Circuit Court for Montgomery County
Case No. 469865-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2308
September Term 2019

Nos. 44 and 814
September Term, 2020

COUNCIL OF UNIT OWNERS OF NORMANDIE-ON-THE-LAKE II CONDOMINIUM, *et al.*

v.

MONTGOMERY VILLAGE FOUNDATION, INC.

Shaw Geter,
Gould,
Wilner, Alan M. (Senior Judge, Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed: February 16, 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.

Montgomery Village is a large planned community in Montgomery County. Appellants are three councils of condominium unit owners in Montgomery Village. Appellee (the Foundation) is a not-for-profit corporate foundation created by the developer of Montgomery Village to provide various amenities and services in the Village, including the upkeep of open spaces that are required by the county zoning law to be provided and maintained.

The principal issue in these three appeals, which we have consolidated, is whether the condominium unit owners represented by the three appellant councils are still required to pay monthly assessments for the upkeep and funding of the community-wide services and amenities provided by the Foundation. They believe that their obligation to pay those assessments, authorized and required as covenants running with the land in the Supplementary Declarations that accompanied their addition to Montgomery Village, was properly terminated. Unsurprisingly, the Foundation disagrees.

When appellants stopped paying the assessments, the Foundation sued them in the Circuit Court for Montgomery County, essentially for breach of contract, seeking damages, specific performance, and declaratory judgments. The Foundation won, and appellants have brought these appeals. We shall dismiss the first two appeals as not allowed by law and, in the third appeal, affirm the judgment(s) of the Circuit Court.

BACKGROUND

In May 1965, the Montgomery County Council enacted Ordinance No. 5-117, which created a new Town Sector Zone (T-S-Z) as part of the county zoning law. The

purpose of the new zone was to "assist in the building of new towns or satellite towns which would be located far enough from the present build-up areas of the Washington metropolis to permit a high degree of self-sufficiency and independent existence as a separate functioning economic and social unit."[1] The ordinance required that not less that ten percent of the total area of the Town Sector shall be devoted to open space publicly owned or devoted to community use. Appellants contend, without dispute, that the 1965 ordinance and T-S-Z development was contingent on at least 40 percent of the land remaining open space.[2]

The Ordinance clearly contemplated some permanence to land subject to the T-S-Z zone. It anticipated not just a large scattered development, but a self-sufficient "town . . . [c]ontaining as nearly as possible all of the commercial, employment, cultural and recreational facilities desirable and necessary for the satisfaction of the needs of its residents" To that end, it required that no building permit for the development of a T-S-Z zone could issue until "all persons having a record interest in the Town Sector shall cause

[1] That language appears in the subsequent County Council Resolution No. 5-2084 that approved T-S-Z zoning for what ultimately became Montgomery Village. Ordinance No. 5-117 described its purpose as providing "a method whereby planned New Towns may be built or added to, or addition made to existing urban developments." *See* Section 1-04-19A (a).

[2] In 2014, the County Council enacted a new Zoning Ordinance that created new zones and deleted the existing ones, including the T-S-Z zone. That zone was retained, however, for Montgomery Village until 2016, when a new Master Plan for communities in the Village and an overlay zone for the Village itself were adopted. The Village continued as a planned community under the new overlay zone. The 2014 Ordinance and 2016 rezoning do not affect the issues in these appeals.

to be recorded . . . a description of the area included in the Town Sector Zone [and] a statement that the development of this average density zone could be accomplished only in accordance with an approved plan, and a declaration binding the heirs and assigns for a period of 50 years to the Town Sector classification as approved or thereafter amended." Ordinance No. 5-117, enacting § 104-19A, ¶ G (2) to the Montgomery County Zoning law.

Montgomery Village was the first assemblage of property to be reclassified as a T-S-Z zone. Directly on the heels of Ordinance N0. 5-117, a developer, Kettler Brothers, assembled nearly 1,800 acres just outside of Gaithersburg and applied for the rezoning of that property from R-R (rural/residential) to T-S-Z. In August 1965, by Resolution No. 5-2084, the County Council approved the application. In March 1966, the Foundation was incorporated as a nonstock, non-profit corporation for the purpose of promoting "the health, safety, and welfare of the residents of the community of Montgomery Village, Maryland, and as described and defined in a Declaration of Covenants, Conditions, and Restrictions to be recorded in the Land Records of Montgomery County, Maryland, *and such additions thereto as may hereafter be brought within the jurisdiction of this corporation by virtue of the recording of Supplementary Declarations of Covenants, Conditions, and Restrictions.*" (Emphasis added).

The Foundation was authorized in its charter to own, acquire, and maintain parks, playgrounds, swimming pools and other recreational facilities, open spaces, commons, streets and walkways, including structures incident thereto and to provide facilities and

services for the exterior maintenance of properties within Montgomery Village, garbage and trash collection, fire and police protection, maintenance of unkempt lands or trees, and other supplemental municipal services.

On August 14, 1967, Kettler Brothers, Inc., as the defined "developer," filed a Declaration of Covenants, Conditions and Restrictions in the land records of Montgomery County (the 1967 Declaration). The Declaration applied to the entire 1,767.33 acres then assembled under the name of the Whetstone community, which the Declaration stated was to "become part of a larger community known as 'MONTGOMERY VILLAGE,' to be developed over a period of time, and consisting of a number of local communities, including Whetstone."

The Declaration made clear throughout its various provisions that, although the covenants, conditions, and restrictions were initially applicable only to the Whetstone community, which at the time was the only property that could be subjected to them, the intent was that those covenants, conditions, and restrictions, at least in part, were to apply as well to properties that later became part of Montgomery Village.[3]

[3] Article I (Definitions) distinguished between "community properties," which consisted of properties that were then owned or later became owned by Whetstone, and "common properties," which included "all land, improvements, and other properties heretofore or hereafter owned or in the possession of the Montgomery Village Foundation," which would include properties that would be part of additional communities later added to Montgomery Village. The Declaration recited that parks, playgrounds, open spaces, walkways and other facilities designated as "community properties," were to be owned and maintained exclusively for the benefit of "each local community" and other areas and facilities, designated as "common properties," were to be owned and maintained for the benefit "of the larger community." (Emphasis added).

This was most clearly enunciated in Article II (c) of the 1967 Declaration, which provided that the developer had "the right to create additional communities within Montgomery Village and to bring them within the scheme of this Declaration as it relates to membership in the Montgomery Village Foundation and the rights and obligations of each owner in and to the common properties." This was to be achieved by filing Supplementary Declarations with respect to the additional properties "and thereby subject such additions to assessment for their just share of the Montgomery Village Foundation expenses." Those Supplementary Declarations could contain "such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties *and are not inconsistent with the scheme of this Declaration*." (Emphasis added).

Article VII of the 1967 Declaration imposed an obligation running with the land on the owner of each private dwelling unit within the Whetstone community to pay an annual assessment and special assessments to the Foundation. These assessments were for the purpose of the acquisition, improvement, and maintenance of properties, facilities, and services devoted to the health, safety, and welfare of the residents of Montgomery Village. The special assessment was to defray construction and repair costs of those facilities. Article X made the covenants and restrictions in the Declaration enforceable by the Foundation for a period of 50 years, at the end of which they would be extended for successive terms of ten years unless terminated or changed by an instrument signed by

two-thirds of "the owners of all Private Dwelling Units and Multifamily Rental Units within Montgomery Village that are subject to this Declaration."

In the ensuing years, Kettler added several other residential communities to Montgomery Village, enlarging its area from 1,767 acres to over 2,500 acres comprising 26 local communities and a population of over 40,000 people. Among the additions were the three that are the subject of these appeals – Mills Choice, Thomas Choice Gardens, and Walkers Choice (later renamed Normandie-on-the Lake II) – all of which initially were rental garden apartments or townhouses. In 1981, Kettler converted those structures into condominiums. Mills Choice was divided into two condominiums, one of which was renamed Heron's Cove Condominium. Thomas Choice Gardens became Thomas Choice Gardens Condominium, and Walkers Choice became Normandie-on-the Lake II Condominium. That was significant, because the persons to whom the condominium units were sold became the owners of a "Private Dwelling Unit."[4]

In keeping with Art. II (c) of the 1967 Declaration, Supplementary Declarations were filed with respect to the three new additions to the Village. Except for the name, these Supplementary Declarations were identically worded. In introductory "Whereas" clauses, the Supplementary Declarations recited the developer's right under the 1967

[4] *See* 1967 Declaration, Art. I, § 1 (c) defining "private dwelling unit" as "all living units except Multifamily Rental Units" and Art. IV, § 1, dealing with membership in the Foundation, stating, with an exception not relevant here, that "every person or entity who is a record owner of a fee or undivided fee interest in any Private Dwelling Unit . . . within Montgomery Village which is subject to these covenants and restrictions shall automatically be a Member of the Montgomery Village Foundation" and that, once the unit is first occupied "all assessments and charges shall be fully effective."

Declaration to "bring within the scheme" of the 1967 Declaration additional properties in future stages of development that will include community facilities similar to those created under the 1967 Declaration. The fifth such clause stated the intent to subject the property bound to the Supplementary Declaration to "certain of the Covenants, Conditions, and Restrictions as set forth in [the 1967 Declaration]."

Article III of the Supplementary Declarations imposed, as a covenant running with the land, the obligation on the part of owners of private dwelling units to pay the annual and special assessments as set forth in that Article. Article IV, § 2, in language identical to that in Article X of the 1967 Declaration, made the covenants effective for a term of 50 years "as required by the Town Sector Zoning Ordinance," subject to automatic extension for successive terms of 10 years unless otherwise terminated or changed "by an instrument signed by not less than two-thirds (2/3) of the owners of all Private Dwelling Units and Multifamily Rental Units and Condominium Units within Montgomery Village *that are subject to this Declaration*." (Emphasis added). As we shall explain, that italicized language, and, in particular, the word "this," is the heart of this dispute.

In 2014, the Montgomery County zoning law was amended to enact a Montgomery Village Overlay Zone to take the place of the T-S-Z zone**.** Two years later, the County Council, sitting as the District Council of the Maryland-National Capital Park and Planning Commission adopted a new Montgomery Village Master Plan that expressly recognized the role of the Foundation and its authority to collect "assessments

to meet the costs of preserving and maintaining the 330 acres of land and community facilities owned by [the Foundation]."[5]

The genesis of the dispute now before us arose when, during the period from September 2018 to February 2019, the Boards of Directors of the Councils of Unit Owners of the Normandie-on-the Lake, Heron's Cove, and Thomas Choice Gardens condominiums initiated votes of their respective unit owners to terminate their respective Declarations and withdraw from Montgomery Village. In May 2019, three documents were filed in the Land records of Montgomery County allegedly signed by not less than two-thirds of the unit owners in each of those three communities purporting to terminate their respective 1981 Supplementary Declarations. Commencing in June 2019, those unit owners ceased paying the monthly assessments, which triggered this lawsuit.

The amended complaint contained 11 counts: Count I for declaratory judgment that the councils of unit owners had no authority to withdraw from Montgomery Village; Count II for declaratory judgment that the actions to withdraw from the Village were *ultra vires*; Count III for declaratory judgment that the actions of the councils of unit owners violate the county village overlay zone; Count IV (specific performance) ordering the Normandie-on-the-Lake Council of Unit Owners to collect the outstanding monthly assessments from the unit owners totalling $24,227and pay them to the

[5] Section 3.1.2 of the Master Plan noted that the Foundation owned, maintained, and managed four community centers, seven pools, 22 tennis courts, 18 recreation and park areas, a natural amphitheater, a nature center, and an extensive trail and bikeway network.

Foundation; Count V (specific performance) ordering the Heron's Cove Council of Unit Owners to pay the outstanding assessments of $34,152, entering judgment against it for that amount, and entering preliminary and permanent injunctions requiring the council to collect assessments from the unit owners and pay them to the Foundation; Count VI entering declaratory judgments that the councils of unit owners were contractually obligated to pay the assessments and that their refusal to do so is without legal authority; Counts VII through X for damages for breach of contract and injunctions requiring the councils of unit owners to collect assessments from the unit owners and pay them to the Foundation; and Count XI for declaratory judgment that the actions of the councils of unit owners to withdraw from Montgomery Village violate the subdivision approvals by the Maryland National Capital Park and Planning Commission and to enjoin such withdrawal. In summary, the Foundation was seeking declaratory and injunctive relief along with money damages, costs, and attorneys' fees.

Appellants' response was a bare-bones motion to dismiss or, in the alternative, a motion for summary judgment. Their motion asserted that the Foundation had no standing to bring its claims, that there was no justiciable controversy, and that the claims were time-barred. The details of these defenses apparently were provided in a supporting memorandum that does not appear in the record extract. The Foundation responded with a cross-motion for summary judgment. Because appellants' response relied on extraneous documents, the court treated it as a motion for summary judgment rather than a motion to dismiss. That is not an issue in these appeals.

The argument presented by appellants was that, as to properties and owners in their communities, the restrictive covenants, including the payment of assessments, were governed by the 1981 Supplementary Declarations which, in their view, supplanted the provisions in the 1967 Declaration. That meant that they were bound only by the covenants and provisions relating to them that were stated in the 1981 Declarations.

In that regard, appellants pointed out that, after 50 years, the 1967 Declaration allowed the Declaration to be terminated by a two-thirds vote of the owners of units "within Montgomery Village that are subject to this Declaration." By its plain meaning, that required a two-thirds vote of *all* the unit owners in the Village. In contrast, they noted that the comparable clause in the 1981 Supplementary Declarations applicable to them provided that the covenants imposed by *those* Declarations required only a two-thirds vote of the unit owners in Montgomery Village "that are subject to *this* Declaration." (Emphasis added). Though the text of that provision was identical to the one in the 1967 Declaration, the word "this" in the 1981 Declarations confined the provision to the owners in their particular community.

The court, through Judge Michael D. Mason, conducted a hearing on those motions on December 17, 2019. After listening to argument and having read "the hundreds of pages" presented by the parties, the court announced from the bench its conclusion that, as a matter of contract interpretation, the 1981 Supplementary Declarations supplemented the 1967 Declaration but did not displace it and that, as a result, termination of the covenants required approval by two-thirds of all the unit owners

in Montgomery Village, not just the unit owners in the defendant communities. Upon that conclusion, the court stated that the Foundation was entitled to summary judgment on its three breach of contract claims. Regarding the grant of the requested declaratory judgments as discretionary, the court stated that there was no need for the court to grant such relief and announced that it would deny all other relief.

Counsel for the Foundation reminded the court of holdings by the Court of Appeals that, when declaratory judgments are sought, even if the court was not disposed to grant the relief requested, it still was obliged to enter a written judgment declaring the rights of the parties. Tacitly acknowledging that to be the case, the court directed counsel to prepare a judgment on each claim for declaratory relief stating that "the Court declines to grant declaratory judgment because . . . the Court of necessity has addressed these issues in deciding the motion for judgment on the contract claims." The Court added that "the appeal rights run from the date the written order gets filed."

On January 6, 2020, the Foundation filed a "Motion for Clarification of Oral Ruling" accompanied by a proposed declaratory judgment and a request for a hearing**.** The Foundation attached to the motion an affidavit stating the amount of the unpaid assessments as of December 17, 2019, which the court would need in entering a money judgment or order of specific performance on the breach of contract claims. Appellants did not wait for any hearing or ruling on the motion but instead, on January 15, 2020, filed a notice of appeal from the court's December 17 oral ruling. The Circuit Court

clerk docketed that appeal as an interlocutory appeal. That is No. 2308 (S.T. 2019) on this Court's docket.

On February 19, Judge Mason signed two documents. One was an Order granting the Motion for Clarification. Rejecting appellants' argument that the December 17 ruling constituted a final judgment and that the Foundation's motion was untimely, Judge Mason confirmed that the court had entered judgment on Counts VII, VIII, and X as to liability only and that no final judgment would occur until a written order was signed and filed. The court added that that remained the case – that "judgment on the breach of contract counts (Counts VII, VIII, and X) is granted to the Plaintiff on liability only" and that "[t]he Assignment Office shall set the matter in for trial on the issue of damages only."

The second document was the Declaratory Judgment attached to the motion. It included a finding that the Normandie-on-the-Lake Council of Unit Owners owed $42,396 for assessments for June through December 2019 and that the Heron's Cove Council of Unit Owners owed $59,767 for assessments for the same period. Because it was not clear whether or how much of those assessments had been paid, Judge Mason stated that his ruling was as to liability for the assessments only and not as to damages for their non-payment. No ruling as to liability was entered against the Thomas Choice Gardens Council because it apparently had paid what was due for that period. With respect to unpaid assessments due for January and February 2020, the court declined to accept an affidavit submitted with the motion and instead directed that that matter be set

for trial on the sole issue of damages. That judgment was filed on February 27, 2020. In docketing the judgment, the clerk noted "Case Not Closed."

Notwithstanding the court's clear statement, by both the judge and the clerk, that the case was not over – that a further ruling on damages was required – on March 11, 2020, appellants filed their second appeal. That is No. 44 (S.T. 2020) on our docket.

A nonjury trial, by remote electronic means, occurred on September 29, 2020. Judge Mason having retired, the trial was conducted by Judge James A. Bonifant. First, addressing procedural arguments by appellants, Judge Bonifant held that Judge Mason did not intend his February 27 order to be a final disposition of the case It determined liability only through the last six months of 2019 but additional evidence was needed as to what, if anything, was paid for that period or for January and February 2020. At the conclusion of the trial, Judge Bonifant announced certain rulings but stated that he would incorporate those rulings and Judge Mason's declaratory judgments into a separate final judgment, which he did on October 2, 2020. In that judgment, the court:

(1) confirmed that the court's oral rulings of December 17, 2019 and the written declaratory judgments entered on February 27, 2020 were not intended to be an unqualified final disposition of the matter;

(2) ruled that the Foundation was entitled to interest on the unpaid assessments and to court costs;

(3) incorporated by reference the declaratory judgments entered on February 27, 2020;

(4) granted in part and denied in part appellants' motion *in limine* to preclude the Foundation from introducing evidence regarding litigation costs and expenses;

(5) entered judgment against the Normandie-on-the-Lake Condominium Council of Unit Owners for $55,779 for unpaid assessments for January through September 2020 plus prejudgment interest of $1,329;

(6) entered judgment against the Heron's Cove Council of Unit Owners for $78,634 plus $1,873 in prejudgment interest for unpaid assessments for the same period;

(7) entered judgment for costs of $165; and

(8) denied all other relief.

Appellants' third appeal, from that judgment (No. 814, S.T. 2020), was filed on October 9, 2020.

ISSUES

1. Did the oral rulings enunciated on December 17, 2019 constitute a final judgment that, in light of the appeal from them, was not subject to later modification?
2. Did the declaratory judgments filed on February 27, 2020 constitute a final judgment that, in light of the appeal from it, was not subject to later modification?
3. Are the judgments entered on October 2,2020 legally correct?

DISCUSSION

December 17, 2019 Rulings

The Court of Appeals has made clear many times that, with exceptions not applicable here, appeals may be taken only from final judgments and that, in order to constitute a final judgment, the trial court's ruling(s) must either determine *and conclude* the rights of the parties or deny a party the means to prosecute or defend his/her/its rights and interests in the subject matter of the proceeding. *See Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017); *Amer. Bank Holdings v. Kavanagh*, 436 Md. 457, 463 (2013). To have that effect, the ruling(s) must contain the following three attributes:

"(1) it must be intended by the court as an unqualified, final disposition of the matter in controversy;

(2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all the claims or all the parties, it must adjudicate or complete the adjudication of all claims against all parties; and

(3) it must be set forth and recorded in accordance with Maryland Rule 2-601." *Bd. of Physicians*, 451 Md. at 545; *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989).

In determining whether rulings of a trial court satisfy those criteria, the Court announced in *Rohrbeck*:

> "Lest there be any lingering question about the matter, we now make clear that, whenever the court, whether in a written opinion or in remarks from the bench, indicates that a written order embodying the decision is to follow, a final judgment does not arise prior to the signing and filing of the anticipated order unless (1) the court subsequently decides not to require the order and directs the entry of the judgment in some other appropriate manner or (2) the order is intended to be collateral to the judgment."

Rohrbeck, 318 Md. at 41. *See* also *Nnoli v Nnoli*, 389 Md. 315, 325 (2005).

The oral rulings of Judge Mason on December 17, 2019 satisfy none of those criteria. Those rulings did not address the several counts for declaratory judgment, which sought relief beyond liability for past-due assessments, and, when that was brought to the judge's attention, he expressly stated that his final decision would await a written order that would deal with those requests. The rulings as announced were not intended as an unqualified final disposition and they were not recorded in a separate judgment as required by Md. Rule 2-601. They do not constitute or qualify as a final judgment, and the appeal taken from them (No. 2308) is one not allowed by law, will be dismissed, and did not preclude the court from later doing what it had said it would do – await the presentation of a written order.

February 27, 2020 Declaratory Judgments

The February 27 order was in writing and did include the declaratory judgments missing from the December 17 rulings, but it still was not complete and said so. It determined the amount of assessments through December 2019 owed by the Normandie-on-the Lake and Heron's Cove councils of unit owners but did not enter judgment for those amounts and did not address what amounts may be due for January and February of 2020 because there was no evidence of how much, if any, of those assessments had been paid. The court determined that an evidentiary hearing or trial would be necessary to resolve that missing element of the amended complaint and ordered the Assignment

Office to schedule one. Judge Mason made clear that the document he was about to sign was not "intended by the court as an unqualified, final disposition of the matter in controversy" and therefore did not constitute a final judgment. Nor was it intended as a partial judgment under Md. Rule 2-602, as there was no express determination required by section (b) of that Rule. Accordingly, the appeal from the rulings made by the court at that time (No. 44, S.T. 2020) also is one not allowed by law and will be dismissed. All that is properly before us is whether the final judgment entered by the court on October 2, 2020 is legally correct (No. 814, S.T. 2020).

October 2, 2020 Judgment

As we have observed, the dispositive issue in this case is whether the 1981 Supplementary Declarations were intended to supplant and effectively did supplant the covenants included in the 1967 Declaration, in particular the provision relating to the amendment or termination of those covenants – whether the trial court should have considered *only* the Supplementary Declarations and given dispositive effect to the word "this" in determining whether the covenants in those Supplementary Declarations were properly terminated.

That issue is one of contract interpretation, which is an issue of law. Our task is to determine from the language of the agreement what a reasonable person in the position of the parties would have meant at the time the contract was made. *Dumbarton v. Druid Ridge*, 434 Md. 37, 52 ((2013); C*redible Behavioral Health v. Johnson*, 466 Md. 380,

395 (2019). Covenants running with the land are a species of contract, "to be enforced according to the objective intent of the original parties." *Id.* The interpretation of a restrictive covenant, "including a determination of its continuing vitality, is subject to de novo review as a legal question." *Id.* at 55; *Bowie v. MIE*, 398 Md. 657, 677 (2007).

The overarching consideration in construing restrictive covenants is the intent of the parties as it appears or is implied from the instrument itself. *Bowie*, 398 Md. at 679, relying on *Belleview v. Rugby Hall*, 321 Md. 152 (1990). Paraphrasing in part what was said in *Bowie* and *Belleview*, the language of the instrument is properly considered "in connection with the object in view of the parties and the property." If the meaning is not clear from its terms alone, the circumstances surrounding the execution of the instrument should be considered "and the apparent meaning and object should be gathered from all possible sources." *Bowie*, 398 Md. at 679.

If ambiguity still remains, the general rule in favor of the unrestricted use of property will prevail, but the rule of strict construction should not be employed to defeat a restrictive covenant that is clear on its face "or is clear when considered in light of the surrounding circumstances." *Id.* The courts are under a duty "to effectuate rather than defeat an intention which is clear from the context, the objective sought to be accomplished by the restriction and from the result that would arise from a different construction." *Id.* at 680.

Ambiguity can arise in at least two different ways. It can arise intrinsically from the language itself if that language can reasonably be read in different and antagonistic

ways or is so unclear that no meaning can rationally be ascribed to it. It also can arise even when the language itself is clear but what is unclear is whether that language was intended to apply to a particular circumstance that may or may not have been contemplated by the parties. *Taylor v. Mandel*, 402 Md. 109, 125-26 (2007).

That latter circumstance can become a problem when the overall contract consists, or allegedly consists, of more than one document, for "[w]hen a contract is comprised of more than one document, the writings are to be read and construed together as if they were one instrument." *Bachmann v. Glazer*, 316 Md. 405, 415 (1989); *Rothman v. Silver*, 245 Md. 292, 296 (1967).

The relevant evidence in this case consists of documents – predominantly the 1967 Declaration and the 1981 Supplementary Declarations – that need to be read together to determine intent. Such a required reading makes clear that the principal focus was on Montgomery Village, less so on the individual communities other than Whetstone that later were to become a part of it. All of the relevant documents either proclaim or acknowledge that fact – that the initial Whetstone community was only the first of multiple communities that would eventually form an integral part of the greater Montgomery Village.

That began with the charter of the Foundation, which stated as its purpose to promote the health, safety, and welfare of the residents of "the community of Montgomery Village as defined in the initial Declaration to be recorded "and such additions thereto as may hereafter be brought within the jurisdiction of [the] corporation

by virtue of the recording of Supplementary Declarations." It was made even clearer in the 1967 Declaration.

As we have observed, Article II, § (c) of that Declaration expressly gave the developer the right to create "additional communities within Montgomery Village and to bring them *within the scheme of this Declaration* as it relates to membership in the Montgomery Village Foundation *and the rights and obligations of each owner* in and to the Common Properties." (Emphasis added). Section (c) continued that those additions were to be made by filing Supplementary Declarations of covenants and restrictions "*which shall extend the scheme of the covenants and restrictions of this Declaration to such properties and thereby subject such additions to assessments for their just share of the Montgomery Village Foundation expenses.*" (Emphasis added).

Section (c) allowed the Supplementary Declarations to contain such complementary additions and modifications of the covenants and restrictions in the 1967 Declaration "*as may be necessary to reflect the different character, if any, of the added properties and are not inconsistent with the scheme of this Declaration*." (Emphasis added). That is a very limited authority. Any deviations included in a Supplementary Declaration had to be *necessary to reflect the different character*" of the added property and could not, in any event, be inconsistent with the scheme in the 1967 Declaration.

There is nothing in the Supplementary Declarations applicable to appellants that even purports to establish a different character of the appellant communities, much less a necessity to deviate from the 1967 Declaration for that reason. Indeed, the text of the

covenants and restrictions in the Supplementary Declarations is identical to that in the 1967 Declaration, including the provision for revising or terminating those covenants and restrictions. As noted, the fifth "Whereas" clause in those Supplementary Declarations acknowledges that the parties "desire by the execution of the within document. To subject the land described in Schedule 'A' hereof to certain of the Covenants, Conditions, and Restrictions recorded in [the 1967 Declaration]." Nothing in those Supplementary Declarations purports to authorize those communities to secede from Montgomery Village absent the consent of two-thirds of the property owners of the entire Village.

Appellants rely almost entirely on the language in Article IV, § 2 of the Supplementary Declarations that, after 50 years, dating from 1965, the entire Supplementary Declaration, and along with it their obligation to comply with the requirements in the 1967 Declaration and their continuing to be part of Montgomery Village, could be terminated by the approval of two-thirds of "all Private Dwelling Units and Multifamily Rental Units and Condominium Units within Montgomery Village *that are subject to this Declaration*." (Emphasis added). That last phrase, they claim, unambiguously sets the electorate as limited to the owners in their respective community and excludes all other unit owners in the Village, notwithstanding that *their* Village could be vitally affected by such a secession.

To construe the phrase in that manner would be inconsistent with the whole scheme of Montgomery Village and with the covenants and restrictions in the 1967 Declaration, which is not allowed. It is also internally inconsistent with dating the 50

years from 1965, sixteen years before the 1981 covenants were created. As noted, the 50-year non-amendment provision was required by the T-S-Z zoning ordinance and applied to "area included within the Town Sector Zone." Under appellants' view that they are bound only by the covenants in their Supplementary Declaration and not by anything in the 1967 Declaration, the 50-year period would seem to run from 1981, when their land was first included in the T-S-Z zone, not 1965.[6]

To adopt appellants' restrictive view would leave facilities and amenities created and maintained by the Foundation in those communities and paid for, in part, by assessments from the other owners in the Village in the control of others, possibly to the exclusion of those who helped pay for them. More significant, it would permit a few of the later-added communities to effect the dismantling of Montgomery Village and thwart what was contemplated by the 1965 Town Sector Zone, the more recent Montgomery Village Overlay Zone, and the 2016 Master Plan for the Village. The conclusions reached by the Circuit Court and the judgments entered on those conclusions were correct.

APPEALS NOS. 2308 AND 44 DISMISSED; JUDGMENTS ENTERED IN NO. 814 AFFIRMED; APPELLANTS TO PAY THE COSTS IN ALL THREE APPEALS.

[6] That issue was not raised in the case, and we simply note the point but do not rely on it.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2308s19cn.pdf