Circuit Court for Howard County
Case No. C-13-CV-20-000479

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0916

September Term, 2020

COLUMBIA ASSOCIATION, INC.

v.

DOWNTOWN COLUMBIA ARTS AND CULTURE COMMISSION, INC., ET AL.

Arthur,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: July 23, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Columbia Association requested a preliminary injunction to prevent the owner and operator of Merriweather Post Pavilion from hosting a six-week long, drive-through holiday light display. Columbia Association alleged that the light display would trespass on its property.

The Circuit Court for Howard County denied the request for a preliminary injunction, and Columbia Association appealed. For the reasons stated below, we shall vacate the denial of the motion for a preliminary injunction and remand this case to the circuit court. On remand, the circuit court shall conduct further proceedings to determine whether to grant a preliminary injunction.

FACTS AND PROCEDURAL BACKGROUND

Columbia Association is a nonprofit service corporation that manages and maintains the city of Columbia's 3,600 acres of open space, including lakes, parks, basketball and tennis courts, and pathways. *See* *https://www.columbiaassociation.org/about-us/*. The parks include Symphony Woods, which is owned by Columbia Association and controlled by an affiliated entity, Inner Arbor Trust, Inc., pursuant to a perpetual easement. *See* https://innerarbortrust.org/about-us.

Symphony Woods surrounds Merriweather Post Pavilion, an open-air concert pavilion. The pavilion is owned by appellee Downtown Columbia Arts and Culture Commission, Inc. ("DCACC"), and is operated by appellee It's My Amphitheater, Inc. ("IMA"). Because Merriweather Post Pavilion is completely landlocked by Symphony Woods, Columbia Association and its predecessors granted three easements that allow DCACC and its visitors access to Merriweather Post Pavilion.

A. The Easements

The first easement, referred to as the 1979 Access Easement, was granted to DCACC's predecessors through a deed of easement on October 19, 1979. The 1979 Access Easement includes three easement areas: the "710 Easement," the "716 Easement," and the "722 Easement."[1] The easements were each granted for the general purpose of:

> ingress, egress and access, pedestrian and by means of all forms of vehicular transport, by grantor, its successors and assigns, as well as its or their agents, servants, employees, invitees, licensees and all others authorized or permitted by same; together with the right at any time and from time to time to enter upon, construct, modify, replace and maintain in, on and over the Easement Area any type or kind of structure, building, roadway, pathway or other item or thing conducive or desirable, in Grantee's opinion, for its utilization and enjoyment of the Easement Area for the purposes herein stated, including as example and not by way of limitation, paved and unpaved roadways, fences, paved and unpaved pedestrian walkways, directional markers and signs, gates or other devices to control access, information signs, utility lines of all types, lighting structures and landscaping.

The deed of easement clarifies that DCACC could "obstruct and/or impair the use of the Easement Area by all others, *except Grantor*[.]" (Emphasis added.) Additionally, under the deed of easement, DCACC "shall indemnify and save Grantor harmless against and from any and all claims, actions, damages, liability and expense in connection with personal injury, loss of life, or property or other damage arising from or out of the use of the Easement Areas by Grantee or others[.]"

[1] The numbers are a shorthand reference to the page number (or folio) in the land records where the recorded easements can be found.

In 1999, Columbia Association granted DCACC's predecessor (and its "successors and assigns") a "Parking Lot Easement." The Parking Lot Easement is a non-exclusive easement that grants DCACC permission to "construct and maintain a parking lot and related facilities." The easement agreement states that the entirety of the parking lot "shall be reserved for the use of disabled patrons of the Pavilion" when performances occur at Merriweather Post Pavilion. When performances are not occurring, the lot is available "to the general public for parking with seven (7) of such spaces reserved for handicapped parking." As with the access easements, the parking lot easement agreement requires DCACC to indemnify Columbia Association from "all liabilities, losses, damages, costs, expenses . . . in connection with third-party causes of action, suits, claims, demands, or judgments of any nature arising from any injury to or death of persons or loss of or damage to property occurring as a direct result of the specific use of the easement hereby granted[.]"

On May 17, 2015, Columbia Association, DCACC, and the Howard Research and Development Corporation, the owner of a neighboring property, entered into a reciprocal easement agreement (the "2015 REA"). The 2015 REA grants the parties non-exclusive access to portions of Symphony Woods and the Merriweather Post Pavilion property. The 2015 REA created 14 easement areas, four of which are at issue here: Easement Area A (the "VIP Parking Lot"), Easement Area B (the "ADA Complaint Parking Lot"), Easement Area E (the "VIP Access Drive"), and Easement Areas J-1 and J-2 (additional parking and access ways).

The 2015 REA states that Easement Area A "shall provide shared-use parking for the Pavilion, visitors to Symphony Woods, and patrons of the DCACC." When a party to the easement is hosting an event, that party has "exclusive" parking rights in Easement Area A; however, "no party shall block access to Symphony Woods by its use of the VIP Parking area and such access route shall always be kept free and clear of any parked vehicles." Easement Area A also includes an "emergency access area."

Easement Area B, located on Symphony Woods property, provides a shared-use, ADA-compliant parking area for the parties, subject to the same "exclusivity rights" as set forth in Easement Area A.

Easement Area E, located on Symphony Woods property, is "constructed mostly within" the existing 1979 access easement area and grants the parties non-exclusive access "for the general purpose of ingress, egress, and access[.]"

Easement Area J-1 and J-2 are additional parking and access easements for the "purposes of providing vehicular (including emergency vehicles) and pedestrian ingress and egress and parking."

B. Symphony of Light Displays

For 25 years, beginning in the early 1990s, Columbia Association permitted the Howard County General Hospital Foundation ("the Foundation") to host the "Symphony of Lights," a drive-through holiday light display, in Symphony Woods. The Symphony of Lights involves a slow-moving procession of automobiles that drive past festive light displays depicting skaters, reindeer, Santas, snowflakes, and the like.

It appears that until 2016 the Symphony of Lights made little use of Symphony Woods. Instead, the event took place largely on what was then undeveloped land owned by another entity (most recently, The Howard Hughes Corp.). By the middle of the last decade, however, that land (the so-called Merriweather District) had been developed, or was in the process of being developed. Consequently, the Symphony of Lights was re-routed into Symphony Woods in 2016.

In 2017, Columbia Association informed the Foundation that it would not permit the Foundation to host the light display in Symphony Woods after the 2017 holiday season. Columbia Association explained that because of the unavailability of the land traditionally used for the Symphony of Lights and because of the surrounding development in that area of downtown Columbia, the Symphony of Lights was no longer a feasible use for Symphony Woods. Columbia Association informed the Foundation that, for the final year of the display, the use of Symphony Woods would be subject to a license agreement and a license fee of $10,000.

In 2018, the Foundation was unable to find an alternative location for the light display. The Foundation asked for permission to host one final Symphony of Lights event in Symphony Woods, and Columbia Association agreed. In exchange, the Foundation agreed, among other things, to pay Inner Arbor Trust $25,000, to recognize an in-kind contribution of $25,000 from the Trust, and to pay the Trust 50% of all net ticket proceeds from a co-sponsored walk-through event.

At about the same time, Columbia Association banned drive-through parades in Symphony Woods. As a basis for its decision, Columbia Association cited the

environmental costs of idling and slow-moving automobiles, such as the waste of fuel and the generation of greenhouse gases.

In 2019, Columbia Association learned that DCACC and IMA planned to host their own Symphony of Lights event that upcoming holiday season, using the Symphony Woods property. DCACC and IMA did not acquire a license or obtain consent from Columbia Association to host the event. DCACC and IMA conducted the event over Columbia Association's objection.

During the 2019 light display, DCACC and IMA placed lighting displays on Columbia Association's property. In addition, DCACC and IMA routed drivers over the Access Easement areas, the Parking Lot Easement area, and the 2015 REA easement areas. According to Columbia Association, the display route caused several "choke-points" that blocked or impeded Columbia Association's access to Symphony Woods.

At some point in 2020, Columbia Association learned that DCACC and IMA planned to host a "substantially similar" light display for six weeks during the 2020 holiday season. Consequently, in June 2020, Columbia Association and Inner Arbor Trust filed a complaint against DCACC and IMA in the Circuit Court for Howard County. The complaint alleged that the light display (1) exceeds the scope of the easements; (2) physically trespasses on the easement areas; (3) impermissibly blocks the access easement areas and the ADA-compliant parking spots; and (4) restricts access to Symphony Woods from Columbia Association, guests, and the public.

Columbia Association and Inner Arbor Trust sought a preliminary injunction, as well as a permanent injunction and declaratory relief.

C. Circuit Court Proceedings

At the outset of the proceedings, the circuit court found that Inner Arbor Trust had agreed to arbitrate its claims against IMA. The court compelled Inner Arbor Trust to pursue those claims in arbitration.

Neither Columbia Association nor DCACC were parties to the arbitration agreement between IMA and Inner Arbor Trust. Consequently, the arbitration agreement had no bearing on Columbia Association's ability to assert its claims against either DCACC or IMA. Nonetheless, the court stayed all proceedings pending the result of the arbitration. In light of the stay, the court refrained from deciding whether Columbia Association had the right to a preliminary injunction.

After unsuccessfully attempting to persuade the court to rule on the motion for a preliminary injunction, Columbia Association appealed to this Court on the ground that the circuit court had tacitly denied the motion by failing to decide it. On November 18, 2020, we ordered the circuit court to decide the motion for preliminary injunction by November 25, 2020, the day before the 2020 Symphony of Lights was to begin.

The circuit court held a remote hearing on November 23 and 24, 2020. Because of time limitations, DCACC and IMA did not have the opportunity to present witnesses. As the 2020 light display had already been designed and installed, both parties presented evidence, including maps and photographs, of the 2020 light display.

On November 25, 2020, the circuit court issued an order denying Columbia Association's motion for preliminary injunction. The circuit court explained that, in

denying the motion for a preliminary injunction, it considered the four requisite factors that guide trial judges in deciding whether a preliminary injunction should be issued:

> (1) The likelihood that the plaintiff will succeed on the merits;
>
> (2) The balance of convenience determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal;
>
> (3) Whether plaintiff will suffer irreparable injury unless the injunction is granted; and
>
> (4) The public interest.

See DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc., 160 Md. App. 640, 648 (2005).

The circuit court found that the balance of convenience favored Columbia Association, in part because DCACC and IMA would not suffer any harm as a result of a preliminary injunction. The court, however, found in favor of DCACC and IMA on the remaining three factors.

On the issue of likelihood of success, the court concluded that Columbia Association demonstrated only a possibility of prevailing on the merits. In reaching that decision, the court reasoned that none of the light displays would be placed on Columbia Association's property. The court expressly declined to make any determination about whether the 2020 Symphony of Lights would exceed the scope of the easement agreements.

On the issue of irreparable injury, the court observed that the event did not involve a permanent obstruction of the easements and that none of the light displays would be

placed on Columbia Association's property. Recognizing that the question of irreparable injury may include the necessity of maintaining the status quo, the court observed that the Symphony of Lights had been held for 25 years.

On the final issue of the public interest, the court stressed that the event would raise funds for the Foundation, which were "vital" to the health and welfare of the community. The court also stressed the public importance of continuing "traditional holiday events," especially events that allowed people to maintain social distance during the pandemic. The court discounted Columbia Association's complaints about traffic and vehicle emissions, because the Association had allowed the public to use the easements to gain access to a COVID-19 testing facility at Merriweather Post Pavilion.

For these central reasons, the court denied Columbia Association's request for a preliminary injunction. The 2020 Symphony of Lights took place as planned.

Columbia Association filed a timely appeal of the denial of the motion for a preliminary injunction to this Court.

QUESTION PRESENTED

Columbia Association raises three issues, which we have reworded and consolidated into one question:

1. Whether the trial court erred in denying Columbia Association's request for a preliminary injunction.[2]

[2] Columbia Association presented the following questions:

1. Whether the circuit court abused its discretion by: (a) failing to consider the primary issue of contractual interpretation relevant to the likelihood that [Columbia Association] will succeed on the merits of its claims; (b) ignoring uncontroverted testimony regarding Defendants' trespass on

DCACC and IMA present an additional question:

1. Whether the appeal of a preliminary injunction that sought to enjoin the 2020 *Symphony of Lights* is moot because the event was already held.

First, we conclude that the appeal is not moot, because Columbia Association sought to enjoin *all* displays while this action is pending, not only the 2020 display. Second, for the reasons that follow, we hold that the circuit court committed legal and factual errors in denying the motion for a preliminary injunction. Thus, we shall vacate the denial of the motion for a preliminary injunction and remand the case to the Circuit Court for Howard County for further proceedings.

Additional facts will be included in the discussion.

DISCUSSION

I. Mootness

DCACC and IMA ask this Court to dismiss this appeal as moot because the 2020 display "proceeded and is over." They suggest that Columbia Association asked the

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[Columbia Association's] property; and (c) failing to apply the correct standard for evaluating [Columbia Association's] likelihood of success in light of a decided imbalance in the equities in its favor.

2. Whether the circuit court committed legal error in: (a) basing the status quo on the historical momentum of an event, rather than the dealings between the parties; and (b) determining that harm to a property right can only be irreparable if it is permanent.

3. Whether the circuit court abused its discretion in evaluating the public interest by: (a) considering financial gain to a private company; and (b) suggesting that a holiday light display is a basis to excuse violations of fundamental property and contract rights.

court to enjoin the 2020 light display alone. Thus, they contend, Columbia Association's request for a permanent injunction and declaratory relief are the only pending issues, and both will (eventually) be resolved in the circuit court. Columbia Association responds that the appeal is not moot, because it "sought to enjoin not just the 2020 display, but all such drive-through Displays 'during the pendency of this case and until entry of final judgment.'" (Emphasis omitted.)

This Court generally does not decide moot questions. Md. Rule 8-602(c)(8); *Attorney General v. Anne Arundel Cty. School Bus Contractors Ass'n, Inc.*, 286 Md. 324, 327 (1979). "A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide." *Attorney General v. Anne Arundel Cty. School Bus Contractors Ass'n, Inc.*, 286 Md. at 327; *accord Hamot v. Telos Corp.*, 185 Md. App. 352, 360 (2009). "Accordingly, an injunction should not [be] issue[d] if the acts sought to be enjoined have been discontinued or abandoned." *Attorney General v. Anne Arundel Cty. School Bus Contractors Ass'n, Inc.*, 286 Md. at 327.

In arguing that this appeal is moot, DCACC and IMA rely primarily on *Hamot v. Telos Corp.*, 185 Md. App. 352 (2009). In *Hamot*, Telos Corp. had requested a preliminary injunction to prevent a pair of shareholders from "making certain contacts or communications with past or future" company auditors while an audit of the company was pending. *Id.* at 357-58. The circuit court granted a "time-conditioned" preliminary injunction (*id.* at 356) to prevent communications with the auditors "during the pendency of the litigation." *Id.* at 358. On appeal, but after oral argument, Telos Corp. informed

this Court that the audit had been completed and, thus, the appeal had become moot. *Id.* at 359-60. This Court, relying on *University of Texas v. Camenisch*, 451 U.S. 390, 396 (1981), held that "when the injunctive aspects of a case become moot on appeal of a preliminary injunction, any issue preserved by an injunction bond can generally not be resolved on appeal, but must be resolved in a trial on the merits." *Hamot v. Telos Corp.*, 185 Md. App. at 362. This Court "decline[d] to transform [the] review of an expired preliminary injunction into a trial court-like final decision on the merits." *Id.* at 363.

Here, DCACC and IMA rely on *Hamot* to argue that the appeal is moot because Columbia Association sought to enjoin the 2020 light display, which has already occurred. However, unlike *Hamot*, the "injunctive aspects of [this] case" have not expired. Columbia Association seeks to enjoin light displays "during the pendency of this action or in the future," and not specifically the 2020 light display. Columbia Association's alleged injuries from the light displays, including the issues of trespass by encroachment over the easement areas and trespass by easement violation, will reoccur during a 2021 light display. DCACC and IMA have not disavowed their intention to conduct a drive-through holiday light display in 2021 similar to the one that occurred in 2020. Thus, a controversy continues to exist.

II. Preliminary Injunction

Columbia Association argues that the circuit court abused its discretion and erred as a matter of law in denying the preliminary injunction. According to Columbia Association, DCACC and IMA violated the easement agreements by directing visitors to view the light displays by driving across the easement areas and by placing a lighted

guidewire within the 2015 REA easement area. Columbia Association argues that these actions exceeded the general purposes permitted by the easement agreements of ingress, egress, access, and parking. In Columbia Association's view, a preliminary injunction should be granted, as the failure to comply with the scope of the express easements is both a trespass by encroachment and a trespass by easement violation. DCACC and IMA respond that the circuit court acted within its discretion in denying the preliminary injunction; thus, DCACC and IMA contend, the denial of preliminary injunction should be upheld.

For the reasons that follow, we hold that the circuit court erred in its application of the relevant legal principles and committed clear error in its findings of fact. Thus, we shall vacate the court's denial and remand the case for further proceedings.

A. Standard of Review

Preliminary injunctions "are designed to maintain the status quo between parties during the course of litigation." *Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc.*, 396 Md. 219, 241 (2006); *see Harford Co. Educ. Ass'n v. Board of Ed. of Harford Cty.*, 281 Md. 574, 585 (1977) (inner citations omitted) (emphasis omitted) ("it is fundamental that a preliminary injunction does not issue as a matter of right, but only where it is necessary in order to preserve the status quo").

Generally, the circuit court has wide discretion in granting or denying injunctive relief. *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 354-55 (2001). "Nonetheless, 'even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards.'" *LeJeune v. Coin Acceptors, Inc.*,

381 Md. 288, 301 (2004) (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)); *accord Ehrlich v. Perez*, 394 Md. 691, 708 (2006).

"We review *de novo* a trial judge's decision involving a purely legal question[,]" *see, e.g.*, *Ehrlich v. Perez*, 394 Md. at 708, such as the circuit court's "determination of the likelihood of success on the merits." *Id.*; *see State v. Falcon*, 451 Md. 138, 157-58 (2017) ("where a trial court's determination as to one of the factors for issuing a preliminary injunction involves a purely legal question, *i.e.*, a question of law, we review the trial court's decision as to that factor without deference").

We apply "the more deferential abuse of discretion standard to the trial judge's determinations as to the remaining three factors[,]" *Ehrlich v. Perez*, 394 Md. at 708, including the "balancing of interests." *Id.* Even then, we give no deference to the court's decision "when we find an obvious error in the application of the principles of equity." *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. at 354-55.

We assess "the underlying factual findings of the circuit court . . . for clear error." *Ademiluyi v. Egbuonu*, 466 Md. 80, 115 (2019).

This Court reviews a trial court's decision to issue or deny a motion for a preliminary injunction by evaluating the trial court's finding of the following factors:

> (1) the likelihood that the plaintiff will succeed on the merits; (2) the 'balance of convenience' determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.

Id. at 114-15 (citing *Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc.*, 396 Md. at 240).

Although the moving party has the burden of proving all four factors (*see, e.g.*, *Ademiluyi v. Egbuonu*, 466 Md. at 115), the factors "are not like elements of a tort." *DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005) (inner citation omitted). Rather, the factors are "designed to guide trial judges in deciding whether a preliminary injunction should be issued." *Id.* And, while the circuit court should give weight to each of the factors, the factors of likelihood of success on the merits and risk of irreparable injury "are generally considered to be the most significant." *Ademiluyi v. Egbuono*, 466 Md. at 114-15.

Ordinarily, the first step in considering a preliminary injunction is factor two, in which the court balances "the 'likelihood' of irreparable harm to the plaintiff against the 'likelihood' of harm to the defendant." *Lerner v. Lerner*, 306 Md. 771, 783 (1986). "[T]he greater the hardship on the party seeking the injunction, the less of a showing of success on the merits need to be made." *DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc.*, 161 Md. App. at 649 (inner citations omitted). Conversely, "[t]he importance of probability of success increases as the probability of irreparable injury diminishes." *Lerner v. Lerner*, 306 Md. at 784 (citations omitted). The court should consider the factors as "related points along a continuum," rather than as "discrete concepts." *DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc.*, 161 Md. App. at 649.

B. Likelihood of Success on the Merits and Balance of Hardship

The circuit court concluded that Columbia Association had not met its burden of proving "that it has a real probability of prevailing on the merits, not merely a possibility

of doing so." Because the likelihood of success is a question of law, we review the court's conclusion without deference. *Ehrlich v. Perez*, 394 Md. at 708. We reject the circuit court's conclusion because it was based on legal and factual errors.

In concluding that Columbia Association had shown a mere "possibility of success" on the merits, the court wrote that it was "making no determination that the Defendants' actions exceed the scope of the express easements." In other words, the court decided the issue of likelihood of success without making any determination about the central legal issue in dispute – whether the 2020 Symphony of Lights, which involved a procession of cars driving slowly over Columbia Association's property seven nights a week for six weeks, would exceed the permitted scope of the easements.

The court could not make an informed decision on Columbia Association's likelihood of success on the merits without giving appropriate consideration to whether the parties to the easement agreements envisioned that they would authorize a use of the type and intensity involved in the 2020 Symphony of Lights. The court erred as a matter of law in deciding the issue of likelihood of success without interpreting the scope of the easements.

In addition to this legal error, the circuit court committed clear error in finding that no light displays would be placed on Columbia Association's property and that DCACC and IMA would not physically encroach on Columbia Association's property. In making that finding, the court disregarded evidence showing that the light display did, in fact, physically encroach on one of the easements in a manner not permitted by the easement agreements.

At the hearing, an employee of Columbia Association, Albert Edwards, testified that a lighted "guidewire" passed across the J-2 portion of the REA Easement area. Columbia Association presented the court with a photograph that showed the guidewire physically crossing the easement. DCACC and IMA admitted to this encroachment in their opposition to preliminary injunction, where they stated that "[a] small area at the bottom of the course . . . is over the REA Easement Area . . . inside the fence behind the Merriweather Post Pavilion stage building."[3]

Despite Mr. Edwards's testimony, the circuit court erroneously found that Mr. Edwards had "agreed that no light displays were placed on [Columbia Association's] property." Relying on this inaccurate conclusion, and overlooking the photograph and the defendants' own admission, the circuit court found that "[t]he exhibits entered by the parties and testimony elicited from witnesses tended to show that no light displays would be placed on Plaintiff's property for the 2020 *Symphony of Lights* event."

A finding is clearly erroneous if it is unsupported by competent and material evidence. *See*, *e.g.*, *L.W. Wolfe Enters., Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005). The finding of no physical encroachment is not only unsupported by competent and material evidence; it is decidedly contradicted by the evidence. Columbia Association established, beyond any dispute, that the 2020 Symphony of Lights exceeded the scope of the easements and resulted in a trespass on its property, at least insofar as the

[3] DCACC and IMA argue that, while the lighted guidewire does cross an easement, the guidewire is permitted as "directional lighting." However, while the 1979 access easement does permit "directional lighting," the lighted guidewire crosses over the 2015 REA easement area, which does not permit such a use.

display employed the lighted guidewire. Columbia Association's success on the merits of that issue was not just likely; it was all but certain.

Because of the court's errors in ascertaining Columbia Association's likelihood of success on the merits, we must remand the case for further proceedings. On remand, the circuit court is instructed to interpret the 1979 Access Easement, the 1999 Parking Lot Easement, and the 2015 REA so as to assess whether the light display, which routes numerous vehicles across the easement areas, every night over the course of the six-week holiday season, exceeds the general purposes of the easement agreements.[4]

In interpreting the easements, the circuit court should rely on "basic principles of contract interpretation." *Miller v. Kirkpatrick*, 377 Md. 335, 351 (2003). The "focal point" of the interpretation is the "'language of the agreement itself,' seeking to discern 'what a reasonable person in the position of the parties would have meant at the time it was effectuated.'" *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 314 (2013) (citing *Maryland Agricultural Land Preservation Found. v. Claggett*, 412 Md. 45, 62-63 (2009)). "The intention of the parties at the time the easement is granted is the North Star in guiding our interpretation of it." *Id.*; *see Buckler v. Davis Sand and Gravel Corp.*, 221 Md. 532, 537 (1960) (stating that this Court "should ascertain and give effect to the intention of the parties at the time the contract was made").

When the easement contains "clear and unambiguous language of the parties' intent," the court does not turn to extrinsic evidence to construe the easement. *Long*

[4] We recognize that DCACC and IMA have not yet had an opportunity to put on evidence on the issue of whether an injunction should be issued.

Green Valley Ass'n v. Bellevale Farms, Inc., 432 Md. at 314 (citing *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 392-93 (2006)). But even if the language is clear and unambiguous, the court can consider the context of the grant of an easement without violating the parol evidence rule. *See Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 418 (2014).

C. Irreparable Injury

Although we must reverse the judgment below because of the errors in analyzing the question of likelihood of success, we consider the additional factors for the purpose of providing guidance on remand.

The court found that the second factor, the balance of hardship, favored Columbia Association, in part because DCACC and IMA had not demonstrated that they would suffer any harm as the result of the grant of a preliminary injunction. No one has challenged that finding on appeal. Consequently, the first of the additional factors for us to consider is the question of whether Columbia Association established that it would suffer irreparable harm in the absence of an injunction.

For an injury to qualify as "irreparable," it "need not 'be beyond all possibility of compensation in damages, nor need it be very great.'" *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. at 355 (quoting *Maryland-Nat'l Capital Park and Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615 (1978)); *accord Ademiluyi v. Egbuonu*, 466 Md. at 133-34. "'[A]n injury may be said to be irreparable when it cannot be measured by any known pecuniary standard.'" *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. at 355 (quoting *Dudley v. Hurst*, 67 Md. 44, 52 (1887)); *accord Ademiluyi*

v. Egbuonu, 466 Md. at 134. "[I]rreparable injury is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate." *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. at 355 (quoting *Maryland-Nat'l Capital Park and Planning Comm'n v. Washington Nat'l Arena*, 282 Md. at 615); *accord Ademiluyi v. Egbuonu*, 466 Md. at 134. A party may suffer irreparable injury if, "in seeking redress at law, [it] would be driven to a multiplicity of vexatious and unprofitable suits." *Smith v. Shiebeck*, 180 Md. 412, 422-23 (1942).

In considering the factor of irreparable harm, the circuit court found that Columbia Association failed to demonstrate a "***substantial*** injury as a result of the alleged wrongful conduct." (Emphasis in original.) The circuit court explained that it would find an irreparable injury if Columbia Association could prove that the light display constituted a "permanent physical obstruction." Without considering whether the drive-through light display exceeded the scope of the easements, the circuit court found that the display itself was not permanent and that any obstruction caused by the display was limited and temporary. Thus, the court concluded that the injury to Columbia Association was not "substantial."

Columbia Association argues that the light display creates an irreparable injury, not because of the permanency or size of the display, but because Columbia Association's property rights are irreparably harmed by the unauthorized use of the easement areas. Citing *Smith v. Shiebeck*, 180 Md. at 422-23, Columbia Association contends that monetary damages for trespass will be "difficult to estimate, and . . . might be comparatively trivial" in relation to the injury suffered and the cost of protecting its

rights. Without an injunction, Columbia Association argues, the trespass will continue to recur, and thus it will be driven "to a multiplicity of vexatious and unprofitable suits" in order to protect its property rights. *See id.*

We agree that the circuit court committed legal error in ruling that an irreparable injury must be "permanent" in order to be "substantial" and "irreparable." The law imposes no such requirement. If the law were as the circuit court envisioned it, equity would afford little protection against temporary but recurring trespasses, nuisances, and violations of intangible rights. A classic example of irreparable harm is where compensatory damages are nominal or trivial, and thus are much smaller than the cost of asserting one's legal rights (and the cost of protecting against a charge that one has waived those rights or is estopped from asserting them).

On remand, the circuit court should focus not on whether the light display constitutes a "permanent" harm, but on whether the alleged harm to Columbia Association's property rights could be remedied with adequate and calculable damages if a permanent injunction is later granted. In making this finding, the court should determine the extent, if any, to which Columbia Association's private property rights are harmed by a physical encroachment (such as the guidewire) and by a use in excess of the permitted scope of the easements. *See USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 172 (2011) (stating that the "right to exclude others" is considered "one of the most essential sticks in the bundle of rights that are commonly characterized as property").

Furthermore, on remand, the circuit court should reevaluate its finding of the status quo. The status quo, often considered during the analysis of the irreparable injury

factor, is "the last, actual, peaceable, noncontested status which preceded the pending controversy." *Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc*., 396 Md. at 241.

Here, the circuit court determined that the "last, actual, peaceable, non-contested status" was a year in which a light display was held, "not one in which the event was cancelled." The court did not expound on this finding beyond explaining that an "annual holiday light event has been hosted at the Merriweather Post Pavilion property" for the past 25 years.

For the majority of those 25 years, though, the annual holiday light event was hosted by the Foundation, not DCACC or IMA. Moreover, for the majority of those 25 years, Columbia Association consented to the use of its property for the event. DCACC and IMA have hosted the light display for just the past two years, and neither of those events were uncontested. The last year in which an uncontested and peaceable "Symphony of Lights" event occurred was 2018, when the Foundation hosted its annual light display pursuant to a license granted by Columbia Association.

Unlike the Foundation-hosted events, DCACC has yet to host a light display pursuant to a license from Columbia Association or with Columbia Association's consent. Instead, DCACC and IMA have relied on the contention that the easement agreements grant them permission to use the easement areas to host the event. Because Columbia Association contested that claim for both the 2019 and 2020 event, the circuit court erred in finding that the 2019 light display was uncontested and peaceable.

Finally, preliminary injunctions "are designed to maintain the status quo *between parties* during the course of litigation," *Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc.*, 396 Md. at 241 (emphasis added), not to maintain the status quo of an event. On remand, the circuit court should consider whether a preliminary injunction will maintain the status quo between DCACC and IMA, on one hand, and Columbia Association, on the other, during the course of litigation, not whether a preliminary injunction will permit the continuation of a contested event.

D. Public Interest

Although the public interest is typically the least important factor in a court's decision about whether to grant a preliminary injunction,[5] the circuit court placed a great deal of emphasis on it in this case. In so doing, the court erred in several respects.

First, the court concluded that the public interest favored the denial of an injunction because it found that the light display generated funding for the Foundation. The court based that finding on two affidavits, which it had excluded from the record. The court erred in basing its conclusion on evidence that is not a part of the record.

Second, the circuit court found that the general interest in supporting the public health, especially during the COVID-19 pandemic, outweighed Columbia Association's interest in protecting its right to exclude others from its private property. The circuit court explained that Columbia Association had granted vehicular access across the

[5] *See, e.g.*, *State Dep't of Health & Mental Hygiene v. Baltimore County*, 281 Md. 548, 554 (1977) (directing courts to consider the public interest "where appropriate"); *accord Lerner v. Lerner*, 306 Md. at 776.

easement areas during drive-up COVID-19 testing at Merriweather Post Pavilion. The court reasoned that because Columbia Association had allowed the public to drive over the easements for COVID-19 testing, it could not reasonably argue that vehicular access to the easements during the light display exceeded the permitted use of the easement and caused environmental degradation. "There is just as much traffic and vehicle emissions being caused by the testing" as by the light display, the court wrote.

The circuit court erred in finding that Columbia Association could not limit access to its property for one purpose because it had permitted access to the same property for another purpose. Columbia Association has the authority to consent to use of its property for some purposes while withholding consent for others. *See United Food and Commercial Workers Int'l Union v. Wal-Mart Stores, Inc.*, 228 Md. App. 203 (2016) (holding that the appellee, "[h]aving consented to entry onto its land for [the] limited purpose" of "ingress and egress to the adjacent properties . . . did not give up its right to exclude from the property others entering"), *aff'd*, 453 Md. 482 (2017). In finding that the public interest in hosting a holiday event outweighs a landowner's asserted right to exclude others from the property, the court arguably transformed Columbia Association's private property into public land for the six-week holiday event.

On remand, the circuit court should consider the public interest, where appropriate, based on the evidence in the record. The court should also consider whether the public interest is served by curtailing private property rights, assuming that some curtailment does occur in a future version of the Symphony of Lights.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.