Circuit Court for Baltimore City
Case No. 24-C-17004469

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 724

September Term, 2018

5501 PULASKI, LLC

v.

CBK REALTY, INC., et al.

Meredith,
Graeff,
Battaglia, Lynn A.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Graeff, J.

Filed: August 14, 2019

CBK Realty, Inc. ("CBK"), one of the appellees, is the owner of a parcel of land located at 5401 Pulaski Highway in Baltimore ("Lot A"). 5501 Pulaski, LLC ("Pulaski LLC"), appellant, is the owner of an adjacent parcel of land located at 5501 Pulaski Highway ("Lot B"). The lots initially were owned by one entity, but in 1955, Lot B was sold. The prior owners of Lot B used an easement through Lot A to access the nearby highway. Although CBK, who acquired Lot A in 2013, initially allowed Pulaski LLC to use Lot A to access the highway, it began to impede Pulaski LLC's access in April or May 2017.

On August 31, 2017, Pulaski LLC filed a complaint in the Circuit Court for Baltimore City against CBK and Chong Kim, one of the owners of CBK, seeking, among other things, a temporary restraining order against CBK and a declaratory judgment that there was a valid and enforceable easement on Lot A. On April 5, 2018, CBK and Chong Kim ("appellees") filed a motion for summary judgment, arguing that Pulaski LLC did not have the right to use or enforce an easement. The following day, Pulaski LLC filed a motion for partial summary judgment, asserting that there was valid and enforceable easement. On May 11, 2018, following a hearing, the circuit court entered orders denying Pulaski LLC's motion for summary judgment and granting appellees' motion.

On appeal, Pulaski LLC raises the following two issues on appeal:

> 1. Did the circuit court err in denying appellant's motion for partial summary judgment, where the easement was created in perpetuity?
>
> 2. Did the circuit court err in granting appellees' motion for summary judgment even though there were issues of material fact regarding whether the easement was terminated?

For the reasons set forth below, we shall affirm the judgment of the circuit court denying Pulaski LLC's motion for partial summary judgment, vacate the judgment granting appellees' motion for summary judgment, and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Subdivision and Easement

From 1949 to 1955, E.A. Kaestner Company ("E.A.") owned what is now Lot A and Lot B as a single, undivided parcel of land. E.A. subdivided the parcel, and on March 24, 1955, it conveyed Lot B by deed to Jesse and Mary Margaret Noland ("the Nolands").[1] The Nolands operated a boat sales and service business on Lot B and maintained a good relationship with E.A. From 1955 to 1986, E.A. allowed the Nolands to travel across Lot A to reach Pulaski Highway.

On November 10, 1986, after the death of her husband, Mrs. Noland sold Lot B to Carroll L. Bond, Jr. ("Bond, Jr.") and Charles A. Born, (collectively, "Bond/Born"), as tenants in common. Three days later, on November 13, 1986, Bond/Born and E.A. executed a Declaration of Easement (the "1986 Declaration") that formalized the right of Bond/Born, as owners of Lot B, to "cross Lot 'A' as additional ingress and egress to and from Pulaski Highway."

[1] As of March 24, 1955, the day that E.A. sold a parcel of his property to the Nolands, the parcels were located on "Erdman Ave." It is unclear, based on the record, when "Erdman Ave." became "Pulaski Highway."

The 1986 Declaration provided that the easement was for the "limited purpose of ingress and egress from Pulaski Highway to Lot B for vehicular traffic." It stated that E.A. could designate the precise route of the easement through Lot A, and it had the right to change the easement in its sole discretion. The easement was "binding upon [E.A], its successors or assigns and upon [Bond/Born], personally and individually and not their heirs and personal representatives."

Paragraph 6 of the 1986 Declaration described five events, the occurrence of any of which would "automatically terminate and . . . extinguish[] forever" the easement. These events included:

> (a) the conveyance of Lot B for value by [Bond/Born] to a third party;
>
> (b) the abandonment or vacation of the use of Lot B as an established, ongoing business concern;
>
> (c) the lease of Lot B or any improvements thereon to a third party;
>
> d) the failure to continue the use of Lot B for the conduct of a coin vending machine business;
>
> (e) the death of both [of the Grantees].

Paragraph 8 addressed the possibility of reverter. It stated that, after September 1, 2016, E.A.'s "right of entry or possibility of reverter, upon the occurrence of the events set forth in Paragraph 6" would "automatically terminat[e]," unless the easement was "renewed by an instrument duly recorded, acknowledged, and signed."

Paragraph 9 expressed the intent that the easement granted be an interim easement. It stated:

> On or before twelve (12) months following the recordation of [the 1986 Declaration] [E.A.] and [Bond/Born] shall execute and record . . . a Declaration of Easement and plat delineating the exact route and boundaries of the easement . . . . Said easement shall not be greater than fifteen (15) feet wide and the precise route of the easement shall be as determined by [E.A.] in its sole and absolute judgement and discretion. Said easement shall be in perpetuity and [Bond/Born] shall pay all costs and expenses incurred in the preparation of the Declaration of Easement including survey costs, plat preparation and recording fees.

On October 30, 1987, E.A. and Bond/Born executed and recorded another Declaration of Easement (the "1987 Declaration"). This easement agreement permitted Bond/Born "the right to cross Lot 'A' as additional access to Pulaski Highway as set forth in a Declaration of Easement dated November 13, 1986." In accordance with the 1986 Declaration, the declaration more particularly described the boundaries of the easement, designating a "15 foot wide strip running 160 feet parallel to the common boundary line between Lot A and Lot B."

Approximately six years later, on June 30, 1993, Bond/Born executed and recorded a quitclaim deed transferring Lot B to Bond, Jr., individually. On July 14, 2005, Bond, Jr. executed and recorded a deed transferring Lot B to Pulaski LLC, a pass-through LLC operated by the Carroll L. Bond, Jr. Trust (the "Trust") as the sole member.[2]

Lot B was used as a site for several businesses, including a gold business, a bail bonds office, a carpet store, and Carbond, Inc. d/b/a/ Bayside Vending ("Carbond"). Carbond, a vending machine business owned by Bond, Jr.'s son, Caroll L. Bond III ("Bond III") until 2008, was the "longest-standing" business.

[2] Pulaski LLC was formed on April 26, 2005. The Trust is based in Florida, and its trustees include: David Penner, Sandra Bond, and August Papa.

On November 1, 2008, Bond Jr. and Bond III agreed to sell Carbond to August Papa. That day, the Trust entered into a Lease Agreement with Carbond, in which it agreed to lease Lot B to Carbond for a term of one year, "commencing on the 1st day of November 2008, with an option for one . . . additional one . . . year term at the expiration of the original lease term, for the minimum annual rent of [$24,000] payable monthly in advance in sums of [$2,000]." Beginning in January 2008, Carbond made monthly rental payments of $2,000 to Pulaski LLC.

On July 31, 2013, E.A. executed and recorded a deed transferring Lot A to CBK (the "CBK Deed"), which, by its terms, was "subject to" the 1987 Declaration. Chong Kim, appellee, and his wife, Shalley Kim, are the co-owners of CBK. When CBK first acquired Lot A, they allowed Pulaski LLC to use the easement. After April or May 2017, CBK and Mr. Kim began to block access to the easement.

Unable to access the easement, Pulaski LLC began to access Lot B using an access point in the "on ramp" onto Interstate 895. At his deposition, David Penner, representative for Pulaski LLC, testified this was not safe because there was no visibility of oncoming traffic and limited time to react to traffic accelerating up the on-ramp.

II.

Motions for Summary Judgment

On June 6, 2017, Pulaski LLC's attorney made a written demand that CBK "immediately cease and desist" its obstruction of the easement. She stated that the easement was subject to the 1986 Declaration, explaining:

> Paragraph 6 of Easement identifies five specific events which would automatically terminate the Easement: Paragraph 8, however, provides "[f]rom and after September 1, 2016, the Declarant's right of entry or possibility of reverter upon the occurrence of the events set forth in Paragraph 6 hereof shall be automatically terminated unless renewed by an instrument duly recorded, acknowledged, and signed by the Declarant." As no such instrument was recorded prior to September 1, 2016, the Easement has ripened into a perpetual easement that cannot be terminated without the consent of both parties. Accordingly, the Easement remains in full force and effect, and your obstruction of our client's access to 5501 Pulaski Highway violates the terms of the Easement.

Counsel for appellees wrote a response letter dated July 7, 2017, stating that appellees were "within their rights to restrict [Pulaski LLC's] access to 5401 Pulaski" because the easement had expired by its own terms. Counsel stated that, pursuant to Paragraph 6 of the Declaration of Easement, "at least four of the five" event/s conditions that triggered termination of the easement had occurred. These conditions included:

> 1. By your own letter dated June 6, 2017, you admit that your clients are successors in interest to the Grantees, Charles A. Born and Carroll L. Bond. Accordingly, that transfer terminated the Easement, pursuant to Paragraph 6(a), "conveyance of Lot B for value by Grantees to a third party." (See also, Exhibit B, a July 14, 2005 Deed in which Grantee Carroll L. Bond, conveys his interest to your client's 5501 Pulaski, LLC).
>
> 2. Next, Paragraph 6(c), "the lease of Lot B or any improvements thereon to a third party." Lot B is currently being leased by a third party, engaged in the business of selling used cars, your client[s] do not own that business.
>
> 3. Further, Paragraph 6(d), "the failure to continue the use of Lot B for the conduct of a coin vending machine business." As noted immediately above, the current business is not a coin vending business, but a used automobile business. See Exhibit C, (the Article of Organization of 5501 Pulaski, LLC, provides that "[t]he purpose for which the Company is formed is to engage in the managing and owning of real property . . . ."

4. Finally, Paragraph 6(e), "the death of both of the Grantees." In the instant matter, both Grantees are believed to be deceased.

(Footnote omitted.) Appellees continued to block Pulaski LLC's access to the easement.

On August 31, 2017, Pulaski LLC filed a Verified Complaint for Temporary Restraining Order and Motion for Temporary Restraining Order in the Circuit Court for Baltimore City, seeking injunctive and declaratory relief. Following appellees' answer, Pulaski LLC filed a First Amended Verified Complaint (the "Amended Complaint"), in which it asserted claims for breach of contract and trespass and requested declaratory and injunctive relief.

On April 5, 2017, appellees filed a Motion for Summary Judgment. In support, they asserted three arguments: (1) based on the plain language of Paragraph 7 of the 1986 Declaration, the "rights under the Easement were non-transferrable and terminated upon transfer" of Lot B to Pulaski LLC; (2) even if the easement "was not limited to the original grantees," it automatically terminated based on the occurrence of three of the terminating events set forth in Paragraph 6 of the 1986 Declaration, including the conveyance of Lot B to Bond, Jr., a third-party, the lease of Lot B to Carbond, a third-party, and the death of Bond, Jr., the last surviving grantee under the 1986 Declaration; and (3) there was "no legal basis for asserting an easement of necessity."

The next day, Pulaski LLC filed a motion for partial summary judgment, contending that there was a valid and enforceable express easement over Lot A because: (1) "[t]he plain language of the [1986 and 1987 Declarations] granted an easement in perpetuity binding upon successive owners of Lot A"; (2) "[a]ny right to terminate the

Easement has been waived or expired"; and (3) in any event, none of the "Termination Events" set forth in the 1986 Declaration ever occurred. Additionally, Pulaski LLC argued that, "[e]ven if the easement was somehow terminated, an easement of necessity" was implied.

III.

May 11, 2018, Hearing

On May 11, 2018, the circuit court held a hearing on the motions. Counsel for appellees advanced several arguments why they were entitled to summary judgment. Initially, counsel stated that the easement was a contractual easement, and it was "personal to the grantees," with "no reference to [grantees]' successors and assigns." Additionally, the easement was a "defeasible easement," an easement that can "automatically terminate upon a certain occurrence." Because the 1987 Declaration was a "follow up," it did not supersede the 1986 Declaration, and the terminating conditions in the 1986 Declaration continued after the execution of the 1987 Declaration.

Counsel for appellees argued that several of the terminating conditions had occurred: (1) on July 14, 2005, when the property was sold to Pulaski LLC, a third-party; (2) on November 1, 2008, when the Trust leased the property to Carbond; and (3) when Bond, Jr., the only surviving grantee under the 1986 Declaration with an ownership interest in Lot B, died in 2014. Because this was a defeasible easement, if one of the conditions occurred prior to September 1, 2016, the easement automatically terminated. Once this occurred, the "only way to revive the easement" would be "to record a subsequent document that says, despite the fact that reverter has occurred, [the easement]

is still valid." Additionally, counsel stated that there could be no "easement by necessity" in this case because there was no evidence that such an easement was "created at the time the property [was] subdivided," and an easement by necessity "must be created at the time the other lot is created."

Counsel for Pulaski LLC argued that the operative date was 2013, when "CBK acquired the property subject to the easement." He asserted that Paragraph 9 of the 1986 Declaration stated it was an interim easement, and within a year the parties would execute a declaration of easement delineating the exact boundaries of the easement, and "said easement shall be in perpetuity." Thus, he argued, once the 1987 Declaration was filed, the easement bound Lot A, owned by CBK, "in perpetuity."

Counsel disputed that any of the termination events set forth in Paragraph 6 of the 1986 Declaration had occurred. He asserted: (1) Pulaski LLC never "leased" Lot B to Carbond, a third-party, because the Trust, which rented out the lot to Carbond, did not own the property, and therefore, the alleged lease was "on its face . . . a nullity," and (2) the transfer of the property was not "for value."

Counsel then argued that, even if a termination event had occurred, once a perpetual easement was created, by the execution and recordation of the 1987 Declaration, the easement could not be terminated.[3] When asked by the court why the 1986 Declaration included provisions regarding the terminating events if the filing of the subsequent deed

[3] Counsel cited to the Affidavit of Albert Kaestner, stating that the interim easement was only to the original grantee until the exact metes and bounds of the easement was delineated, at which point it was a perpetual easement and the termination events were no longer in play.

made the easement perpetual, counsel responded that those provisions were included "in the event that either something happened between [the] 12-month period, or in the event that the final easement was never filed."

In any event, counsel argued that the 2013 CBK Deed stated that the property was subject to the easement recorded in the land records. And after that, and prior to September 1, 2016, no document was filed renewing the possibility of reverter. Counsel for Pulaski LLC stated that the easement was established, either by the perpetual nature of the easement, the doctrine of estoppel, or necessity.

Following arguments, the circuit court granted appellees' motion for summary judgment. It initially found that "there is absolutely no ambiguity in the [1986 Declaration]," which included the terminating events set forth in Paragraph 6. It then stated that, even if there were material facts in dispute regarding whether there was a violation of Paragraph 6(a) or 6(c) of the 1986 Declaration, there was no dispute of fact that Pulaski LLC leased Lot B to Carbond, which terminated the easement.

The circuit court noted that Paragraph 7 of the 1986 Declaration provided that the easement inured to the benefit of the grantees personally, not to their successors and assigns. And although Paragraph 8 provided that, after September 1, 2016, the right of reverter would be terminated unless renewed, the court stated that it was plain that this provision applied only if none of the terminating events occurred prior to that date, but "at the very least," the lease of Lot B occurred prior to this date. Accordingly, the circuit court found that the easement was terminated. The court rejected Pulaski LLC's waiver argument, finding that, following the occurrence of the terminating conditions, appellees

could have allowed Pulaski LLC to use the easement, but it became a license at that point, which was subject to termination.[4]

The court next addressed Pulaski LLC's argument regarding Paragraph 9, which stated: "Said easement shall be in perpetuity." The court noted that "what was at issue still at the time" of the 1986 Declaration was the metes and bounds "description of the easement: where was it going to be, how wide was it going to be, how long was it going to be, and the like." The court stated that the provision that the "easement shall be in perpetuity" meant that "there could be no shifting of the metes and bounds" of the easement.[5]

Next, the circuit court rejected Pulaski LLC's claim that there was an easement by necessity in this case. Although it acknowledged that the "on-ramp [was] not ideal and . . . probably . . . does not help the businesses located there," it found that the absence of an "ideal" outlet for egress and ingress did not render Lot B "landlocked."

The court ultimately denied Pulaski LLC's motion for summary judgment, and it granted appellees' motion for summary judgment.

[4] This Court has explained that "an easement implies an interest in land," but a license is "merely a personal privilege to do some particular act," which is "revocable at the pleasure of the party making it." *Rau v. Collins*, 167 Md. App. 176, 192 (2006).

[5] In the court's written order, it stated that

> paragraph nine of [t]he 1986 [Declaration] . . . did not create an easement in perpetuity, but instead gave the parties' additional time to file a metes and bounds description of the contours of the easement granted in 1986. I[n] other words, it was the route and boundaries of the easement that was immutable, (i.e. in perpetuity), not the temporal length of the easement itself.

IV.

May 11, 2018, Orders

On May 11, 2018, following the hearing, the court entered written orders. With regard to the order denying Pulaski LLC's motion for summary judgment, the court made the following findings:

> The [c]ourt finds the language of The Easement Documents clearly and unambiguously did not create an easement in perpetuity. The reference to same in paragraph nine of [t]he 1986 [Declaration] gave the parties' additional time to file a metes and bounds description of the contours of the easement granted in 1986. I[n] other words, it was the route and boundaries of the easement that was immutable, (i.e. in perpetuity), not the temporal length of the easement itself. Further, it is clear that paragraph eight of [t]he 1986 [Declaration] . . . speaks to the rights of the declarant and its assigns should none of the triggering events found in paragraph six to have occurred by September 1, 2016, which is not the case here.
>
> The [c]ourt does not credit [Pulaski LLC's] argument that [appellees] waived their objection to the validity of the easement upon purchase in 2013. The fact that the deed transferring title to [CBK] puts [appellees] on notice of the easement, does not constitute a waiver or expiration of [appellees'] ability to enforce and/or terminate the easement based upon the clear terms of the [1986 and 1987 Declarations]. In effect, the 2013 purchase by [CBK] places it in the same position as the sellers had they retained title. The court further finds that there is no genuine dispute that paragraph (6)(c) of [t]he 1986 [Declaration] has been violated as a result of the lease of a portion of 5501 Pulaski Highway to a third-party starting in 2008, and as such, a "triggering event" allowing [appellees] to terminate the easement had occurred.
>
> Last, the [c]ourt finds that [Pulaski LLC] is not entitled to partial summary judgment on its claim of easement by necessity. To the contrary the [c]ourt finds that an easement by necessity does not exist as a matter of law. I[t] is undisputed that the existing entrance/exit onto [Lot B] is located on the on-ramp to southbound Interstate 895/ on-ramp to Erdman Avenue. While this entrance/exit does not allow vehicles to exit onto eastbound Pulaski Highway, it does not landlock the property in a manner that makes vehicular access impracticable.

In its order granting appellees motion for summary judgment, the court restated and incorporated the findings set forth in its order addressing Pulaski LLC's motion. This appeal followed.

STANDARD OF REVIEW

Maryland Rule 2-501(f) governs motions for summary judgment and states that a trial court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." *See Fox v. Fidelity First Home Mortg. Co.*, 223 Md. App. 492, 507–08, *cert. denied*, 445 Md. 20 (2015). "A material fact is 'one that will somehow affect the outcome of the case."' *Id.* at 508 (quoting *Commercial Union Ins. Co. v. Harleysville Mut. Ins. Co.*, 110 Md. App. 45, 51 (1996)). "We review a grant of summary judgment without deference, and construe the facts, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Calvo v. Montgomery Cty.*, 459 Md. 315, 323 (2018).

DISCUSSION

Before addressing the parties' contentions, we briefly discuss the law of easements. "'An easement is broadly defined as a nonpossessory interest in the real property of another[.]"' *Purnell v. Beard & Bone, LLC*, 203 Md. App. 495, 505 (2012) (quoting *Boucher v. Boyer*, 301 Md. 679, 688 (1984)). *Accord Arthur E. Selnick Assoc., Inc. v. Howard Cty. Md.*, 206 Md. App. 667, 694, *cert. denied*, 429 Md. 529 (2012). It '"involves primarily the privilege of doing a certain class of act on, or to the detriment of another's land, or a right against another that he refrain from doing a certain class of act on or in

connection with his own land[.]" *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 174 (2011) (quoting *Rau v. Collins*, 167 Md. App. 176, 185 (2006)), *aff'd*, 429 Md. 199 (2012). Generally, the "terms 'easement' and 'right-of-way' are regarded as synonymous." *Miller v. Kirkpatrick*, 377 Md. 335, 349 (2003).

In every private easement, "there exists the characteristic feature of two distinct tenements-one dominant and the other servient." *Brown v. Smith*, 173 Md. App. 459, 471 (2007). As we stated in *Brown*:

> "The owner of the dominant tenement is entitled to use the easement only in such manner as is fairly contemplated by his grant, whether expressly or implied, and the owner of the servient tenement is entitled to use and enjoy his property to the fullest extent consistent with the reasonably necessary use thereof by his neighbor in accordance with the terms and conditions of the grant. . . . '[I]t is axiomatic that the owner of a servient tenement cannot close or obstruct the easement against those who are entitled to its use in such manner as to prevent or interfere with their reasonable enjoyment."'

Id. (quoting *Miller*, 377 Md. at 349–50).

"'An easement may be created by express grant, by reservation in a conveyance of land, or by implication."' *Bacon v. Arey*, 203 Md. App. 606, 636–37 (quoting *Sharp v. Downey*, 197 Md. App. 123, 160 (2010)), *cert. denied*, 427 Md. 607 (2012). We have described the different types of easements as follows:

> "An express easement, whether by grant or reservation, must be created by a written memorandum that satisfies the Statute of Frauds; and 'a right[ ] of way created by deed'" must satisfy "'the mode and manner prescribed by the recording statutes.' . . . 'An express easement by reservation often arises when a property owner conveys a portion of his property to another, which would otherwise render the retained part inaccessible, so the reservation permits a right-of-way.' In contrast, an easement by implication '"may be created in a variety of ways, such as by prescription, necessity, the filing of plats, estoppel and implied grant or reservation where a quasi-easement has existed while the two tracts are one."'"

Id. at 636–37 (quoting *Sharp*, 197 Md. App. at 159).

With these principles in mind, we turn to the parties' contentions.

I.

Pulaski LLC contends that the circuit court erred in denying its motion for partial summary judgment. It makes three arguments in support of this contention: (1) the 1986 and 1987 declarations are unambiguous and "expressly created an easement in perpetuity"; (2) appellees "waived any right to assert that the easement had terminated" by accepting the 2013 CBK Deed, "which describes Lot A as 'subject to' the 87 Declaration"; and (3) "even if the Easement had somehow terminated, an easement has arisen by necessity, dating back to E.A.'s original acquisition of the lots."

Appellees disagree. They contend that the easement on Lot B was a "defeasible easement" that automatically terminated when Lot B was leased to a third-party, i.e., Carbond. And because "a possibility of reverter occurs automatically, it cannot be waived." With respect to Pulaski LLC's argument that they have an easement by necessity, appellees assert that this claim fails because there was no showing that an "easement by necessity arose while there was unity of title," and Pulaski LLC "currently enjoys independent road access."

A.

Easement in Perpetuity

Pulaski LLC argues that the circuit court erred in finding that the easement documents "clearly and unambiguously did not create an easement in perpetuity." It

contends that the 1986 Declaration created an "interim" easement, which provided for conditions that could terminate the easement until a declaration of easement delineating the exact boundaries of the easement was recorded, and "[s]aid easement shall be in perpetuity." It asserts that, once the 1987 Declaration was recorded, it became the "operative Easement Declaration," and it does not contain or reference any termination conditions.[6]

Appellees contend that the 1986 Declaration created a "defeasible easement," which included a '"possibly of reverter' whereby the easement would 'automatically terminate and . . . be extinguished forever' upon the occurrence of certain events relative to the use of Lot B." They assert that the court properly granted summary judgment because there was no dispute of fact that at least one of those terminating events occurred, i.e., the lease of Lot B.

Appellees further contend that the 1987 Declaration "did not replace [the] 1986 Declaration." They assert that the 1987 Declaration, as required by the 1986 Declaration, was recorded for the purpose of '"delineating the exact route and boundaries of the easement by a metes and bounds description."' Although Paragraph 9 of the 1986 Declaration stated that this easement "shall be in perpetuity," there was no language in the

[6] We note that Pulaski LLC's contention in this regard is inconsistent with its initial position below. In its response to CBK's Request for Admission of Facts, Pulaski LLC denied that the 1986 Declaration was an interim easement or that it terminated upon recordation of the 1987 Declaration. Ultimately, however, Pulaski LLC did argue to the circuit court that the 1986 Declaration created an interim easement and that the terminating conditions set forth in the 1986 Declaration became inoperative after the recordation of the 1987 Declaration. Accordingly, we reject appellees' argument that this contention was raised for the first time in Pulaski LLC's initial brief.

document suggesting that this provision replaced the other conditions in the document. Indeed, appellees assert that, given the extensive conditions of the 1986 Declaration, which "govern[] the relationship between the parties, set[] forth maintenance responsibilities, and include[] a possibility of reverter that unambiguously addresses the future use of Lot B," it would be "nonsensical" to interpret the 1987 Declaration as rendering those conditions moot.

In resolving the parties' contentions, we must examine the relationship between the 1986 and 1987 Declarations. In interpreting the meaning of contractual language, Maryland courts "'follow the law of objective interpretation of contracts, giving effect to the clear terms of the contract regardless of what the parties to the contract may have believed those terms to mean.'" *Ray v. State*, 230 Md. App. 157, 183–84 (2016) (quoting *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004)), *aff'd*, 454 Md. 563 (2017). When the language in a contract is unambiguous, we "'give effect to its plain meaning and there is no need for further construction by the court.'" *Precision Small Engines, Inc. v. City of College Park*, 457 Md. 573, 585 (2018) (quoting *Walker v. Dep't of Human Res.*, 379 Md. 407, 421 (2004)). "'We . . . attempt to construe contracts as a whole, to interpret their separate provisions harmoniously, so that, if possible, all of them may be given effect.'" *City of College Park v. Precision Small Engines*, 233 Md. App. 74, 85 (2017) (quoting *Walker*, 379 Md. at 421), *aff'd*, 457 Md. 573 (2018).

Here, we agree with the circuit court that the 1987 Declaration did not replace the 1986 Declaration, but rather, it incorporated the termination conditions set forth in Paragraph 6 of the 1986 Declaration. The 1987 Declaration states that the owners of Lot

B were granted "the right to cross Lot 'A' as additional access to Pulaski Highway as set forth" in the 1986 Declaration. Thus, the 1987 Declaration was incorporating the terms in the 1986 Declaration. *See Ray v. William G. Eurice & Bros., Inc.*, 201 Md. 115, 128 (1952) ("It is settled that where a writing refers to another document that other document, or so much of it as is referred to, is to be interpreted as part of the writing.").

The 1986 Declaration shows the limited purpose of the 1987 Declaration. Pursuant to Paragraphs 3 and 9, the initial boundaries of the easement constituted an interim easement, which E.A. could change at its sole discretion, but within 12 months another declaration of easement would be recorded delineating the exact boundaries of the easement, which would be in perpetuity. The 1987 Declaration states that, pursuant to that requirement, "the legal description of the easement is more particularly described."

Thus, as the circuit court found, a plain reading of the declarations indicates the boundaries could not be changed after the 1987 Declaration was recorded, i.e., those boundaries remained in perpetuity as long as the easement existed, but there is nothing in the 1987 Declaration indicating an intent to supersede the other conditions of the 1986 Declaration. Those conditions, including (1) that the owners of Lot B pay a percentage of repairs and maintenance costs and (2) that the easement would automatically terminate on the occasion of the listed events, remained in place after the 1987 Declaration was recorded. Accordingly, the circuit court did not err in its determination that the easement was subject to termination.

B.

Waiver

Pulaski LLC next argues that, even if the termination conditions apply, appellees waived any right to argue that a terminating event extinguished the easement. It argues:

> By accepting the CBK Deed which describes Lot A as "'subject to" the 87 Declaration, CBK expressly acknowledged that the Easement was binding upon Lot A, and was perpetual in nature. As a result, CBK "expressly agreed" to waive any rights it may have had to assert that the Easement terminated prior to July 31, 2013.

The circuit court rejected the claim that appellees "waived their objection to the validity of the easement" when they purchased Lot A in 2013. The court found that, although "the deed transferring title to CBK Reality, Inc. put[] [appellees] on notice of the easement," it did "not constitute a waiver or expiration of [appellees'] ability to enforce and/or terminate the easement based upon the clear terms of The Easement Documents." Rather, the court stated that the 2013 purchase placed appellees "in the same position as the sellers had they retained title." And based on the court's further findings, discussed *infra*, i.e., that there was no genuine dispute that a terminating event occurred "as a result of the lease of a portion of 5501 Pulaski Highway to a third party starting in 2008," there was a "'triggering event' allowing [appellees] to terminate the easement."

We perceive no error in the court's finding that appellees did not waive their right to argue that a terminating event extinguished the easement because they took the property subject to the same rights as the seller. *See Bennett v. Bates*, 94 N.Y. 354, 371 (1884) ("By receiving the absolute title and interest, the grantee becomes the privy in estate of

his grantor, and takes the property, subject to the same rights as pertained to in the hands of his grantor.").

Pulaski LLC next contends that, assuming the 1986 Declaration applies, and appellees did not waive their right to terminate the easement in 2013, appellees' right to terminate automatically ceased after September 1, 2016, pursuant to Paragraph 8 of the 1986 Declaration. That paragraph provides:

> Possibility of Reverter. From and after September 1, 2016, the Declarant's right of entry or possibility of reverter upon the occurance of the events set forth in Paragraph 6 hereof shall be automatically terminated unless renewed by an instrument duly recorded, acknowledged, and signed by Declarant.

Pulaski LLC asserts that "[t]here is *no* evidence in the record that any entity ever recorded a renewal of the 'right of entry' prior to September 1, 2016," and therefore, "CBK's right of entry or possibility of reverter was terminated on September 1, 2016." Accordingly, it argues that "any right that [a]ppellees had to assert that the Easement had terminated was finally and forever relinquished when they failed to record a renewal instrument prior to September 1, 2016."

Appellees claim that the 1986 Declaration created a "possibility of reverter," which had the effect of automatically terminating the lease upon the occurrence of one of the events described in Paragraph 6.[7] Since at least one of the terminating conditions, i.e., the

[7] A "possibility of reverter" is a future interest in the grantor where, upon the occurrence of a stated event, the property "automatically reverts to the grantor without any entry or other act[.]" 28 Am. Jur. 2d Estates § 189. *Accord Wheeler v. Monroe*, 523 P.2d 540, 542 (N.M. 1974), *appeal dismissed*, 419 U.S. 1014 (1974).

lease of Lot B to a third-party, occurred prior to September 1, 2016, the "easement is void," and there was no need to file anything pursuant to Paragraph 8. We agree.

Paragraph 6 states that the occurrence of any of the stated conditions "automatically" terminates the easement. As the trial court found, Paragraph 8 was applicable only if the easement had not been extinguished by September 1, 2016, almost 30 years after the 1986 Declaration, at which time the owner of Lot A had to file an instrument renewing the possibility of reverter. Here, because a terminating event occurred prior to September 1, 2016, Paragraph 8 was inapposite.

C.

Easement by Necessity

Pulaski LLC next contends that, "[a]ssuming *arguendo* that the Easement was never granted in perpetuity by the Declarations or was subsequently terminated, the record reveals that an easement by necessity was created at the time the lots were subdivided and remains in place today." It argues that an easement by necessity should be recognized in this case because: (1) lots A and B initially were owned by E.A., (2) the lots were subsequently severed; (3) after the severance, "the only outlet for ingress and egress to or from Lot B was to cross Lot A;" and (4) the existing outlet from Lot B, via an on-ramp to 895, is too dangerous to constitute an acceptable alternative pathway for egress and ingress.

Appellees contend that Pulaski LLC "does not have an easement by necessity." They argue that there was no showing "that the easement by necessity arose while there was unity of title, which is dispositive as a matter of law."

An easement by necessity, a type of easement by implication, "arises where a parcel is 'landlocked' by other land that was originally held by a common grantor, such that the only way to reach a public road is by crossing adjacent property." *USA Cartage Leasing, LLC*, 202 Md. App. at 175–76. "'[T]he court will not recognize a way of necessity if another road to the public highway can be made without unreasonable expense, even though the other road may be much less convenient.'" *Id.* at 176 (quoting *Condry v. Laurie*, 184 Md. 317, 322 (1945)). Easements by necessity fulfill core public policy principles of '"full utilization of land and [a] presumption that parties do not intend to render land unfit for occupancy."' *Stansbury v. MDR Development, L.L.C.*, 390 Md. 476, 488 (2006) (quoting *Condry*, 194 Md. at 321). *Accord Rau*, 167 Md. App. at 186.

Easements by necessity "are of two types, either implied grant or implied reservation." *Rau*, 167 Md. App. at 186. An implied reservation will be found "only in cases of strictest necessity, and where it would not be reasonable to suppose that the parties intended the contrary." *Burns v. Gallagher*, 62 Md. 462 (1885). *Accord Snider*, 373 Md. at 45. Where, as alleged here, there is an implied grant, an easement by necessity will be found if '"necessary to the reasonable enjoyment of the premises granted."' *Rau*, 167 Md. App. at 188 (quoting *Michael v. Needham*, 39 Md. App. 271, 276 (1978)).

There are three prerequisites to the creation of an easement by necessity:

> (1) initial unity of title of the parcels of real property in question; (2) severance of the unity of title by conveyance of one of the parcels; and (3) the easement must be necessary in order for the grantor or grantee of the property in question to be able to access his or her land, with the necessity existing both at the time of the severance of title and at the time of the exercise of the easement.

Stansbury, 390 Md. at 489. Easements by necessity, like other easements by implication, '"are looked upon with jealousy and are construed with strictness by the courts."' *Id.* at 488 (quoting *Condry*, 184 Md. at 321 (1945)).

Here, the parties' do not dispute that the first two elements, i.e., the "initial unity of title" and the "severance of the unity of title," are satisfied. Prior to 1955, E.A. owned lots A and B. And on March 24, 1955, E.A. transferred Lot B to the Nolands.

With respect to the third element, Pulaski LLC asserts there was necessity existing both at the time of the initial severance and at the time of the exercise of the easement. With respect to the time of severance, Pulaski LLC baldly states that

> [u]pon the initial severance of the Lots, the only outlet for ingress or egress to or from Lot B was to cross Lot A. As a result, the record clearly demonstrates that an easement over Lot A for the owners of Lot B was implied by necessity at the time Lot B was conveyed.

It does not, however, cite to any portion of the record to support that statement.

With respect to necessity now, Pulaski LLC argues that, although there is an outlet for ingress and egress, it is "extremely dangerous," and therefore, the "necessity that existed at the conveyance of Lot B in 1955 remains in existence to this day." In its reply brief, however, Pulaski LLC argues that, "whether or not an easement by necessity was created is a factual determination that requires findings of fact and cannot be resolved on a motion for summary judgment," and "[a]t the very minimum, the dispute regarding whether or not the easement was 'necessary' or if there are viable alternatives to enter and leave Lot B is a material issue of fact."

Given Pulaski LLC's contention that there is a dispute of material fact regarding whether there currently is an easement by necessity, it is with some ill grace that it contends on appeal that the circuit court erred in denying its motion for summary judgment on this ground. In any event, because, as discussed *infra*, we agree that there was a material dispute of fact on this issue, the circuit court did not err in denying Pulaski LLC's motion for summary judgment.

II.

Pulaski LLC next contends that the circuit court "erroneously granted appellees' motion for summary judgment[.]" It asserts that there are numerous issues of material fact, including: (1) "whether Lot B was leased"; (2) the "true intentions of [E.A.] at the time the Easement was created," given alleged ambiguities in the 1986 Declaration; and (3) whether "an easement by necessity was established" when E.A. deeded Lot B to the Nolands in 1955.

Appellees disagree. They assert that there were no genuine disputes of material fact, and the circuit court properly granted their motion for summary judgment.

We have already discussed and expressed our agreement with the circuit court's conclusion that the 1986 and 1987 Declarations were not ambiguous. Accordingly, we limit our analysis to the court's finding that (1) there was no genuine dispute of material fact that Lot B was leased to a third-party and (2) the issue of an easement by necessity.

A.

Lease of Lot B

As indicated, the circuit court found that a terminating event set forth in Paragraph 6 of the 1986 Declaration, i.e., that Lot B was leased to a third party, had occurred, and therefore, the easement had terminated. Pulaski LLC contends that the court's finding in this regard was erroneous, arguing that there is a "substantial factual dispute . . . as to whether Lot B was leased to a third party." It asserts that the "*only* lease ever signed with respect to Lot B was from the *Trust* to Bayside (the Carbond Lease)," and because the Trust did not own Lot B and had no right to enter into a lease, the lease was void *ab initio*. Accordingly, Pulaski LLC claims that "Lot B was *never* legally leased to a third-party," and therefore, 'this Termination Event . . . was not met."

Paragraph 6(c) of the 1986 Declaration provides that "the lease of Lot B or any improvements thereon to a third party" terminates the easement. There is no dispute of fact that there was a "lease of Lot B . . . to a third party."[8]

Pulaski LLC's argument is that, "[a]bsent a legally valid lease, the Termination Event of 'the lease of Lot B . . . to a third party' never occurred and the Easement did not terminate." We, like the circuit court, are not persuaded.

[8] In appellees' motion for summary judgment, they attached a lease agreement between the Trust and Carbond, dated November 1, 2008, as well as a Stock Purchase Agreement, dated November 14, 2008, which indicated that the Trust had a 100% interest in Pulaski LLC. They also produced evidence showing that Carbond made consistent rental payments to Pulaski LLC from 2008 to 2010.

Initially, we note that Pulaski LLC cites no case law in support of its argument. Moreover, even if the Trust, the sole member of Pulaski LLC, was not authorized to sign a lease, Carbond acted upon the lease and made monthly rental payments. The Maryland appellate courts have held that, when a tenant who occupies premises owned by a landlord pays the landlord rent, a lease is implied by law and may be enforced in contract even if the parties never entered into a valid written lease. *See Cline v. Fountain Rock Lime & Brick Co.*, 210 Md. 78, 88–89 (1956); *Cook v. Boehl*, 188 Md. 581, 591 (1947); *Falck v. Barlow*, 110 Md. 159,162–63 (1909).

Finally, the 1986 Declaration does not refer to a "legally valid lease." It refers to the lease of Lot B to a third party, which clearly occurred.

Under these circumstances, the circuit court did not err in finding that a terminating event occurred under Paragraph 6(c) of the 1986 Declaration.

B.

Easement by Necessity

Pulaski LLC's final contention is that the court erred in granting appellee's motion for summary judgment because there was a dispute of fact whether an easement by necessity was established. Appellees argue that there is no easement by necessity because Pulaski LLC has not shown (1) necessity at the time of severance and (2) present necessity.

With respect to necessity at the time of severance, appellants baldly state that there was only one outlet at the time of severance. Appellees refute that assertion, and, relying on an aerial photograph, state that the additional access that exists today existed at the time of severance.

The circuit court did not address this issue and, based on our review of the record, it is not clear what the conditions were at the time of severance. Although it is clear from the photograph to which appellees refer that there was additional access for Lot B, there are indications that the photograph does not reflect the condition of the property at the time of severance because it shows buildings and signs attributed to the Nolands. Thus, without further evidence, there is a dispute of material fact regarding whether the access road was present at the time of severance.[9]

Additionally, we conclude that there is a genuine dispute of material fact regarding whether there is a present necessity. Since the alleged easement in this case would be an implied grant, proof of strict necessity is not required. *Rau*, 167 Md. App. at 186, 188; *Stansbury*, 161 Md. App. at 613–14. Rather, it is sufficient to show that the easement is necessary for the "'reasonable enjoyment' of the dominant tenement."' *Stansbury*, 161 Md. App. at 613–14 (quoting *Kelly v. Nagle*, 150 Md. 125, 131 (1926)).

Pulaski LLC produced evidence indicating that the outlet to the on-ramp it currently uses for ingress and egress to and from Lot B is hazardous. Whether this hazard deprives Pulaski LLC of the reasonable enjoyment of its property and results in an easement by necessity is, based on the record before us, a factual issue that cannot be resolved on summary judgment. *See Hedger Bros. Cement & Materials v. Stump*, 10 S.W.3d 926, 930 (Ak. 2000) (easement by necessity existed where "there was

[9] We note that when the 1986 Declaration was executed it stated that the easement was being granted as "**additional** ingress and egress to and from Pulaski Highway." (Emphasis added.)

considerable evidence that [other means of access] were either unsafe or unreasonable for frequent ingress and egress, thus leaving appellee essentially landlocked"); *Francini v. Goodspeed Airport, LLC*, 134 A.3d 1278, 1289 (Conn. App. Ct. 2016) (reversing grant of summary judgment on issue whether easement was a "reasonable necessity"), *aff'd*, 174 A.3d 779 (2018).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT BY PARTIES.