

I.

Declaratory Relief

Almega contends that the trial court committed reversible error in concluding that the exchange of letters between the parties in May 2016 gave rise to a justiciable controversy subject to review for legal correctness. Seaside responds that Almega's antagonistic claims limiting Seaside's rights to use the Easement Area, and corresponding threats to destroy the stakes and flags placed by Seaside in the Easement Area in preparation for the driveway, created an actual controversy between the parties that put Seaside well within its rights under CJP § 3-406 to request declaratory relief. Seaside points out, as well, that the pleadings establish that an actual controversy exists between the parties. For example, Almega admitted in its answer to Seaside's complaint that

Seaside was entitled to declaratory relief.[6] Moreover, Almega's denials of paragraphs 27-30 of Seaside's complaint, in which Seaside asserts its right to use the Easement Area, further establish the existence of an actual, justiciable controversy. Almega, in reply, insists that "the issue is not ripe for declaratory relief, as Talbot County has repeatedly denied Seaside the required access to construct such a roadway."

The declaratory judgment act, codified at CJP § 3-401 *et seq.*, provides the basis for Seaside's suit below. Specifically, CJP §§ 3-406 and 3-409 provide as follows:

> **§ 3-406. Power to construe.**
>
> Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined

[6] Seaside asserted the following in paragraphs 23 and 24 of its complaint, to which Almega answered (shown in italics below) by admitting the assertions:

> 23. Pursuant to the Courts and Judicial Proceedings Article of the Maryland Code, § 3-406, this Honorable Court may construe and determine the rights and liabilities of the parties to the Seaside Easement Agreement. Further, pursuant to § 3-409 of the Courts and Judicial Proceedings Article of the Annotated Maryland Code, the Court may enterer a declaratory judgment for the purpose of determining a question of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding.
>
> *[Almega's Answer] 23. Admitted.*
>
> 24. Seaside is entitled to declaratory relief because such a decree will terminate the uncertainty and controversy giving rise to this lawsuit in that:
>
> a. An actual controversy exists among the parties;
>
> b. Antagonistic claims are present among the parties involved which indicate imminent and inevitable litigation; and
>
> c. Seaside asserts a legal right to use the Seaside Easement Area without consent or permission of Almega, which legal rights Almega challenges, denies or seeks to disregard.
>
> *[Almega's Answer] 24. Admitted as to Subparagraphs a. and b. Defendant is without knowledge as to Subparagraph c., as it is not established that Plaintiff may legally construct the roadway (of unspecified form) that it seeks.*

> any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.
>
> **§ 3-409. Discretionary Relief.**
> (a) *In general.* — Except as provided in subject (d) of this section [dealing with divorce and annulment of marriage], a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
> (1) An actual controversy exists between contending parties;
> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it. . . .

A court's authority to grant declaratory relief pursuant to these subsections, however, is limited to circumstances in which "the underlying controversy is justiciable." *Pizza di Joey, LLC v. Mayor & City Council of Balt.*, ___ Md. App. ___, ___, No. 2411, Sept. Term, 2017, slip op. at 13 (filed on May 30, 2019) (citing *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 591 (2014). In this case, Almega's position that Seaside's suit is "theoretical" and "in anticipation" of "future rights" sound in the doctrine of ripeness.

This Court recently explained that ripeness is "[a]mong the 'numerous hurdles' to justiciability." *Id.* In the context of actions for declaratory relief, ripeness "can become an elusive concept," *Boyds Civic Ass'n v. Montgomery Cty. Council*, 309 Md. 683, 691 (1987) (citation omitted), because "one of the primary purposes of the declaratory judgment act is to 'relieve litigants of the rule of the common law that no declaration may be adjudged unless a right has been violated.'" *Pizza di Joey*, slip op. at 14 (quoting *Boyd's*

Civic Ass'n, 309 Md. at 691). Ordinarily, a case is not ripe until "it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen or upon a matter which is future, contingent and uncertain." *Boyd's Civic Ass'n*, 309 Md. at 690 (internal quotations and citations omitted). The declaratory judgment act, however, is remedial in nature, so courts should construe and administer it liberally in determining whether a plaintiff's request for declaratory relief is "sufficiently 'concrete and specific' to generate a controversy that is ripe for review." *Pizza di Joey*, slip op. at 16 (quoting *Hatt v. Anderson*, 297 Md. 42, 46 (1983)); *see also* CJP § 3-402 ("This subtitle is remedial. Its purpose is to settle and afford relief from uncertainty in insecurity with respect to rights, status and other legal relations. It shall be liberally construed and administered.").

The parties' controversy in this case was ripe for the circuit court's consideration. As Judge Kehoe recognized, the parties' attorneys began exchanging letters in May 2012, disputing the scope of the Easement and the parties' rights thereunder. In its May 9 letter, Almega asserted that it "retain[ed] all ownership rights in the Easement Area, and [Seaside is] not permitted to install or construct anything in the Easement Area without [Almega's] consent." Almega concluded by directing Seaside to, immediately, remove the stakes and flags it placed in the Easement Area. Seaside responded in a latter on May 12 declaring that its flags and stakes "will not be disrupted" and disputing the rights in the Easement Area that Almega retained. In Seaside's view, Almega had granted it the right to use the Easement area "for ***any lawful purpose*** . . . on an ***exclusive*** and ***permanent*** basis." According to Seaside, its use of the Easement Area was not unlawful and Almega had retained no right to approve or consent to Seaside's lawful use of the property. A few

weeks later, Almega responded further contesting Seaside's use of the property and reasserting Almega's divergent interpretation of the rights the Easement granted to Seaside. Under Almega's reading of the document, Seaside was "not permitted to take any action that would cause an undue burden" on Almega. Consistent with this interpretation, Almega asserted that Seaside's placement of stakes and flags, while "not unlawful, [] cause[d] an undue burden" on Almega's "ongoing and continued use of its property[,]" which Almega "ha[d] been utilizing . . . on a regular and consistent manner since the easement was granted." Almega concluded its May 31 letter by threatening to destroy the stakes and flags if Seaside did not remove them from the property.

Based on this dispute, Seaside halted its engineering work and sought declaratory relief in this circuit court rather than risking Almega's destruction of its stakes and flags (or worse). Almega then reinforced the existence of this dispute in its answer to Seaside's complaint, in which Almega agreed that "[a]n actual controversy exist[ed] between the parties[,]" "[a]ntagonistic claims [we]re present . . . [that] indicate[d] imminent and inevitable litigation[,]" and that the circuit court could "enter a declaratory judgment for the purpose of determining a question of actual controversy between the parties and terminating uncertainty and controversy giving rise to th[e] proceeding."

Seaside did not need to secure approval from Talbot County to construct a roadway before asking the circuit court to declare its rights under the Easement Agreement. For one, Seaside, through the affidavit of Mr. Stafford, rebutted Almega's claims that Seaside could not obtain the necessary permits to construct the roadway. But, more importantly, Seaside's rights under the Easement Agreement—and the parties' dispute over its rights—

are not limited to the construction of this roadway. The letters the parties exchanged through counsel and their court filings in the underlying action reflect that Seaside and Almega disagree over Seaside's rights under the Easement Agreement: whether, on the one hand, Seaside may use the property for any lawful use or, on the other hand, Seaside's must first obtain Almega's consent to Seaside's use of the property and such use may not cause an undue burden to Almega. Almega acknowledged the ongoing nature of this dispute in its answer to Seaside's complaint, in which Almega *denied* that "[t]he Seaside Easement Agreement grants Seaside and all subsequent owners of the Seaside Parcel the exclusive and perpetual right to use the Seaside Easement area *for any lawful purpose*." (Emphasis added).

In short, the parties here dispute their rights under the Easement Agreement, generally, as well as whether the Easement Agreement would, specifically, permit Seaside to construct a road within the Easement Area to provide access onto Todds Corner Road. As such, Seaside's request for a judgment declaring its rights under the Easement Agreement is "sufficiently 'concrete and specific' to generate a controversy that is ripe for review." *Pizza di Joey*, slip op. at 16.

II.

Use of the Easement Area

1. The Parties' Contentions

Almega argues that "the trial court erred as a matter of law in its analysis of whether the construction of a private roadway on the Easement Area would constitute an undue burden upon Almega's servient estate." In support of this claim**,** Almega charges that the

circuit court failed to consider, as required by the Court of Appeals's decision in *Chevy Chase Land Co.*, whether the proposed road would constitute change that is so substantial as to create and substitute a different servitude from that which previously existed. According to Almega, Seaside's proposed "change in use of the Easement Area from agricultural to a private roadway" would constitute a such a change in use of the Easement Area, and consequently, created an undue burden on the servient estate.

Seaside responds that the trial court was correct in ruling that Seaside, as owner of an exclusive, perpetual easement could use or improve the Easement Area for any lawful purpose without permission or consent of the servient estate and could use the area inconsistent with the use of the servient estate. Further, Seaside maintains that the trial court's declaration was consistent with the parties' intent at the time they executed the Easement Agreement—that Seaside construct a private road for ingress and egress on Parcel 2, the "pipestem" running from Parcel 1 to the public road.

2. Standard of Review

We consider whether the declaratory summary judgment entered in the underlying case was correct as a matter of law. *Md. Agric. Land Pres. Found. v. Claggett*, 412 Md. 45, 61 (2009) (citing *S. Easton Neighborhood Ass'n v. Town of Easton*, 387 Md. 468, 487 (2005)). In so doing, we accord no deference to the trial court's legal conclusions, *Emerald Hills Homeowners' Ass'n, Inc. v. Peters*, 446 Md. 155, 161 (2016), and we review the record in the light most favorable to the non-moving party, construing any reasonable inferences that may be drawn from the facts against the moving party. *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 140 (2007).

3. Analysis

The parties dispute the scope of the easement acquired by Seaside via the Easement Agreement. As the Court of Appeals instructed in *Chevy Chase Land Co.*, "the primary consideration in construing the scope of an express easement is the language of the grant." 355 Md. at 143. "When an easement is acquired by an express grant. . . the extent of the rights thereby granted must necessarily depend upon a proper construction of the conveyance[.] . . . The primary rule for the construction of contracts generally—and the rule is applicable to the construction of a grant of an easement—is that a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible." *Buckler v. Davis Sand & Gravel Corp.*, 221 Md. 532, 537 (1960).

In *Chevy Chase Land Co.*, in determining that the right-of-way at issue was not limited to railroad purposes only, the Court of Appeals pointed out that the express grant used the terms "free" and "perpetual," providing a "clear indication that few, if any, conditions were intended to be placed on the railroad's use of the right-of-way." 355 Md. at 143-44. The Court further observed that "[t]he use of the term 'perpetual' clearly indicated that the easement was intended to be of indefinite duration and, particularly when combined with the term 'free,' suggests that the use of the easement was to be dynamic, i.e. adaptable to the evolving circumstances[.]" *Id.* at 144. The Court noted that the deed in that case did not suggest any limit on the use of the right-of-way. *Id.* Importantly, the Court instructed that "because of the broad language of the grant any doubts about its use will be resolved in favor of the grantee." *Id.* at 145.

The Easement Agreement in the instant case states, in pertinent part:

> Declaration of Easement. The Almega Owner, as owner of Almega Parcel, does here grant and convey unto the Seaside Owner, as owner of Seaside Parcel, **an exclusive, perpetual easement for Seaside Owner's use for any lawful purpose**, in the area designated on Exhibit C attached hereto and by this reference made a part hereof as (the "Easement Area").
>
> Duration of Easement. Except as expressly set forth herein, **the grant of the easement, rights, privileges and agreements set forth herein shall continue in perpetuity**. At such time as a deed is recorded conveying the Easement Area from Almega Owner to Seaside Owner, this Agreement shall be null and void and of no further force or effect. . . .

(Emphasis added). The express language of the Easement Agreement is clear: Seaside's rights in the Easement Area are "exclusive"; for "any lawful purpose"; and these rights are "perpetual." The rights convened here are far more expansive than the "broad" easement grant in *Chevy Chase Land Co.* And, as in that case, the Easement Agreement contains no limitations on the use of the Easement Area by Seaside, other than the restriction that such use must be for a lawful purpose.

Almega argues that Seaside's proposed use of the Easement Area for a private roadway would be a "change in use constitut[ing] an undue burden on the servient estate." According to Almega, any use that interferes with the historically agricultural use of the Almega Parcel would constitute a substantial burden. Almega relies on the test applied in *Chevy Chase Land Co.* and first announced in *Reid v. Washington Gas Light Co* for determining whether a change in use constitutes an undue burden:

> The test to determine the right to make a particular alteration appears to be whether the change is so substantial as to result in the creation and substitution of a different servitude from that which previously existed.

Reid v. Wash. Gas Light Co., 232 Md. 545, 549 (1963).

We agree with Judge Kehoe's observation that Almega's argument "represents a wooden application" of *Chevy Chase Land Co.*, and we observe that that case and *Washington Gas Light* are distinguishable. The "changes" that were considered in those cases involved conversions of prior uses of the easements in question. *Chevy Chase Land Co.* involved the conversion by Montgomery County of a right-of-way that had been used by the railroad company as a railway, to a hiker/biker path. *Chevy Chase Land Co.*, 355 Md. at 120-21. In *Washington Gas Light*, the question was whether under the terms of the easement, the appellee had the legal right to substitute a sixteen-inch gas pipe line for the twelve-inch pipe originally laid. 232 Md. 545. The instant case, by contrast, involves, as far as we know from the record, the initial attempt by Seaside to use the Easement Area under the terms of the Easement Agreement. The most reasonable and apparent purpose of the pipestem easement leading from the Seaside Parcel to Todds Corner Road is to provide access to Todds Corner Road. We find nothing in the Easement Agreement to indicate that there are any restrictions on the use of the Easement Area, and we would resolve any doubts in favor of the grantee. *Chevy Chase Land Co.*, 355 Md. at 145.

Finally, the easement in this case is expressly an "exclusive" easement. The Court in *Chevy Chase Land Co.* pointed out that the holder of an exclusive easement has the right to exclude the owner of the servient estate from use of the land. 355 Md. at 153-54 (citing *State v. Preseault*, 652 A.2d 1001, 1003 (Vt. 1994) ("[T]he holder of a railroad easement enjoys the right to the exclusive occupancy of the land, and has the right to exclude all concurrent occupancy in any mode and for any purpose."); *State ex rel. Fogle v. Richley*, 378 N.E.2d 472, 475 (Ohio 1978) ("There can be no greater burden upon property than that

which results from [a railroad's] appropriation of a right to exclusive use."); *cf. Oakhampton Ass'n Inc. v. Reeve,* 99 Md. App. 428, 440-41 (1994) (distinguishing between an exclusive easement for a parking space under which the owner could exclude neighboring condominium owners and a limited easement subject to the condo association's rule-making power).

Seaside has an "exclusive, perpetual easement for Seaside[]'s use for any lawful purpose." There is nothing in the express grant in this case that would prevent Seaside from improving the Easement Area with a roadway, without Almega's permission, if Seaside is able to obtain the requisite permits from the government (*i.e.*, so long as it is a lawful use). This conclusion is confirmed by the significant consideration that Seaside paid for the Easement Agreement—$100,000—and by the "pipestem" shape of the easement.

JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED; CASE REMANDED TO THE CIRCUIT COURT FOR ENTRY OF A SUPPLEMENTAL ORDER SETTING OUT THE DECLARATORY RELIEF GRANTED BY THAT COURT. APPELLANT TO PAY COSTS.