Circuit Court for Anne Arundel County
Case No. C-02-CV-19-002279

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1255

September Term, 2021

TIMOTHY E. KOCH, ET AL.

v.

ROCHELLE B. HOLLANDER, ET AL.

Beachley,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: August 28, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal arises out of a dispute between two neighboring property owners, Ronald and Rochelle Hollander (the "Hollanders"), and Timothy and Mary Koch (the "Kochs"), concerning the scope of a five-foot-wide easement granting the Hollanders pedestrian access to the Kochs' property (the "Easement"). The Easement was created in 2016 between the Hollanders and the Kochs' predecessor-in-interest, Nassar Development, LLC ("Nassar"). At issue is whether the Kochs interfered with the Hollanders' right to use the Easement by installing a gated fence within it.

After a bench trial, the Circuit Court for Anne Arundel County granted the Hollanders' request for declaratory and injunctive relief. The court determined that the installation of the gated fence violated the Hollanders' right to use the Easement, and it ordered the Kochs to remove all fencing within it.

On appeal, the Kochs present two questions which we have rephrased:

I. Did the trial court abuse its discretion by declining to apply the doctrine of unclean hands to bar the Hollanders' action for declaratory and injunctive relief?

II. Did the trial court err in concluding that the Easement deed prohibits the Kochs from installing a gated fence within the Easement?

For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

The Hollanders and Kochs own adjacent waterfront properties in Annapolis, located at 22 and 24 Spa View Circle, respectively. The Kochs' property is situated northwest of the Hollanders' property, and both sit atop a steep bank that descends to the bulkhead and a pier at Spa Creek. The side of the Hollanders' house is about five feet from the common

property line. There are bushes and an air conditioning unit between the Hollanders' house and the property line that reduce the navigable area such that the Hollanders have used a few feet of the Kochs' property to get from their carport, in the front of their house, to the rear of the house and the pier. Behind the Hollanders' house, there are 22 concrete steps near the property line that descend the steep bank to the pier.

The Hollanders have owned the property at 22 Spa View Circle since 1974, whereas the property at 24 Spa View Circle has changed ownership since that time. From 1974 until 2006, Gilbert Crandall owned the property, and then his daughter, Linda Rawson, became the owner (collectively, the "Crandalls"). In 2013, Nassar purchased the property to develop improvements to the existing cottage. Finally, in October 2016, Nassar sold the property to the Kochs.

Over the years, disputes arose between the Hollanders, on the one hand, and the Crandalls and Nassar, on the other, related to the pier and common property line. To provide context for the eventual grant of the Easement, we summarize the controversies between these property owners.

The Hollanders' Dispute with the Crandalls:
The Pier and Chain-Link Fence

The Hollanders and Crandalls enjoyed an amicable relationship for over 30 years. The relationship, however, deteriorated in 2005 when Ms. Rawson's son blocked off the pier that the neighbors had shared. The Hollanders sued Mr. Crandall over their access and ownership of the pier. In 2007, the Hollanders successfully obtained a court order declaring them joint owners of the pier.

Thereafter, in 2008, Ms. Rawson and her husband installed a 67-foot-long, chain-link fence along the common property line. The fence extended down the bank, next to the concrete steps, and terminated near the bulkhead where a gate was installed. The Hollanders obtained a contempt order, compelling Ms. Rawson to remove the gate and part of the fence near the pier. The Rawsons removed part of the fence, but the remaining portion partially blocked access to a disputed area—the land between the two properties on the left side of the Hollanders' house which the Hollanders had been using to move appliances and/or carry items to the waterfront or patio.

Ms. Rawson had a surveyor place stakes in the ground to mark the boundary line between the properties. Mr. Hollander, however, believed that part of the staked, disputed area was his property. As a result, in 2009, the Hollanders filed a lawsuit, claiming that they had acquired title to the disputed area through adverse possession and/or a prescriptive easement. Ultimately, the Hollanders were not successful; the circuit court entered an order, finding that the Hollanders did not have any right, title, or interest in the disputed area.[1]

The Hollanders' Dispute with Nassar:
The Permit Challenges and Grant of the Easement

In 2013, Nassar purchased the property at 24 Spa View Circle to develop the existing cottage into a larger house. The City of Annapolis approved Nassar's site design plans, but the Hollanders appealed that decision, claiming that the plans did not comply

[1] The circuit court's judgment was affirmed by this Court in an unreported opinion, *Ronald B. Hollander, et ux. v. Frank Francis Rawson, Personal Representative of The Estate of Linda Crandall Rawson*, No. 2403, Sept. Term, 2010 (filed Feb. 28, 2012).

with the city code. Nassar then submitted revised plans, which the city approved. The Hollanders appealed this approval but lost the challenge before the Board of Appeals.

In December 2015, the Hollanders filed a petition for judicial review of the Board's decision. On April 25, 2016, the Hollanders' attorney at the time, Jonathan Hodgson, Esq., sent a letter to Nassar's attorney stating, in pertinent part:

> As you know, [the Hollanders] have filed an appeal to the Circuit Court regarding [Nassar's] plans to develop the property located at 24 Spa View Circle. Moreover, they plan to file an appeal from the issuance of the grading permit . . . and Building Permit. Be advised that they will dismiss all of these appeals on the following conditions:
>
> * * *
>
> c. [The Hollanders], their successors and assigns, shall be granted a permanent pedestrian easement, five feet in width, on the property of 24 Spa View Circle to allow persons to walk from the front yard of 22 Spa View Circle to the rear or waterway yard of 22 Spa View Circle.
>
> Please let me know if these conditions are acceptable to [Nassar].

Thereafter, the Hollanders and Nassar came to an agreement whereby the Hollanders would dismiss all appeals, and Nassar would grant the Hollanders a five-foot-wide easement, among other concessions.[2] In an email dated May 9, 2016, Nassar's attorney summarized her understanding of the agreement as follows:

> [Nassar] will grant a 5 foot pedestrian only easement adjacent to the Hollander property line from the edge of the Hollander garage closest to the water to the waters of Spa Creek to allow the Hollanders to walk in that area

[2] Other concessions included Nassar's agreement not to install a hot tub and HVAC unit (or other noise generating equipment) on the Hollanders' side of the Nassar property. Nassar also agreed to remove the first support pole and first section of the chain-link fence furthest from the water at the top of the bank between the properties.

> around the side of their house. This will be reflected in an instrument to run with the land and be recorded with the land records of Anne Arundel County.

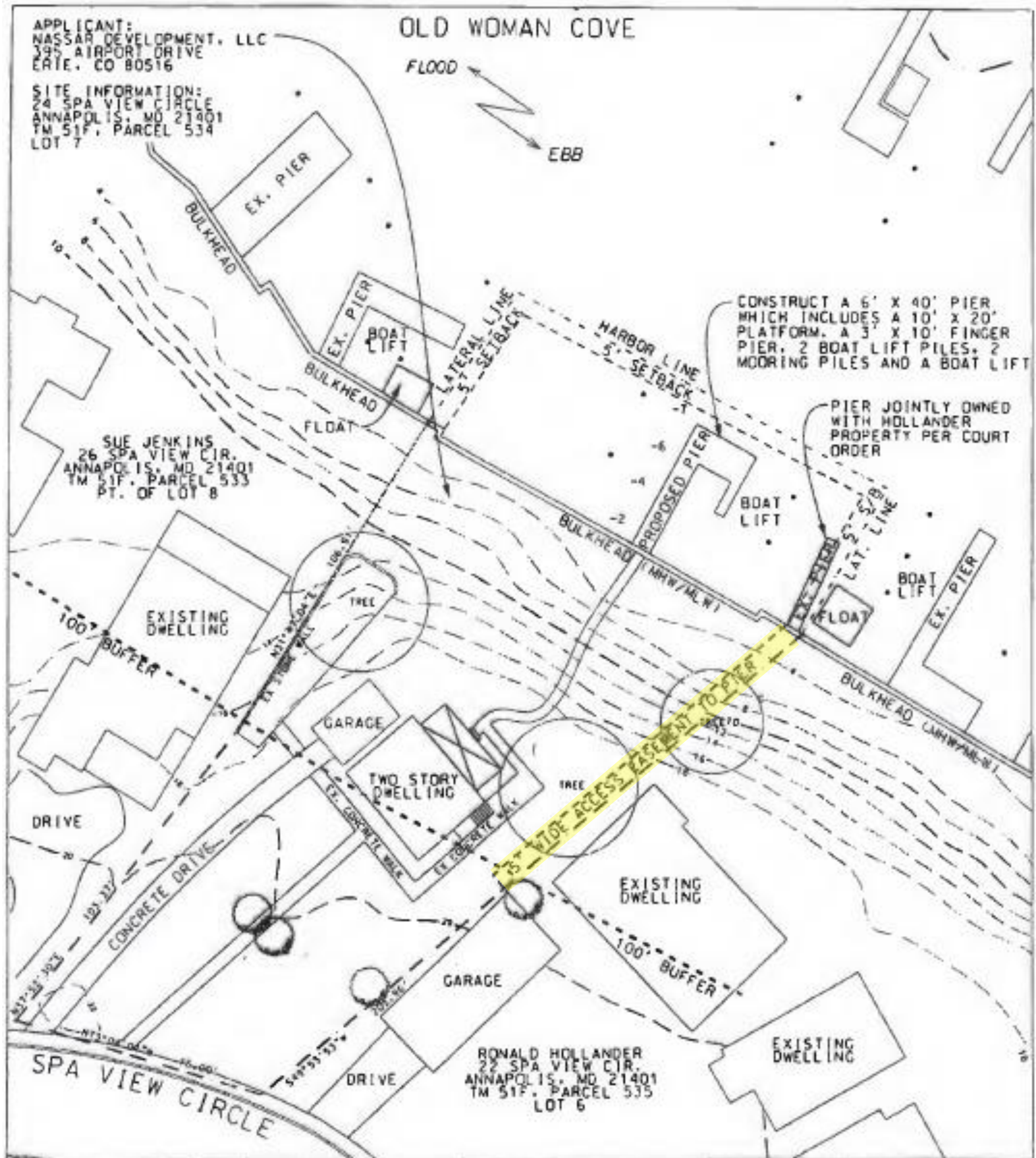
On May 12, 2016, Mr. Hodgson, on behalf of the Hollanders, responded:

> Although we have described this as a "pedestrian easement", the parties acknowledge that the easement may be used for yard equipment such as riding lawn mowers and the like. With that understanding this is agreed.

In June 2016, the Hollanders and Nassar signed a settlement agreement, and Nassar executed a Deed of Easement and Covenants (the "Deed"), followed by a Confirmatory Deed of Easement and Covenant, containing the following grant:

> [I]n consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, . . . [Nassar] hereby grant[s] a perpetual, non-exclusive easement vested in [the Hollanders], its successors, legal representatives and assigns subject to the terms and conditions set forth below:
>
> 1. **Pedestrian Easement.** Nassar grants to Hollander a five foot perpetual pedestrian easement in the area shown on Exhibit A attached hereto [excerpted below[3]] for Hollander's pedestrian ingress and egress which includes the allowed use of lawn and household maintenance type equipment, but not the storage of any such equipment, nor the use or storage of furniture or fixtures of any kind in the pedestrian easement area.

[3] The Confirmatory Deed of Easement and Covenant clarified an annotation on the exhibit to reflect that the existing pier is "JOINTLY OWNED." The annotation is shown in the excerpted exhibit.



In the excerpted exhibit, the Easement is labeled as a "5' WIDE ACCESS EASEMENT TO PIER" and delineated with dashed lines. (Highlighting added). It is located on the Kochs' side of the property line and extends from the northern corner of the

Hollanders' carport, labeled "GARAGE," down the bank towards Spa Creek to the bulkhead next to the "JOINTLY OWNED" pier.

The Present Dispute:
The Kochs' Installation of a New Fence Within the Easement

After acquiring 24 Spa View Circle, the Kochs hired an architect to develop plans for the house. The Kochs also planned to construct a gated fence along the common property line to enclose the backyard, primarily for their rescue dogs. Upon learning of the anticipated fence, Mr. Hollander emailed the Kochs' architect to advise that:

> I have an unobstructed right to fully use [the five-foot-wide] easement. The builder stated that the intended fence would have a gate for my entry to the easement area. You can not authorize the builder to block my access. A simple solution would be to install the fence past my five foot easement.

Mr. Koch responded to Mr. Hollander's objection to the fence, explaining that he was "under the impression that the easement is for use of the shared dock. [W]e will work to give you access. . . . A personal easement gives you access but does not cede you our property."

The parties dispute whether the Hollanders subsequently agreed to the installation of the fence within the Easement, the details of which are not pertinent to the issues on appeal.[4] Suffice it to say, the Kochs proceeded to construct the fence within the Easement in June 2019. The fence extended from the Hollanders' "GARAGE"/carport and terminated nine to ten feet from the jointly owned pier. The Kochs also placed locked gates

[4] The disagreement related to the Kochs' defense of equitable estoppel that is not the subject of this appeal.

at the top and bottom sections of the fence, for which the Hollanders were not provided keys. There was no dispute that the fence was installed within the five-foot width of the Easement.

As noted, there is a limited, navigable area between the left side of the Hollanders' house and the Kochs' property line. In the past, Mr. Hollander carried items such as chairs and lawn equipment through that area, and the Hollanders' contractors used that side to pass through. The Kochs' fence now "makes things harder," according to the Hollanders' son, "because you have a smaller space to get by[.] I've got to worry about bumping into a fence or bumping into the a/c unit." Mrs. Hollander further testified that, on one occasion, a new refrigerator had been delivered to the house, but the servicers "couldn't even get the refrigerator through the easement" because of the Kochs' fence. Likewise, Mr. Hollander stated that the fence would prevent him (or his landscapers) from taking a riding mower from the carport to the back of his house.

The Hollanders filed a complaint for declaratory and injunctive relief, seeking a declaration of their rights to the Easement and the removal of the Kochs' fence.[5] A two-day bench trial took place, during which the pertinent facts, recounted above, were established by the evidence.

The parties interpreted the scope of the Easement differently. The Hollanders maintained that they had lateral (side-to-side) access to the entire width of the Easement,

[5] In the last operative complaint, the Hollanders also sought declaratory and injunctive relief as to the installation of other items, but the parties apparently resolved those issues before trial.

and the Kochs could not narrow it by installing a gated fence within it. They relied on the language of the grant, which allowed the Hollanders to take mowing equipment through the Easement, which could not be achieved with the fence present.

Preliminarily, the Kochs argued that the Hollanders' action was barred by the doctrine of unclean hands. The Kochs claimed that Mr. Hollander had engaged in a "pattern of vexatious and coercive litigation against his neighbors," the Crandalls and Nassar. Specifically, the Hollanders "extorted" the Easement from Nassar through administrative challenges and a petition for judicial review, and "traded public rights for private advantage[.]" They clarified, however, that the Easement was not procured by any fraud, and they were not challenging its validity.

On the merits, the Kochs disagreed that the Hollanders had lateral access to the entire width of the Easement. Their assertion was based on the Deed, which they contend (1) did not explicitly prohibit the installation of a gated fence; and (2) only granted the Hollanders' pedestrian ingress and egress *to the pier*, not general use of the Easement area. The fence neither violated the Deed nor interfered with the Hollanders' reasonable use of the Easement. Rather, according to the Kochs, the configuration of the fence "afford[ed] the Hollanders pedestrian access to the shared pier from their own property without the necessity of even passing through a gate. The easement area also remain[ed] readily accessible" to the Hollanders with the gates.

After trial, the court gave its oral ruling. It declined to invoke the doctrine of unclean hands and concluded that the gated fence violated the Hollanders' right to use the Easement. It entered an Order of Declaratory Judgment, declaring, in relevant part, that:

> [T]he easement created through a 2016 Deed . . . contains clear and unambiguous language[;]
>
> [T]he Hollanders have the right to access the full five-foot width of the Easement for the uses allowed by the Easement and are not restricted to any entry or exit point[;]
>
> [T]he Kochs' construction of the fence in the Easement adjacent to the Hollanders' property . . . and burdening the Kochs' property . . . is a violation of the Easement and interferes with the Hollanders' rights under the Easement as the dominant estate; . . .
>
> [T]he Kochs, their heirs, assigns, legatees, or any other subsequent owner of the Kochs' Property are enjoined from erecting any fences or any other permanent structure within the Easement in the future that restricts or prevents the allowed uses of the Hollanders and subsequent owners of the Hollanders' property, their guests, heirs and assigns, access, enjoyment for allowed uses of the entire five-foot width of the Easement[; and]
>
> [T]he Kochs their heirs, assigns, legatees, or any other subsequent owner of the Kochs' Property are not permitted to interfere with the Hollanders and any subsequent owners of the Hollanders' property, their guests and assigns, access, enjoyment of allowed uses of the entire five-foot width of the Easement[.]

The court ordered the Kochs to remove "all fencing within the Easement."

Additional facts will be supplied, as necessary, in the discussion below.

DISCUSSION

I.

The Kochs argue that the trial court erred in refusing to apply the doctrine of unclean hands to bar the Hollanders' action for declaratory and injunctive relief. At trial, the Kochs attempted to support their "extortion" theory, by eliciting from Mr. Hollander, on cross-examination, that he had used administrative challenges to delay the development of Nassar's property and secure the grant of the Easement.

Mr. Hollander acknowledged that he used the "appeal process" to obtain certain personal concessions from Nassar and the process delayed Nassar's development. He explained, however, that he exercised his right to petition for judicial review "for good reason" as Nassar's plans did not comply with the city code. Mr. Hodgson similarly testified that he filed the petition for judicial review in good faith, and the grant of the Easement was "made in a fair exchange by logical adults represented by [c]ounsel." The evidence also demonstrated that the Hollanders and Nassar had affirmed, in the settlement agreement, that they entered into the agreement "of their own free will, without coercion from any source; and . . . they have determined that this Agreement is fair and reasonable, is not the result of any fraud, duress, or undue influence exercised by any of [them] or by any other person, and has been voluntarily entered."

Notwithstanding the evidence, the Kochs insisted that the Hollanders' legal challenges against Nassar amounted to unclean hands, barring the Hollanders' action against the Kochs:

[KOCHS' COUNSEL]: . . . Unclean hands is a specific remedy directed to the people with unclean hands. So what I would say to you is that [the Hollanders], because they knew they had no right to that property and they used delay and claiming legal arguments about public rights. Remember, I got this testimony from Mr. Hollander. He acknowledged, I used litigation and threats of delay and actual delay to win concessions including the very easement at issue here for my personal benefit.

THE COURT: Even if I accept that, . . . I'm not here to decide the validity of that easement.

[KOCHS' COUNSEL]: Again, I'm not asking you to.

THE COURT: But you are.

[KOCHS' COUNSEL]: No. No. I'm not. No. I am not asking you to say the Deed of Easement is void. I'm asking something different.

THE COURT: Even if there was – even if there was unclean hands up to that point, how does it affect this?

[KOCHS' COUNSEL]: That's my point. [The Hollanders] with unclean hands are seeking an equitable remedy before you. . . . Under unclean hands, all I'm asking you to say is [the Hollanders], because they have unclean hands about the way they extracted the easement agreement that is at issue here with litigation for years, because of that, th[ey] can't come before you in equity and ask you for relief. That's what I'm asking.

The court was unpersuaded:

THE COURT: I mean, suppose a hundred years ago somebody did something with unclean hands and things kept getting recorded in the land records for a hundred years, all the sudden current owners are affected?

[KOCHS' COUNSEL]: No. See, we're missing each other. We're missing each other.

THE COURT: Well, we are. You're not being real clear.

[KOCHS' COUNSEL]: Okay. A hundred years ago – the only point I'm trying to make is those folks you [sic] acted inequitably a hundred years

> ago . . . couldn't enforce those rights. But once they're gone one [sic] they're out of the picture, I agree with you.
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> THE COURT: But even if they had unclean hands, it did not affect them.
>
> [KOCHS' COUNSEL]: It's affecting them right now. They are asking–
>
> THE COURT: Stop. Stop. . . . Please. . . . You're getting nowhere on that argument.

The court then invited counsel to "say more" and make his record but stated it was "not at all on[] board with that argument":

> THE COURT: They bought property knowing there was an easement. The easement is very clear in what it says and that's all I can say. That's the point of it being recorded. . . . It's called public notice. . . . I can't imagine what anything that Nassar, in negotiating with these people, have to do with this case. Nothing.

In its oral ruling, the court declined to apply the doctrine of unclean hands, citing its earlier comments, and explaining:

> [T]here was something that kind of bothered me when counsel for defense said that [t]he Hollander[]s extorted, that was the word that was used, this easement, which is Exhibit 33 and 34. That's pretty strong language, that they extorted that agreement when both sides were represented by counsel. How in the world is that extortion? It was a gratuitous use of that word and it did not impress me in the least. . . . I've already completely discounted the unclean hands. And you can refer to my comments yesterday. That is just a totally frivolous unmeritorious defense.

Analysis

The doctrine of unclean hands "refuses recognition and relief from the court to those guilty of unlawful or inequitable conduct pertaining to the matter in which relief is sought." *Manown v. Adams*, 89 Md. App. 503, 511 (1991). It is "not applied for the protection of

the parties nor as a punishment to the wrongdoer[.]" *Adams v. Manown*, 328 Md. 463, 474-75 (1992). Rather, it protects the integrity of the court and the judicial process by denying relief to those persons "whose very presence before a court is the result of some fraud or inequity." *Manown,* 89 Md. App. at 511.

"The maxim is subject to certain limitations or qualifications[.]" *Hlista v. Altevogt*, 239 Md. 43, 48 (1965). The first prerequisite is that the facts must "actually disclose unclean hands," meaning that the opposing party's conduct was "fraudulent, illegal, or inequitable." *Id*. "[C]ourts, in applying the maxim, do not require litigants to have led faultless lives in their dealings on all matters, but confine themselves to the effect that the alleged fraudulent, illegal, or inequitable conduct has upon the request for relief then under consideration." *Id*. For a party to have "unclean hands," the party's conduct need not "have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character." *Smith v. Westminster Management, LLC,* 257 Md. App. 336, 402 (2023) (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co*., 324 U.S. 806, 815 (1945)). Rather, "[a]ny willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim." *Id*.

In addition, for the doctrine to apply, "[t]here must be a nexus between the misconduct and the transaction[.]" *Hicks v. Gilbert*, 135 Md. App. 394, 400 (2000). "It is only when the plaintiff's improper conduct is the source, or part of the source, of his equitable claim, that he is to be barred because of this conduct." *Adams*, 328 Md. at 476

(citing Daniel B. Dobbs, *Remedies* § 2.4 at 46 (1973)). "What is material is not that the plaintiff's hands are dirty, but that he dirties them in acquiring the right he now asserts." *Id*. (citation omitted).

It also "has been said that the opposite party must show injury, in order to invoke the maxim." *Niner v. Hanson*, 217 Md. 298, 310 (1958) (citing 2 John Norton Pomeroy, *Equity Jurisprudence* § 399 at 99 (5th ed. 1941)) ("The wrong must have been done to the defendant himself and not to some third party."). In this regard, the "true rule" applied by our courts is, "[w]hen a plaintiff's wrongful conduct is not contrary to law or public policy, he is not barred unless it injures the defendant." *Id*. (citing *Messick v. Smith*, 193 Md. 659, 668 (1949)).[6] Since the doctrine of unclean hands "is not one of absolutes," the question of whether the doctrine is to be invoked rests in the sound discretion of the trial court. *Hicks*, 135 Md. App. at 401 (citing *Manown*, 89 Md. App. at 511).

On appeal, the Kochs make two main arguments. First, they claim that the trial court "dismissed" the doctrine without legal analysis and without examining how the Hollanders obtained the Easement. According to the Kochs, because the court "failed to apply the correct legal standard—or *any* legal standard—in evaluating the Hollanders' conduct" under the doctrine, it abused its discretion.

Second, the Kochs contend that the evidence established the Hollanders' unclean hands. They argue that the tort of abuse of process is a "form of extortion," and the

[6] The Hollanders argue that the injury requirement was not satisfied because the Hollanders' prior, alleged wrongful conduct did not injure the Kochs. The point, however, was not raised below. We decline to review this issue. *See* Md. Rule 8-131(a).

Hollanders' conduct amounted to a "textbook example of the improper manipulation of legal proceedings" that "underlies the tort of abuse of process." Specifically, the Hollanders used the public permit appeal processes as a "threat or a club" to extract from Nassar personal property rights that "they could not have obtained by carrying the appeal processes through to their conclusion." They also complain that the court "erred in its supposition" that "extortion" or other inequitable conduct could not occur where both sides to the settlement agreement were represented by counsel.

As to the Kochs' first argument, "[t]he trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision. . . . The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal." *John O. v. Jane O.,* 90 Md. App. 406, 429 (1992). The court's on-the-record remarks *supra*, demonstrate that it considered the pertinent qualifications for the application of the doctrine. The court (1) rejected the notion that the Hollanders engaged in extortion in securing the Easement, and (2) implicitly determined that there was no nexus between the alleged misconduct by the Hollanders against Nassar in 2016 and the instant dispute against the Kochs. When a matter is reserved to the sound discretion of the trial court, its "failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand v. Adventist Healthcare, Inc.,* 149 Md. App. 431, 445 (2003).

Turning to the Kochs' second argument, the evidence at trial did not support the Kochs' extortion theory. To the contrary, the evidence established that the Hollanders filed the petition for judicial review in good faith, and the Hollanders and Nassar acknowledged, in the resulting settlement agreement, that the terms, including the grant of the Easement, were "fair and reasonable" and did not result from "any fraud, duress, or undue influence[.]"

That the Hollanders' settlement agreement included a personal concession (*i.e.*, the Easement) that could not have been obtained through the appeal processes does not call for the application of the doctrine. One of the featured advantages of settling a legal dispute is that parties are free to negotiate conditions that exceed what they would otherwise obtain after a trial or other contested proceeding. They are also free to enter into an agreement on terms that are disadvantageous. *See Shallow Run Ltd. P'ship v. State Highway Admin.*, 113 Md. App. 156, 172 (1996) (in negotiating an easement agreement, "[i]f the contract was bad for [the landowner] . . . so what? People are permitted to enter into contracts to their disadvantage.").

Even if there was any merit to the allegation of inequitable conduct, such conduct lacks the requisite nexus with the Hollanders' subsequent enforcement of the Easement against the Kochs. As noted, the Kochs conceded that they were not challenging the validity of the Easement. We fail to see how the Hollanders' alleged misconduct against *Nassar* affected, or was the source of, their claim that the *Kochs*' subsequently violated a valid easement. *See Niner*, 217 Md. at 309 (refusing to apply the doctrine where the relief

sought was in no way predicated upon the prior misconduct; the doctrine "has nothing to do with disapproval of the character or past behavior of the applicant but only with the effect of his present application."). On this record, we cannot hold that the trial court abused its discretion in refusing to apply the doctrine of unclean hands.

II.

An easement is a "non-possessory interest in the real property of another that can arise either by express grant or implication." *Emerald Hills Homeowners' Ass'n v. Peter*, 446 Md. 155, 162 (2016) (citation omitted). An easement features two distinct tenements, one dominant and one servient. *Board of Cnty. Comm'rs of Garrett Cnty. v. Bell Atlantic-Md., Inc.*, 346 Md. 160, 175 (1997). "The owner of the dominant tenement is entitled to use the easement only in such manner as is fairly contemplated by his grant, whether expressed or implied[.]" *Millson v. Laughlin*, 217 Md. 576, 585 (1958). Here, it is undisputed that an express easement was created by the Deed.

"We interpret an easement created by deed, an express grant, through a proper construction of the conveyance by which the easement was created." *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 314 (2013) (internal quotations omitted). The "primary consideration in construing the scope of an express easement is the language of the grant." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 143 (1999). We focus on 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*, 432 Md. at 314 (internal quotations omitted). "These principles require

consideration of the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution." *Chevy Chase Land Co.,* 355 Md. at 123 (internal quotations omitted). "If the language of [an easement] contract is unambiguous, we give effect to its plain meaning and do not contemplate what the parties may have subjectively intended by certain terms at the time of formation." *Cochran v. Norkunas*, 398 Md. 1, 16 (2007). "Ordinarily, the construction of a deed is a question of law for the court, and is subject to *de novo* review." *Gunby v. Olde Severna Park Improvement Ass'n,* 174 Md. App. 189, 242 (2007).

Analysis

The Kochs continue to maintain that the grant language does not explicitly prohibit the installation of the gated fence within the Easement. Nor does the language explicitly grant the Hollanders unrestricted, lateral access within it. They further argue that, because Exhibit A expressly describes the Hollanders' access as "*ACCESS* EASEMENT *TO PIER*," the installation of the gated fence did not offend the intended use of the Easement. (Emphasis added).

The Kochs' interpretations are untenable. They attempt to limit the purpose of the Easement to pedestrian access *to the pier* by relying on the label in Exhibit A, "5' WIDE *ACCESS* EASEMENT *TO PIER*." (Emphasis added). While reference to a plat in a deed incorporates that plat as part of the deed, *Emerald Hills Homeowners' Ass'n,* 446 Md. at 170, the label merely identifies the location of the Easement on the exhibit; it does not limit the Easement's purpose to accessing the pier. *See, e.g., Chevy Chase Land Co*., 355 Md.

at 132 ("Language used in a descriptive clause is less important than the language of the granting clause in denoting what interest in land is conveyed by a deed.").

Nor does the grant language suggest that the purpose is limited to accessing the pier. To the contrary, the language expressly grants the Hollanders' "pedestrian ingress and egress *which includes the allowed use of lawn and household maintenance type equipment*[.]" (Emphasis added). In our view, the language of the grant clearly contemplates pedestrian access for purposes beyond mere ingress and egress to the pier. *See Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 752 (2007) (citation omitted) (In construing contractual language, "effect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed."). Thus, the purpose of the Easement is to enable the Hollanders to get around their house for various reasons, not just to access the pier.

The Kochs also contend that, because the language of the grant does not expressly prohibit installation of a gated fence within the Easement, the trial court should have analyzed the reasonableness of the Kochs' fence under *Baker v. Frick*, 45 Md. 337 (1876), and *Everdell v. Carroll*, 25 Md. App. 458 (1975). In *Everdell*, we expounded on the following proposition derived from *Baker*:

> [U]nless the terms of the grant itself prohibited such a course, or the purposes for which the grant was made, and the nature and situation of the property subject to the easement and the manner in which it has been used and occupied, implied such prohibition, the installation of a gate at the terminii of the right-of-way would be permissible if:

> 1. Its installation was necessary for the useful and beneficial occupation of the land of the servient estate; and
>
> 2. The particular gates complained of, were usual and proper under the circumstances; and
>
> 3. The installation did not interfere with the reasonable use of the right-of-way by the dominant estate.

Id. at 465–66 (1975) (citing *Baker*, 45 Md. at 340). The Kochs argue that the trial court should have evaluated the three elements.

From the record and the court's decision, we infer that the court implicitly rejected this argument. Indeed, the threshold requirement was not met. Although the language of the grant does not, in express terms, prohibit the gated fence, the purpose of the grant itself (discussed *supra*) implies the prohibition. *See id.* at 472-73 (citing *Simon v. Distributing Corp. v. Bay Ridge Civic Ass'n*, 207 Md. 472, 480-81 (1955) (right to modify right-of-way denied where proof did not meet the threshold requirement; the purpose of the grant itself implied prohibition against the gates)). The trial court did not err in failing to evaluate the three elements set forth in *Everdell*.

In determining that the Kochs violated the Easement, the trial court relied on *Miller v. Kirkpatrick*, 377 Md. 335 (2003). There, a 20-foot-wide right-of-way was granted over the Kirkpatricks' property to allow for ingress and egress to the Millers' property. *Id*. at 342. After the parties' relationship deteriorated, Mr. Kirkpatrick erected two barbed wire fences along each side of the access road, reducing the width of the right-of-way to 12 feet. *Id*. at 343, 347. The trial court concluded that Mr. Kirkpatrick had the right to install the wire fences so long as they did not unreasonably interfere with the Millers' use of the

easement, and it determined that there was no showing that there was any such interference. *Id*. at 344. This Court affirmed.

The Court of Appeals (now the Supreme Court) reversed, concluding that both courts "should not have concerned themselves with whether the Kirkpatricks' alteration of the easement, by installation of the fences, afforded the Millers reasonable access to their home and farm property. That was the wrong question to be analyzed." *Id.* at 348. Rather, the Court held that "the Kirkpatricks, standing in chain of title as grantors of an express easement, may not unilaterally narrow the right-of-way easement from twenty feet to twelve feet by the installation of the fences." *Id.* In construing the language of the deed, the Court observed that the deed granted the dominant tenement a right-of-way for ingress and egress that was 20 feet in width, without reserving any rights to the grantors. *Id*. at 351-52 ("[I]f the grantor intends to reserve any right over the tenement granted it is his duty to reserve it expressly in the grant[.]").

The Court concluded that, "although the Kirkpatricks also may use the access road as such, they may not unilaterally modify or reduce the right-of-way in a manner or extent that is inconsistent with the intention of the parties as gleaned from the language in the deed granting the right-of-way." *Id*. at 350 (citing *Chevy Chase Land Co*., 355 Md. at 123). The Court further held that "*any* interference of a permanent nature within a right-of-way that obstructs an express easement, created by reservation, for ingress and egress is unlawful as a matter of law and should be ordered removed." *Id.* at 354 (emphasis added).

Here, the trial court properly relied on *Miller*. The court observed that the language of the grant does not limit the Hollanders' access to the Easement to certain points of entry where the Kochs decided to place the gates. *See Tong v. Feldman*, 152 Md. 398, 402 (1927) ("Ordinarily it is to be presumed that the grantor has made all the reservations he intended, when making his grant, and he is not permitted to contradict or derogate from his grant."); *Dalton v. Real Estate & Imp. Co*., 201 Md. 34, 47 (1952) ("if a grantor intends to reserve any rights or uses in or over the tenement granted, he must reserve them expressly. . . . The reason for [this] rule is said to be that a grantor cannot derogate from his grant."). The installation of the gated fence within the Easement was inconsistent with its intended purpose "as gleaned from the language" itself. *Miller*, 377 Md. at 350. That the fence may have only affected part of the Easement and still allowed pedestrian access to the pier makes no difference; the Hollanders have a right to use the Easement from "the last inch as well as the first inch[.]" *Id*. at 352 (quoting *Bump v. Sanner*, 37 Md. 621, 627-28 (1873)); *see also Clevenger v. Kulla*, 22 Md. App. 448, 453 (1974) ("The right of the owner of the dominant tenement was to have access to the walk from his property at any point, not merely at some particular spot designated by a gate.") (quoting *Evich v. Kovacevich*, 204 P.2d 839, 845 (1949)). For the reasons stated, we agree with the trial court's conclusion that the Kochs' construction of the gated fence violated the Easement and interfered with the Hollanders' rights therein.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANTS TO PAY COSTS.