UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 882

September Term, 2015

URBAN GROWTH PROPERTY
LIMITED PARTNERSHIP

v.

ONE WEST BALTIMORE STREET
ASSOCIATES LLC

Eyler, Deborah S.,
Leahy,
Kenney, James. A. III
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kenney, J.

Filed: February 9, 2017

This case involves an ingress easement from Charles Street in Baltimore City into the DownUnder Parking Garage. Appellant, Urban Growth Property Limited Partnership ("Urban Growth"), appeals the Circuit Court for Baltimore City's grant of summary judgment terminating that easement in favor of appellee, One West Baltimore Street Associates, LLC ("One West").

Urban Growth presents the following question:

> Did the Circuit Court err when it held that a prior-recorded express easement was unilaterally terminated by the terms of the common grantor's subsequently-recorded lease of the burdened property to a third party?

We answer that question in the affirmative and shall remand for further proceedings in accordance with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

The Urban Growth Transaction

On May 20, 1964, Baltimore City ("the City"), as part of the Urban Renewal Plan for the Charles Center Project ("URP"), agreed in a Disposition Agreement to convey real property to Charles Center Parking, Inc. ("Charles Center Parking"). It is undisputed that Charles Center Parking is the predecessor in title to Urban Growth. The Disposition Agreement was recorded in the land records of the City on June 18, 1964. In regard to the easement at issue the Disposition Agreement provided that the easement "shall remain in effect until such time as [the owners of Development Areas 14 and 15] and the City agree that it be terminated" by a written, executed, and acknowledged "instrument . . . recorded

among the Land Records of Baltimore City." The Disposition Agreement further provided:

> At the time of settlement, the City will execute a deed, conveying to [Charles Center Parking] the above described Property by a good and merchantable fee simple title, subject to and with the benefit of the easements hereinafter mentioned or reserved in Paragraph 2 of this Article, and also to the following restrictive covenants, which covenants are intended and designed to operate as covenants binding upon the Parties hereto, their successors and assigns, and binding on and running with said land until March 25, 1999.

On June 26, 1964, the City conveyed Development Area No. 14 ("D.A. 14") to Charles Center Parking by deed "subject to and with the benefit of all the conditions, covenants, reservations, and easements, set forth in the Disposition Agreement dated May 20, 1964." The deed was recorded on July 15, 1964. The Disposition Agreement provided that "[a]n easement for the express purpose of ingress to [D.A. 14] is to be granted to [Charles Center Parking] through Development Area No. 15 in the location described . . . ." Disposition Agreement, Liber 1696 Folio 447. The location of the easement, described by metes and bounds, is not at issue in this appeal.

The One West Transaction

On August 5, 1964, the City entered into a seventy-five year lease (the "Lease") with One West's undisputed predecessor in interest, Charles Center Theatre Building, Inc. ("Charles Center Theatre"), for the development of Development Area No. 15 ("D.A. 15"). The Lease was recorded on January 4, 1965. Article I, Paragraph 3 of the Lease "reserved" to "the City, its successors and assigns for use in common" an easement over D.A. 15 "for the Purpose of ingress to [D.A. 14]." Article I, Paragraph 3, Section ii,

further provides that said easement "shall remain in effect until such time as the owner of [D.A. 15], the owner of [D.A. 14], and the City agree that it be terminated."

Article XII, Paragraph 1 of the Lease provided an option to purchase D.A. 15 (the "Purchase Option"):

> Option to Purchase. Prior to the expiration or termination of this Lease Agreement, [Charles Center Theatre], its successors and assigns, shall have the sole and exclusive option until March 25, 1994 . . . to purchase the fee simple title to [D.A. 15], subject, however, to all of the covenants running with the land and to any mortgage which may be a lien on the leasehold and the fee interest of the City pursuant to subparagraph 2(a) of Article VI of this Agreement.
>
> Notwithstanding anything to the contrary contained herein, all of the covenants, easements, conditions and restrictions contained in this Agreement relating to the Renewal Plan and to the ownership, construction, financing and use of the Improvements and [D.A. 15], and the City's and [Charles Center Theatre's] rights and obligations relating thereto, shall remain in effect after the conveyance of the fee interest of the City to [Charles Center Theatre] for the period provided in this Agreement, but no longer than March 25, 1999, except for the covenant against discrimination created by subparagraph 2(c) of Article I, which shall run with the land forever.

The option was exercised and D.A. 15 was conveyed to One West's predecessor on June 3, 1994.[1] The special warranty deed provided expressly that the property was conveyed

> SUBJECT TO the covenants, easements, conditions, and restrictions contained in the Lease relating to the Renewal Plan (as defined in the Lease) and to the ownership, construction, financing, and use of the Improvements (as defined in the Lease) and the Leased Property, and the City's and [One West's predecessor's] rights and obligations relating thereto, which covenants, easements, conditions, restrictions, rights, and obligations shall remain in effect for the period provided in the Lease, but

[1] The option was exercised by the Estate of Morris A. Mechanic.

> no longer than March 25, 1999, except for the covenant against discrimination created by subparagraph 2(c) of Article I of the Lease, which shall run with the land forever.

The Dispute Arises

On July 29, 2014, counsel for One West wrote Urban Growth that its ingress easement over D.A. 15 had ended on March 25, 1999, and its use since then had been "a matter of courtesy." The letter further advised, however, that the entrance from Charles Street would "be closed and demolished" in approximately 30 days.

On August 20, 2014, counsel for Urban Growth, responded and explained that there was "no support for [One West's] position:"

> The easement was created pursuant to Section 2(c) of the May 20, 1964 (recorded May 28, 1964) Agreement between Charles Center Parking, Inc. and the City of Baltimore, which agreement specifically provided that the easement "shall remain in effect until such time as the owner of the [DownUnder Garage] Property, the owner of the [Mechanic Theater property] and the City agree that it be terminated" in a written and recorded document. The Lease between the City and your client's predecessor that was subsequently recorded on January 4, 1965 also subjected the Mechanic Theater property to the ingress easement with the same termination provision; see Section 3(a). The catch all language that you rely on in Article XII, Section 1 of the Lease and reiterated in the Deed transferring fee simple title to the Mechanic Theater property to your client's predecessor did not apply to the ingress easement and more blatantly, was not and under no circumstance could have been legally effective in terminating the ingress easement since the original and prior 1964 Agreement required the written consent of all three parties, including the DownUnder Garage owner. In short, the ingress easement from South Charles Street through the Mechanic Theater property benefiting the DownUnder Garage was not terminated and cannot be terminated without the written consent of the owner of the DownUnder Garage, which has not been obtained.
>
> Therefore, Urban Growth Property Limited Partnership demands that One West Baltimore Street Associates, LLC immediately cease and refrain from

> its plans to demolish and close the entrance and ingress easement from South Charles Street. To the extent that your client's needs for closure of the ingress easement are for a temporary basis to facilitate its construction plans, we are open to exploring a mutually acceptable temporary solution. Otherwise, please be advised that we intend to vigorously pursue whatever injunctive, legal or equitable actions are necessary to protect our rights with regard to the ingress easement and prevent its demolition.

On August 29, 2014, Urban Growth filed a Verified Complaint for Injunctive Relief and Declaratory Judgment seeking

> a temporary restraining order, preliminary injunction and permanent injunction, . . . [and] permanent injunctive relief in conjunction with, and consistent with, its declaration of the rights and responsibilities of the parties.

One West answered on December 4, 2014. It acknowledged that "declaratory relief as to the rights of the parties" was appropriate but denied that the easement being asserted by Urban Growth "exists or that Urban Growth is entitled to the relief s[ought]."[2]

Summary Judgment Motions

In May 2015, both parties, asserting no dispute of material fact, moved for summary judgment. Urban Growth, in its motion, stated that upon a declaration of its "right to continuous use and permanent existence of the easement," it would "seek leave to amend the Complaint" to recover damages "arising from the wrongful interruption of

[2] The parties agreed that, during the pendency of the litigation, the Charles Street entrance would remain open eliminating the need for temporary injunctive relief. But, in March 2015, that entrance was closed as a result of structural damage.

the use and enjoyment of the easement cause[d] by One West's demolition activities on the servient estate."

Urban Growth asserted that the easement at issue had been expressly granted by the City to its predecessor in title and runs with the land. In other words, when the Lease Agreement was finalized and the Purchase Option was exercised, the City no longer controlled the easement and any modification would require the agreement of Urban Growth. In Urban Growth's view, One West's predecessor was on notice of the easement because both the Disposition Agreement and the Deed to its predecessor were recorded prior to the Lease Agreement and the exercise of the Purchase Option in the Lease Agreement. Alternatively, Urban Growth asserted a prescriptive easement and that the failure of One West's predecessor to exercise the Purchase Opinion in accordance with its express terms precluded One West from obtaining the "benefits" in the agreement.

One West responded that the easement in favor of Urban Growth "terminated in 1999 (less than 20 years ago)" and that any continued use of the Charles Street ramp "has remained permissive." It sought a declaration to that effect. But, if it were determined that the easement had continued, it stated that a trial to determine "whether a final injunction should be entered after considering the equities" should be held. One West also reserved any defenses to any claim by Urban Growth for damages.

Asserting that the applicable documents did not permit a finding of ambiguity, One West focused on the language of the Lease that provided:

> Notwithstanding anything to the contrary contained herein, all of the covenants, easements, conditions and restrictions contained in this

> Agreement relating to the Renewal Plan and to the ownership, construction, financing and use of the Improvements and [D.A. 15], and the City's and [Charles Center Theatre's] rights and obligations relating thereto, shall remain in effect after the conveyance of the fee interest of the City to [Charles Center Theatre] for the period provided in this Agreement, but no longer than March 25, 1999, except for the covenant against discrimination created by subparagraph 2(c) of Article I, which shall run with the land forever.

Additionally, it points to the "nearly identical" language included in the Deed from the City to its predecessor, and the special warranty by the City that it had "not done or suffered to be done any act, matter, or thing whatsoever to encumber" the property being conveyed.

The circuit court, after a hearing on the motions for summary judgment, denied Urban Growth's motion, and on June 24, 2015, granted One West's motion. Although the court acknowledged that Urban Growth was "seeking a declaration that the easement is valid and cannot be extinguished by [One West's] unilateral action," it did not enter a written declaration of either party's respective rights in the easement.[3]

[3] Neither party raises the circuit court's failure to do so. But, it is well settled that a trial court must enter a declaratory judgment in writing in a separate document when an action is appropriate for resolution by declaratory judgment, *Krause Marine Towing Corp. v. Ass'n of Md. Pilots*, 205 Md. App. 194, 226 (2012), and it is error for a trial court to dispose of such an action with a grant of judgment. *Harford Mut. Ins. Co. v. Woodfin Equities Corp.*, 344 Md. 399, 414 (1997). "The fact that the side which requested the declaratory judgment did not prevail in the circuit court does not render a written declaration of the parties' rights unnecessary." *Id.* The failure, however, to enter a declaratory judgment is not jurisdictional. As the Court of Appeals, in *Bushey v. N. Assurance Co. of Am.*, 362 Md. 626, 651 (2001) stated, an appellate court "may, in its discretion, review the merits of the controversy and remand for the entry of an appropriate declaratory judgment by the circuit court." We will do so in this case.

In its Memorandum Opinion, the circuit court, recognizing that the "easement at issue in this action is an express easement" for ingress, explained its reasoning:

> [Urban Growth] reasons that the City could not encumber [its] right to the easement by means of executing the Lease. Specifically, [Urban Growth] contends that because it was not a party to the Lease and it had already been granted access to the easement through the Disposition Agreement and Deed, the City no longer had the ability to reserve for itself the rights to the easement or convey the easement to [D.A.] 15's predecessor. However, as all parties acknowledge, the documents at issue—the Disposition Agreement, the Deed, and the Lease, which contained the Purchase Option—were negotiated and executed in close proximity in time to each other and these instruments were all executed in furtherance of the Renewal Plan. At the time [the] Renewal Plan was approved, the buildings, parking garages, ramps, and other structures at issue in the documents were not in existence. Rather, these instruments were composed during the summer of 1964 as a way of setting forth standards to govern the development areas as part of an overarching plan. Therefore, upon this Court's review of the instruments in conjunction with each other, it is clear that the intent was to transfer the easement to the owner of [D.A.] 15 on March 25, 1999, pursuant to the Option to Purchase.[10]
>
> There is significance to the March 25, 1999 date in the Option to Purchase as the date by which the covenants, easements, conditions, and restrictions expire. The Renewal Plan for the Charles Center Project stated that the plan and/or any modifications thereof would be in effect for forty-years from March 25, 1959, the date the plan was approved by the City. Thus, March 25, 1999 was not an arbitrary date; it indicated that [D.A.] 15 was only burdened during the period when the Renewal Plan was in effect. As noted by [One West], the ramp to [D.A.] 15 had to be built into the theatre and was a separate structure; if the easement survived after the exercise of the Purchase Option, then any future redevelopment of the property would require a new ramp to be built.
>
> Furthermore, the Lease was recorded in the Land Records on January 4, 1965, thereby putting [Urban Growth's] predecessor on notice of the Lease's existence and terms. Despite this knowledge, Charles Center Parking did not take any legal action as to the City reserving the ingress easement for itself in the Lease Agreement nor did it raise any objections as to any other provisions of the Lease. It was not until the current action, more than 50 years after the Lease Agreement was recorded, that such objections were raised.

> The language of the Lease is clear and unambiguous that the Mechanic Estate's proper exercise of the Purchase Option meant that the easement expired on March 25, 1999. Therefore, because there is no genuine dispute of material fact, summary judgment in favor of [One West] is appropriate.
>
> [10] Evidencing continuous negotiations, the cover page and footers of the Lease Agreement for [D.A.] 15 are dated March 26, 1964, which is prior to the execution of the Disposition Agreement and the Deed conveying [D.A.] 14 to [Urban Growth's] predecessor.

(Citations omitted).

Urban Growth noted this timely appeal.[4]

Standard of Review

"The standard for appellate review of a trial court's grant of summary judgment is whether the trial court was legally correct." *Lerner Corp. v. Assurance Co. of Am.*, 120 Md. App. 525, 529 (1998). A party is entitled to summary judgment when a "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." Md. Rule 2-501. Therefore, we first "independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). "[I]f the facts are susceptible to more than one inference, [we] must view the inferences

[4]The circuit court also rejected Urban Growth's alternative prescriptive easement argument and its right to challenge the exercise of the Purchase Option. We agree with the circuit court on these issues, but we need not reach them in this opinion.

in the light most favorable to the non-moving party." *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 153 (2008).

The interpretation of written contracts is subject to a de novo standard of review. *Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250 (2001). Maryland courts interpreting written contracts have long abided by the law of objective contract interpretation, which specifies that "clear and unambiguous language" in an agreement "will not give way to what the parties thought the agreement meant or was intended to mean." *Auction & Estate Representatives, Inc. v. Ashton*, 354 Md. 333, 340 (1999). Where contractual language is unambiguous, "a court shall give effect to its plain meaning and there is no need for further construction by the court." *DIRECTV, Inc. v. Mattingly*, 376 Md. 302, 312 (2003). In that situation, what a contract means is "what a reasonable person in the position of the parties would have thought it meant." *Calomiris v. Woods*, 353 Md. 425, 436 (1999) (quoting *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)).

Contentions of the Parties

Urban Growth contends that the circuit court erroneously concluded that the terms of the Lease control the earlier-recorded Disposition Agreement "by ignoring established legal principles regarding priority of recorded land instruments" and by failing to recognize "settled" law that the owner of a servient estate cannot "unilaterally" terminate an express easement. In addition, it asserts that the circuit court improperly considered

extrinsic "evidence to discern the [City's] intent" regarding the Disposition Agreement and related Deed that were "plain and unambiguous on their face."

Not surprisingly, One West, focusing primarily on the Lease, contends that the circuit court "correctly" determined any easement terminated in 1999 with the end of the URP in accordance with the clear and unambiguous "[n]otwithstanding anything to the contrary" language of the Lease. In addition, One West argues that even if we deem the Lease Agreement to be unclear, we should conclude that the easement terminated in March 25, 1999, because, as a "matter of hornbook law, any ambiguity must be construed against burdening the [One West property] . . . for an indeterminate time."[5]

Analysis

Our analysis begins with the transaction for the purchase of D.A. 14 between the City (the common owner of both D.A. 14 and D.A. 15) and Charles Center Parking. The easement for ingress from Charles Street burdening D.A. 15 has its roots in the May 20, 1964 Disposition Agreement, which was recorded in the land records of the City on June 18, 1964. The special warranty deed for D.A. 14, recorded on July 15, 1964, granted to "Charles Center Parking, Inc., and its successors and assigns in fee simple subject to and with the benefit of all conditions, covenants, reservations and *easements* set forth in the

[5] The City, as Amicus Curaie, does not address or provide any legal arguments. Rather, it points out that the redevelopment of D.A. 15 is "a high priority," that will "attract residents and spur activity in the City's Downtown area, with far-reaching, positive impacts on the City's public welfare," and advances its view that the easement is "incompatible" with the proposed redevelopment and "a major impediment to the project."

Disposition Agreement dated May 20, 1964." (Emphasis added). The Disposition Agreement expressly provided that this easement "shall remain in effect until such time as [the owners of Development Areas 14 and 15] and the City agree that it be terminated by a written, executed, and acknowledged instrument" recorded among the Land Records of Baltimore City. There is, of course, no such instrument.

Later, on August 15, 1964, the City, in its Lease to D.A. 15, "reserved" to itself and its "successors and assigns for use in common" an easement over D.A. 15 for ingress from Charles Street to two parking facilities, one of which was located on D.A. 14. As did the Disposition Agreement for D.A. 14, the Lease expressly provided that the ingress easement benefiting D.A. 14 "shall remain in effect until such time as [the owners of Development Areas 14 and 15] and the City agree that it be terminated" by a written, executed, and acknowledged "instrument . . . recorded among the Land Records of Baltimore City."

Urban Growth contends that, when the City reserved the easement to itself in the Lease, the easement to Urban Growth at issue in this case "had already [been] granted;" One West takes the position that the easement was "actually created" in the Lease when the City "reserved" the easement. We agree with Urban Growth.

To be sure, it appears that the City was engaged in simultaneous negotiations with different developers in implementing the URP and, as noted by the circuit court in its Memorandum Opinion, there is some evidence that could support an inference that the Lease Agreement was being negotiated as early as March 26, 1964. One West suggests

that the simultaneous negotiations allayed any concern that its predecessor might have had that the ingress easements referenced in the Lease extended beyond the March 25, 1999 date. Therefore, it asserts that "it is unreasonable to postulate that [its predecessor] should have checked the land records for other property given the contemporaneous negotiation of the transfers by the City." But, in light of settled Maryland law, we do not agree.[6]

The Disposition Agreement clearly states that the City and Charles Center Parking, for themselves, "their successors and assigns" have agreed to the sale and purchase of D.A. 14. It further provides:

> At the time of settlement, the City will execute a deed, conveying to [Charles Center Parking] the above described Property by good and merchantable fee simple title, subject to and with the benefit of the easements hereinafter mentioned or reserved in Paragraph 2 of this Article, and also to the following restrictive covenants, which *covenants* are intended and designed to operate as *covenants* binding upon the Parties hereto, their successors and assigns, and binding on and running with said land until March, 25, 1999, except *covenants* (c), (h), (i), (j), (k), and (l),

[6] One West implies that checking the title to the sixteen parcels involved in the Charles Center Urban Renewal area should be unnecessary and would be burdensome. It appears that D.A. 14 and D.A. 15 were the sixth and seventh parcels to be transferred. Although One West characterizes the Urban Renewal as "effectively a single project," it acknowledges, as it must, that the City "was obviously carrying on many simultaneous negotiations with different developers." This, in itself, presents a possibility of "language in another document that would be inconsistent with the Lease." On the other hand, to the extent the circuit court suggests that Charles Center Parking had notice of the Lease upon recording, but did not object "for more than 50 years," there was certainly no obligation for Charles Center Parking to continue to check the land records after the instruments of its purchase were executed and recorded.

> which shall run with the land forever and be binding on the parties hereto, their successors and assigns.[7]

(Emphasis added). In other words, certain "*covenants*," not easements, would terminate in 1999. (Emphasis added).

Moreover, the Disposition Agreement further provided that the easement in question "to be *granted* to" Charles Center Parking through D.A. 15

> shall remain in effect *until such time* as the owner of [D.A. 14], the owner of [D.A. 15], and the City agree that it be terminated. Such termination shall be evidenced by a written instrument duly recorded executed and acknowledged and recorded among the Land Records of Baltimore City.

(Emphasis added). Nothing in the Disposition Agreement suggests an earlier termination date.

The Deed from the City to Urban Growth's predecessor did expressly "grant and convey" an easement over D.A. 15 benefiting D.A. 14.[8] The easement area is clearly

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[7] In general terms, covenant (c) relates to discrimination laws; (h) relates to maintenance of drainage and lighting services and the tunnel connection provided for in Paragraph 2(c) of Article II; (i) and (j) relate to maintenance and repair of subsurface structure; (k) binds the City to maintenance of designated roadways; and (l) relates to Charles Center Parking's agreement to indemnify the City for certain losses.

[8] Maryland Code (1957) Art. 21, § 9, in effect in 1964, stated:

> The word "grant," . . . in a deed, or any other words purporting to transfer the whole estate of the grantor shall be construed to pass to the grantee the whole interest and estate of the grantor in the lands therein mentioned, unless there be limitations or reservations showing, by implication or otherwise, a different intent.

Maryland Code (1974, 2015 Repl. Vol.), § 2-101 of the Real Property Article, the current version of the statute, states:

(Continued…)

described and the dominant and servient properties clearly delineated in the Disposition Agreement referenced in the Deed. The deed was executed, acknowledged, and recorded in the land records of the City. *See* Md. Code (1957), Art. 21, § 1 ("No estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years, shall pass or take effect unless the deed conveying the same shall be executed, acknowledged and recorded . . . ."). In 1964, under Maryland Code (1957), Art. 21, § 11 the deed was "effective" as of its date between the parties upon acknowledgment and recording.[9]

In short, the language of both the Disposition Agreement and the Deed is clear and unambiguous regarding termination of the ingress easement over D.A. 15 from Charles Street. "[W]hat a reasonable person in the position of the parties [to those instruments] would have thought it meant" was that the easement would run with the property until

(…continued)

> The word "grant," . . . in a deed, or any other words purporting to transfer the whole estate of the grantor, passes to the grantee the whole interest and estate of the grantor in the land mentioned in the deed unless a limitation or reservation shows, by implication or otherwise, a different intent.

Nothing in the deed to Charles Center Parking suggests otherwise as to the easement and, as stated above, neither does anything in the Disposition Agreement referenced in the deed. D.A. 14 was conveyed "subject to and with the benefit of the easements hereinafter mentioned or reserved" in addition to certain covenants which "are intended and designed to operate as covenants binding upon the Parties, hereto, their successors and assigns, and binding on and running with said land until March 25, 1999."

[9] The Maryland Code (1957), Art. 21 § 11 stated: "Every deed of real property, when acknowledged and recorded as herein directed, shall take effect as between the parties thereto from its date."

such time as the owners of D.A. 14 and D.A. 15 agree to its termination, unless, of course, Urban Growth or its successors and assigns otherwise abandon the easement. *Calomiris*, 353 Md. at 436. In light of the proposed use of the property as an underground parking facility, continued access to Charles Street would not be an unreasonable expectation. Moreover, the City clearly knew how to terminate an easement when the URP expired if that was its intention. For example, in regard to another easement benefitting Charles Center Parking and burdening D.A. 13, the Disposition Agreement expressly provides that the easement remains in effect "until the Renewal Plan expires," in the absence of an agreement by the affected parties permitting earlier termination.

Any conceivable ambiguity related to the termination of the Charles Street ingress easement is generated by the option to purchase provision in the Lease, which is an instrument to which Charles Center Parking, or its successors or assigns, were not parties. Article 1, Paragraph 3, of the Lease reserves for "the City, its successors and assigns" the easement at issue "for the purposes of ingress to [D.A.] 14" and which could also be used for ingress for underground parking on D.A. 15. Termination of that easement, requires an agreement among the City and respective owners of Development Areas 14 and 15. According to the option to purchase, however:

> [n]otwithstanding anything to the contrary herein, all of the covenants, easements, conditions and restrictions contained in this Agreement relating to the Renewal Plan and to the ownership, construction, financing and use of the improvements and the Leased Property, and the City's and [Charles Center Theatre's] rights and obligations relating thereto, shall remain in effect after the conveyance of the fee interest of the City to [Charles Center Theatre] for the period in this Agreement, but no longer than March 25,

> 1999, except for the covenant against discrimination created by subparagraph 2(c) of Article I, which shall run with the land forever.

One West relies on the "[n]otwithstanding anything to the contrary" provision in the option to purchase to overcome the otherwise explicit language in the Lease and Disposition Agreement regarding termination of the easement. It posits, quoting *Sagner v. Glenangus Farms, Inc.*, 234 Md. 156, 167 (1964), that ordinarily effect must be given to each clause of the contract "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." Citing *Sagner*, 234 Md. at 157, it reaches what it characterizes as a "sensible and reasonable" conclusion that Section 3 (a)(ii) of the Lease (the mutual termination clause) "only applies until the Purchase Option has been exercised or the Lease is otherwise terminated." And, perhaps (we express no opinion) that may have been the City's intention and Charles Center Theatre's and the optionee's ultimate understanding.[10]

But, as of the effective dates of the Lease with, and deeds to, One West's predecessors, the City had already conveyed the easement at issue to Charles Center Parking as a permanent easement running with the land in accordance with the Disposition Agreement. Therefore, the City could not modify the terms of that easement without the consent of Charles Center Parking. The option to purchase could bind only

[10] It appears to be the understanding of the parties and their counsel that there is no extrinsic evidence now available to clarify any ambiguity (if there were any) in the documents themselves.

the City and One West's predecessor. Thus, whatever the intent of One West's predecessor, the "notwithstanding" provision could only address the remaining interests of the City in the "covenants, easements, conditions, and restrictions" and the "rights and obligations" of the City and One West's predecessor to each other relating to the "Renewal Plan and to the ownership, construction, financing and use of the Improvements and the Leased Property." When the City surrendered its remaining interest in the URP, including the easement over D.A. 15, on March 26, 1999, Urban Growth and One West were left on their own to deal with the easement. In light of the language in the two sets of documents, that appears to be an equally, if not more, "sensible and reasonable" conclusion that does not disregard a meaningful part of the One West instruments.

Because the instruments involving the two parcels of land "were negotiated and executed in close proximity in time to each other" and were "executed in furtherance of the Renewal Plan," the circuit court reached a different conclusion regarding the termination of the easement by reviewing the transactional "instruments in conjunction with each other." Citing *Rocks v. Brosius*, 241 Md. 612, 637 (1966), and *DWS Holdings, Inc., v. Hyde Park Assoc.*, 33 Md. App. 667, 674–75 (1976), it essentially treated the City's transfers of D.A. 14 and D.A. 15 as a single transaction. We do not read *Rocks* and *DWS Holdings* as extending single transaction status to the sale and lease of two different properties to two different and unrelated parties as was done in this case.

In *Rocks*, the owners of a tract of land known as Briarwood, on February 5, 1962, leased the land to Prince-Mar Builders, Inc. ("Prince-Mar") for a term of 35 years and "renewable from term to term . . . in perpetuity." *Rocks*, 241 Md. at 618. On April 25, 1962, Prince-Mar, in turn, conveyed its leasehold interest in Briarwood to Ralph D. Rocks, the president of Prince Mar, and his wife Jean W. Rocks, in a recorded deed. *Id.* at 620. The Rocks, with the right to sublease, agreed to lease the property to J. William Brosius and Louis J. Brosius, ("Brosius"), as sublessees, on August 4, 1962. *Id.* at 621. On August 23, 1962, the Rocks and Brosius executed a Sublease and Deed of Assignment, which was recorded on October 3, 1962. *Id.* at 623. The August 23, 1962, sublease set the amount of rents on 91 lots that had already been platted and provided that subleases for the remaining lots would have the same general terms and conditions except for the property descriptions. *Id.* at 632. When Rocks challenged the enforceability of the sublease for vagueness, the Court of Appeals determined that the circuit court "properly construed all the documents together as part of a single transaction constituting one contract for the subdivision and development of the Briarwood tract." *Id.* at 637.

In *DWS Holdings, Inc.*, DWS Holdings, Inc., ("DWS"), the owner of a parcel of real property, took back a note for ten percent of the purchase price, which was to be secured by a deed of trust that DWS agreed to subordinate to the lien of "any Deed of Trust securing a bona fide construction loan" to facilitate the development of the property by Hyde Park Associates. *DWS Holdings, Inc.*, 33 Md. App. at 668, 671. DWS sought to minimize its risk by obtaining personal sureties from the individual general partners of

Hyde Park up to ten percent of the purchase price. *Id.* at 670. Hyde Park and the source of financing for the purchase of the land and construction costs executed an agreement that called for payment to be made in two separate notes and secured by two deeds of trust. *Id.* at 669. A default on either was a default in the other deed of trust. *Id.* at 678. The loan was bifurcated so that land costs were disbursed at time of settlement and construction costs were disbursed upon the satisfaction of certain conditions. *Id.* at 669. Following default on the note by the corporate promisor, DWS brought suit against the guarantors. *Id.* at 668. In considering the intent of the parties in binding the individual guarantors, this Court determined that the intention of the parties "must be divined from all the documents comprising the transaction," *id.* at 675, and that when the intent is not clear from the final document "preliminary negotiations and agreements ought to be considered in construing the written contract." *Id.* at 676.

Both *Rocks* and *DWS Holdings* relate to the same transaction involving the same parties, i.e., the purchase, sale, and development of the same parcel of land. Although both D.A. 14 and D.A. 15 were part of the overall URP, the sale and purchase of each was a separate transaction to be governed by the agreements and instruments related to that transaction. Nothing in the Urban Growth documents referenced the option to purchase provision in the One West documents, and Urban Growth's predecessor, Charles Center Parking, did not agree to have its rights with respect to the easement terminated by a subsequent agreement to which it was not a party. Under these circumstances, the instruments governing the One West transaction had no relevance in

divining the intent of the parties in the Urban Growth instruments. *See Patton v. Wells Fargo Fin. Maryland, Inc.*, 437 Md. 83, 109 (2014) ("Under Maryland law, the parties to a contract may voluntarily agree to define their contractual rights and obligations by reference to documents or rules external to the contract."); 11 Williston on Contracts § 30:25 (4th ed.) ("As long as the contract makes clear reference to the document and describes it in such terms that its identity may be ascertained beyond doubt, the parties to a contract may incorporate contractual terms by reference to a separate, noncontemporaneous document, including a separate agreement to which they are not parties, and including a separate document which is unsigned.").

Because the circuit court held that the easement terminated on March 25, 1999, it had no reason to consider the appropriateness of a permanent injunction in this case. One West argues, and Urban Growth does not argue otherwise, that "[i]f, arguendo," we disagree with the circuit court's decision, equitable issues related to the grant of a permanent injunction to remedy any violation of the easement "should be addressed on remand after the parties are given an opportunity for discovery." At the same time, we also note Urban Growth's reservation of a claim for damages. Therefore, we shall remand for further proceedings.

JUDGMENT REVERSED. REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION, INCLUDING THE ENTRY OF A PROPER DECLARATORY JUDGMENT. COSTS TO BE PAID BY APPELLEE.