UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0724

September Term, 2014

LEXINGTON SQUARE PARTNERS, LLC

v.

THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY, et al.

Zarnoch,
Wright,
Hotten,

JJ.

Opinion by Zarnoch, J.

Filed: May 26, 2015

In 2007, a massive development project in Baltimore City began to take flight. The project demanded the cooperation and commitment of Appellant Lexington Square Partners LLC (LSP), and Appellees the Mayor and City Council of Baltimore and the Baltimore Development Corporation (the BDC) (collectively, the City), who entered into a Land Disposition Agreement (LDA) to redevelop a "Superblock" in Baltimore City. By June 2013, after numerous delays and amendments to the LDA, the City claimed the LDA expired by its own terms because the parties had not settled, which resulted in a lawsuit against the City. The Circuit Court for Baltimore City eventually granted summary judgment in favor of the City, finding, among other things, that the terms of the LDA were unambiguous and that the LDA expired. We agree with the court's reasoning in all respects and thus affirm.

FACTS AND PROCEEDINGS

On January 10, 2007, LSP and the City entered into the LDA. The LDA was part of a plan to develop certain properties in West Baltimore, bounded by Fayette Street to the south, Howard Street to the west, Lexington Street to the North, and Park Avenue to the west (the Superblock).[1] Under the LDA, the City was to acquire fee simple title to the

[1] This redevelopment plan has already spawned three Court of Appeals opinions. For a discussion of the original Superblock plan, beginning in 1999, *see 120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore (Superblock I)*, 407 Md. 253, 258-60 (2009); *see also 120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City (Superblock II)*, 413 Md. 309 (2010); *120 W. Fayette St., LLLP v. Mayor of Baltimore (Superblock III)*, 426 Md. 14 (2012).

parcels comprising the Superblock, and LSP was to purchase the lots from the City. LSP made a $100,000 deposit to secure its interest in the Superblock.

Under the original agreement, settlement was to take place no later than December 21, 2010. The LDA specified a number of events that must occur prior to settlement, including the resolution of any legal or administrative challenges.

Soon after the LDA was signed, a lawsuit was filed against the City and LSP that was not resolved until a Court of Appeals ruling on April 27, 2012. *See Superblock III*, 426 Md. 14. During this time, according to LSP, "the project was effectively halted." In addition, the project was delayed due to "historic preservation issues" and negotiations over a Payment in Lieu of Taxes (PILOT) agreement with the City, which was a necessary component of the project financing. On December 19, 2012, the City approved the PILOT.

During this period, the LDA was amended four times. Under Section 13.1 of the LDA, in the event of any *force majeure* events resulting in project delays, "the time or times for the performance of the covenants, provisions and agreements of [the LDA] shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay) . . ." The effect of the LDA Amendments was to extend the agreement by 2 ½ years, which LSP states was "less than one-half the period of the enforced delays." After the Fourth Amendment to the LSP, the settlement date had been extended to June 30, 2013.

The amended Section 2.15.3 provided:

> In the event that by June 30, 2013, (a) Settlement does not occur, or (b) the conditions to Settlement have not been satisfied, and in either of the above

> circumstances, this Agreement shall, without further action by either party, terminate, with no liability or obligation on either party.

In addition, Section 2.15 required LSP, as a condition of settlement, to provide the City "satisfactory evidence of the existence of financing for the initial Phase of the Project and a plan for financing of the balance of the Project." The term "satisfactory evidence" was not defined. Under the LDA, if there was a disagreement about whether LSP had obtained "satisfactory financing," the City's remedy was to declare a default, which would trigger a cure period for LSP.

By the end of 2012, the anti-project litigation had ceased, the PILOT was formed, and settlement negotiations began in earnest. LSP responded to requests by the BDC in providing updates on its attempts to obtain financing and notified the BDC that it intended to request an extension of the date of closing. On April 24, 2013, the BDC requested a detailed explanation of steps LSP had taken and reasons for requiring the extension. LSP responded by citing a project change in strategy from retail to residential uses and proposed a settlement date of December 31, 2013. From April to June 2013, the parties met to discuss a Fifth Amendment that would have extended the settlement date.

On June 21, 2013, the BDC notified LSP that it was not recommending another extension to the Mayor. The BDC explained

> Conditions precedent to closing must be satisfied, including as set forth in Section 2.15 of the original LDA; the City be provided with 'satisfactory evidence of the existence of financing for the initial phase of the Project.' That condition remains unfulfilled. . . .
>
> This decision is not reached lightly. We recognize that LSP has used good faith efforts in its attempts to move the project forward over the last several years in a difficult economic climate, and as you are aware, the City has

> granted (3) previous extensions. However, based on the City's belief that LSP has failed to demonstrate meaningful progress during the last (6) months with a lending source, BDC has concluded, it is highly unlikely that a closing would take place by the end of 2013.
>
> If LSP is unable to close by June 30, 2013, the LDA will expire and the City will issue a new RFP, in which your client is welcome to participate.

LSP responded with a letter on June 27 that included a term sheet from M&T Bank "indicating their [sic] strong interest in providing the financing for the first phase of the Project." LSP also attached a plan for financing the balance of the project.

The BDC responded that day, informing LSP that the "term sheet, by any reasonable metric, falls far short of 'satisfactory evidence'" and stated that for "[f]or financing to exist, there must be more on the table than preliminary discussion points." LSP responded the next day, stating that "[a] 'commitment' was not required by the LDA, and in today's environment, the term sheet from M&T would, by any reasonable view, constitute 'satisfactory evidence.'" LSP also offered to pledge $3 million as a show of good faith toward proceeding with settlement. On July 3, the City notified LSP that the LDA terminated on June 30.

On September 3, 2013, LSP filed suit in the Circuit Court for Baltimore City, seeking declaratory relief (Count I) and specific performance (Count II), damages for breach of contract (Counts III - VI), and tortious interference with a contractual relationship (Count VII). LSP claimed that the LDA had not terminated and that the City had breached the LDA in asserting that it had. LSP also sued the BDC for tortious interference with contract by allegedly encouraging the City to assert termination. LSP also filed a notice of *lis pendens* as well.

The City filed a motion to dismiss all claims on October 4, 2013. The court denied these motions on December 4, 2013 without a written opinion. The City then filed a motion to reconsider, which was denied on January 15, 2014.

After a period of discovery, the City filed a motion for summary judgment. The court noted that there were no disputes of material fact and that the litigation centered on a question of contract interpretation. The court held that the meaning of § 2.15.3 was "unambiguous" and that because the parties did not settle on June 30, 2013, the LDA automatically terminated. Because of this contract termination, the court also held that the City was not in default or breach of the LDA. Finally, the court found there was no tortious interference with a contractual relationship, as the BDC was a party to the LDA and could therefore not have tortuously interfered with its own contract. The court granted the motion in all respects on May 16, 2014, and LSP noted a timely appeal.

QUESTIONS PRESENTED

Appellee asks:

1. Whether the circuit court erred in finding that Section 2.15.3 of the Land Disposition Agreement unambiguously provides that the agreement expired on June 30, 2013, absent prior settlement?

2. Alternatively, whether the circuit court erred in failing to find ambiguity where Section 2.15.3 is subject to more than on interpretation?

3. Whether the circuit court erred in dismissing Appellant's breach of contract claims where the wrongful conduct pre-dates the alleged automatic termination of the LDA?

4. Whether the circuit court erred by failing to consider Lexington Square's claim against the BDC for tortious interference with contractual relations when the court concluded that the claim was mooted by its interpretation of the contract?

5. Whether the circuit court erred by concluding there was no genuine dispute of material fact?

DISCUSSION

STANDARD OF REVIEW

We review a court's grant of summary judgment *de novo*. *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 330 (2014). Summary judgment is proper when the court finds no genuine dispute of material fact and that the moving party is entitled to judgment as a matter of law. Md. Rule 2-501. A fact is material if its existence would somehow affect the outcome of the case; if none of the disputed facts are material, however, we will affirm the grant of summary judgment. *Debbas v. Nelson*, 389 Md. 364, 373 (2005).

I. Contract Interpretation

LSP argues that the court erroneously construed the LDA in granting summary judgment to the City. A dispute about the meaning of a contract is a question of law. *Sy-Lene v. Starwood*, 376 Md. 157, 163 (2003) ("The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review."). Determining whether a contract is ambiguous is "essentially a 'paper' review where the same contractual language is before the appellate court as was before the trial court." *Calomiris v. Woods*, 353 Md. 425, 434-35 (1999).

We follow an "objective approach" to contract interpretation, meaning that

> unless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation. This undertaking requires us to restrict our inquiry to the four

> corners of the agreement, and ascribe to the contract's language its customary, ordinary, and accepted meaning. Rather than acquiescing to the parties' subjective intent, we consider the contract from the perspective of a reasonable person standing in the parties' shoes at the time of the contract's formation. The language of a contract is only ambiguous if, when viewed from this reasonable person perspective, that language is susceptible to more than one meaning.

Ocean Petroleum, Co. v. Yanek, 416 Md. 74, 86-87 (2010) (Quotations and citations omitted).

As such, our inquiry hinges on the question of ambiguity. If the contract language is unambiguous and capable of only one meaning, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used. *100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 234 (2013). However, if the language in the contract is ambiguous, the court considers extrinsic evidence clarifying the parties' intentions at the time the contract is executed. *Id.* In addition, Maryland courts generally recognize that an integration clause stating that the writing expresses the full agreement of the parties weighs against looking to other sources in interpreting the contract. *See Hovanian Land Inv. Grp. v. Annapolis Town Centre at Parole, LLC*, 421 Md. 94, 126-27 (2011).

To determine if a contract is ambiguous, courts may consider "the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution," to determine whether the language is capable of more than one meaning. *Calomiris*, 353 Md. at 436. However, ordinarily, we will not look outside the contract itself to give meaning to disputed terms.

LSP offers the following interpretation of 2.15.3:

> By its express terms, Section 2.15.3 contemplates that one of two events – settlement or satisfaction of the conditions to settlement (but not actual settlement) must have occurred by June 30, 2013; otherwise the LDA would automatically terminate by that date. This reading results from consideration of all the words in Section 2.15.3, including the phrase "and in either of the above circumstances." Interpreted this way, the following scenarios would reasonably result: (1) settlement occurs and the conditions for settlement have been satisfied; (2) settlement does not occur, but conditions for settlement have been satisfied; or (3) settlement does not occur and the conditions for settlement have not been satisfied. [LSP] finds itself in the position contemplated under the second scenario – it has satisfied the conditions for settlement, but settlement has not occurred.

LSP misinterprets the word "or." To be clear, "the word 'or' is a disjunctive conjunction which serves to establish a relationship of contrast or opposition." *Walker v. Lindsey*, 65 Md. App. 402, 407 (1985) (Citations omitted). "Or" is "used as a function word to indicate an alternative" and is "used in logic as a sentential connective that forms a complex sentence which is true *when at least one of its constituent sentences is true*." *Webster's Third New International Dictionary of the English Language Unabridged* 1585 (3rd ed. 2002) (Emphasis added); *see The American Heritage Dictionary of the English Language* 1236 (4th ed. 2006) ("*conj.* 1a. used to indicate an alternative . . .").

Section 2.15.3 clearly uses "or" to mean that one of two possible conditions would trigger the LDA's termination:

> In the event that by June 30, 2013, (a) Settlement does not occur, *or* (b) the conditions to Settlement have not been satisfied, and in *either* of the above circumstances, *this Agreement shall*, without further action by either party, *terminate*, with no liability or obligation on either party.

(Emphasis added). The contract clearly states that if *either* one of two conditions, (a) *or* (b) fails to occur, the LDA will terminate. No linguistic or logical principle compels a contrary reading.

The court reached this conclusion and dismissed the rest of LSP's arguments:

> Plaintiff argues that this Section is ambiguous because settlement, required under clause (a), necessarily would require completion all of the [sic] conditions precedent to settlement as required under clause (b). Thus, Plaintiff argues that clause (b) is superfluous and that a contract should not be read to render its express terms meaningless."
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> To adopt Plaintiff's interpretation of the Section would be [to] require the Court to ignore the simple language in the agreement and engage in tortured leaps of interpretation of the entire settlement section, Sections 2.15, et seq. A reading of Section 2.15.3 does not lend to multiple interpretations; rather, a reasonably prudent reader would understand that under Section 2.15.3, the parties had until June 30, 2013 to satisfy all of the conditions to settlement (which had not yet occurred as of December 19, 2012), and to accomplish settlement (within thirty days of all completed conditions to settlement). Absent settlement or a completion of the conditions precedent to settlement, i.e., in either circumstance that settlement does not occur or, alternatively the conditions are not satisfied, the LDA terminates. The LDA is not ambiguous simply because plaintiff disagrees with Defendants' interpretation of the automatic termination provisions. Under a plain reading of Section 2.15.3, especially with the specified conditions to settlement enumerated in Section 2.15, and with acknowledgement in Section 2.15 that "time is of the essence" regarding the timing of settlement, clause (b) is not meaningless. Clause (a) instructs, urgently, that settlement is to be accomplished by June 30, 2013, or else the agreement terminates. Recital F of the Fourth Amendment to the LDA also states the conditions precedent to settlement had not occurred as of December 19, 2012. Thus, clause (b) clarifies and reports that a critical requirement of satisfaction of all of the conditions precedent to settlement, must have been accomplished by June 30, 2013.
>
> Plaintiff has offered no reasonable explanation as to why Section 2.15.3 is alleged to be ambiguous on its face. Plaintiff attempts to argue that because the parties were debating issues of financing and marketable title, Settlement could not occur based on forces outside of LSP's control. This argument relies on factors extrinsic to the clear words of 2.15.3; that section does not address or concern why the parties fail to reach settlement or fail to satisfy

> the conditions precedent enumerated in Section 2.15. Because this Court finds that 2.15.3 is unambiguous on its face, the Court will not address extrinsic evidence in interpreting the LDA.
>
> Plaintiff's further assertion that Section 2.15.3 requires consideration of Developer default procedures or force majeure protections—as set forth in Sections 11 and 13, respectively—is wholly unsupported by the clear terms of the LDA. Any mention of default was excised from 2.15.3 by the LDA's Fourth Amendment, and the other settlement provisions do not refer to a right of Developer to seek an extension. The entire settlement provisions in Section 2.15 et seq. lack any reference to default procedures. Likewise, because the force majeure provision acts only to prevent a party from being considered in breach or default, it is inapplicable to the consideration of automatic termination in Section 2.15. . . Accordingly, this Court finds that the terms of the LDA, both specifically as to Section 2.15.3 and as a whole, are clear and unambiguous and, thus, this Court need not consider any extrinsic evidence to interpret the contract.

We are cognizant of the complexity of the project undertaken by LSP and the City and the significant time, resources, and effort spent by both sides. Yet these were sophisticated parties, represented by attorneys at every stage of negotiation, who agreed to the unambiguous language of Section 2.15.3. The undisputed fact is that by June 30, 2013, the parties had not settled. Even if LSP is correct in arguing that the M&T Bank term sheet would satisfy the financing conditions of settlement, the LDA is clear on its terms that it would automatically terminate if the parties did not settle by June 30, 2013. Notably, LSP did not argue to the court that the City made settlement impossible.

Because the relevant language is capable of only one meaning, we affirm the court's finding that the LDA terminated on June 30, 2013. Furthermore, because ultimately, financing was not the reason for termination, then the failure to provide notice to cure is immaterial as well; there was a separate basis for terminating the contract, expressed in the

clear and unambiguous language of Section 2.15.3, language that LSP had agreed to in the four amendments to the LDA.

II. LSP's Additional Claims

LSP also sued for breach of contract and tortious interference with contractual relations. LSP contends that its claims predate the termination of the LDA because they arose under its right to cure in the event of a default, and that the BDC interfered with LSP's relationship with the City. The City responds that the contract terminated automatically due to the parties' failure to settle, not because of any default by LSP. The City also explains that because the BDC was a party to the LDA, it could not tortuously interfere with contractual relations between the BDC and LSP.

LSP's principal argument is that it did provide evidence of financing, and the City did not acknowledge this information until after the LDA terminated. LSP argues that Section 11.3 provides a right to cure, and that the City did not allow them to cure. Yet Section 11.3 (titled "Developer Default") only applies to defaults, and nowhere does Section 2.15.3 establish default as a precondition to termination, nor did the court reach its conclusion on that basis.

Similarly, Section 13.1, which applies to delays and "Force Majeure" events, only applies where a party seeks to avoid a default. It has no bearing on Section 2.15.3's automatic termination provision. As this contract was written, it is clear that failure to settle was a condition to end the LDA (although certainly the parties could, as they had in the past, have amended the LDA to avoid this outcome).

Furthermore, LSP cannot argue that BDC tortuously interfered with contractual relations, because "a party to a contract cannot tortiously 'interfere' with his or her own contract; the party can, at most, breach it." *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 503 (1995). The LDA was a contract between LSP and the BDC, so under *Bagwell*, the BDC could not tortiously interfere with its own contract. Moreover, there was no breach; the LDA terminated automatically, and by its own terms, "with no liability or obligation on either party."

LSP also argues that there are genuine disputes of material fact. It is undisputed that the parties failed to settle by June 30, 2013. The LDA is unambiguous that it would terminate if that condition, among others, occurred. There are no other relevant facts to the dispute. LSP again suggests that the sufficiency of financing is a disputed fact; even if that is the case, it is irrelevant to the court's conclusion based on the plain meaning of Section 2.15.3. Accordingly, we affirm the entirety of the court's ruling.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.