

RIVA, LLC,

Plaintiff

v.

JOE THE GRINDER, RIVA ROAD,
LLC,

Defendant

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Case No.: C-02-CV-19-000583

MEMORANDUM OPINION

This matter is a dispute between two neighboring property owners, Plaintiff, Riva, LLC ("Riva, LLC"), and Defendant, Joe the Grinder, Riva Road, LLC ("Joe the Grinder, LLC") concerning the scope of an access easement agreement that provides Riva, LLC passage through Joe the Grinder, LLC's property. The language of the easement agreement provides Riva, LLC a "perpetual easement as and for a right of way for vehicular ingress and egress ... on, over, across and through the portion of Parcel 12," Joe the Grinder's property, "described on the attached Exhibit A and depicted on the attached Exhibit B." The language further provides Joe the Grinder, LLC a unilateral right to relocate the easement so long as the relocation "continue[s] to provide a use in common right of way for vehicular ingress and egress for the benefit of Parcel 17," Riva, LLC's property, "over Parcel 12 to the Traffic Signal." This dispute arose because Riva, LLC, the owner of Parcel 17, asserted the right of bi-directional ingress and egress, meaning to and from the Traffic Signal adjacent to Parcel 12. Joe the Grinder, LLC has asserted that the County-required easement was a one-way, ingress, or entry onto, his property, with egress, or exit from his property (Parcel 12) to the Traffic Signal at Riva Road and Admiral Cochrane Drive.

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The matter was remanded to the Court by the Court of Special Appeals¹ after it found that while the language of the written Declaration of Easement document was clear, the agreement itself was ambiguous when considered with the site plan it incorporated by reference. Given this internal inconsistency, the Court held that extrinsic evidence was required to resolve the ambiguity. As a result of the intermediate appellate Court's finding, either the easement grant language is controlling, and the site plan requires revision, or the site plan is an accurate depiction of the required easement, and the easement grant language must be modified or interpreted to reflect a unidirectional easement.

The parties tried the matter before this Court for three days from November 16, 2022, through November 18, 2022. At trial, the parties were given the opportunity to present extrinsic evidence in order that the Court might make findings regarding the parties' intentions at the time of the agreement, as well as how, whether, or to what extent any external obligations may have affected the final product. Based on the Court's findings of fact more fully set out below, the Court finds and so declares that the easement agreement, when read as a whole, and considering the parties' intentions at the time in the context of obligations placed upon, or requested of, Joe the Grinder, LLC by agents of Anne Arundel County grants only unidirectional ingress and egress across Parcel 12 to the Traffic Signal at the intersection of Riva Road and Admiral Cochrane Drive for the benefit of Parcel 17. The Court also finds and so declares that the first amended and second amended easement agreements executed and recorded by Joe the Grinder, LLC, and recorded in the Land Records of Anne Arundel County are valid.

FACTUAL AND PROCEDURAL BACKGROUND

In the Spring of 2015, Joe the Grinder, LLC began the process of determining the feasibility of a commercially zoned site on Riva Road in

¹ Now, The Appellate Court of Maryland.

Annapolis, the site of a previous PNC Bank branch, for purchase and redevelopment as a Dunkin Donuts restaurant. The property, identified as Parcel 12 on Map 51A of the Tax Map of Anne Arundel County ("Parcel 12"), is located at the intersection of Riva Road and Admiral Cochrane Drive, a signalized intersection in the Parole district of Annapolis. The existing bank building was generally located in the middle of the lot. The preexisting traffic pattern was counterclockwise, with vehicles entering from the Traffic Signal at the intersection of Riva Road and Admiral Cochrane Drive and proceeding around the building before exiting at one of two exit points: (1) an exit permitting a left turn at the Traffic Signal on the southeast side of Parcel 12, or (2) an exit permitting a right turn onto Riva Road from the southwest side of Parcel 12. Joe the Grinder, LLC desired to maintain this existing traffic pattern, which also provided access to a drive-thru window. Joe the Grinder, LLC was informed during this feasibility period that, in order to obtain the necessary permits for the planned redevelopment, Anne Arundel County required an access easement across Parcel 12, for the benefit of the adjacent property, Parcel 17, in order to access the Traffic Signal.

On September 29, 2015, Joe the Grinder, LLC proceeded with the purchase of Parcel 12; the Deed for which is recorded in the Land Records of Anne Arundel County in Book 28854, page 472. See, Pl. Ex. 2. Thereafter, Joe the Grinder, LLC and the then-owners of Parcel 17, Village, LLC ("Village, LLC"), executed the Declaration of Easement. A member of Joe the Grinder, LLC's team recorded it with the County Land Records. The Declaration includes the following paragraphs:

B. Declarant has applied to Anne Arundel County, Maryland (the "County") for permits required for Declarant's redevelopment of Parcel 12. In connection with that redevelopment and pursuant to the provisions of the Parole Urban Design Concept Plan, the County has required the Declarant to establish a use in common access easement over and

through Parcel 12 for vehicular traffic between Parcel 17 and the Traffic Signal at the intersection of Riva Road and Admiral Cochrane Drive (the "Traffic Signal").

* * *

1. Subject to the terms and conditions of this Agreement, Declarant hereby creates and establishes for the benefit of Parcel 17, Village, LLC, its successors, assigns, agents, tenants, guests, and invitees, a non-exclusive perpetual easement as and for a right of way for vehicular ingress and egress (the "Easement") on, over, across and through that portion of Parcel 12 described on the attached Exhibit A and depicted on the attached Exhibit B (the "Easement Area").

2. Declarant reserves and maintains the right to relocate the Easement (the "Relocated Easement") and the Easement Area (the "Relocated Easement Area") to a different location on Parcel 12, provided that the Relocated Easement shall continue to provide a use in common right of way for vehicular ingress and egress for the benefit of Parcel 17 over Parcel 12 to the Traffic Signal. To the extent that any portion of the Easement Area or Relocated Easement Area is not improved for vehicular traffic, the installation, and costs of any such improvements shall be the sole responsibility of Village, LLC, its successors, and assigns.

The Declaration was prepared by Joe the Grinder, LLC's attorney, Anthony Christhlf, Esquire. Todd Lalumiere, Sole Member of Joe the Grinder, LLC signed the document in the presence of a notary public on October 8, 2015. Thereafter, it was delivered to Village, LLC, whose members also signed before a notary public. The Declaration was subsequently recorded in the County Land Records on October 14, 2015, in Book 28898 page 328. See, Pl. Ex. 1.

On April 17, 2017, Riva, LLC purchased Parcel 17 from Village, LLC, for the purpose of developing that site for a physical therapy business. See, Pl. Ex. 3. Prior to settlement, Riva, LLC obtained a copy of the recorded Declaration, and concluded that Parcel 17 was the beneficiary of a shared private access easement with Parcel 12 allowing ingress and egress to and from the Traffic Signal. Riva, LLC developed Parcel 17, exercising its rights provided under the Declaration, and Annapolis Family Physical Therapy now operates at that location.

Following Riva, LLC's purchase of Parcel 17, Joe the Grinder, LLC executed an Amended Declaration of Easement and Agreement ("Amended Declaration") dated September 5, 2017, and recorded it among the County Land Records in Book 31341 page 353. See, Pl. Ex. 8. In the Amended Declaration, Joe the Grinder, LLC removed the language granting Parcel 17 "a non-exclusive perpetual easement as and for a right of way for vehicular ingress and egress" and replaced it with a clause that states, "the Easement was intended to allow the adjacent property (Parcel 17) access to, over and across Declarant's Property for egress purposes as shown on Exhibit B to the Easement[.]" Joe the Grinder, LLC attached a new site plan and description that relocated the easement to the rear of the property and reduced the width of the drive aisle from 24 feet (the width of a standard two-way, ingress-egress easement) to a width of just over 12 feet, which would accommodate one way traffic. There was no evidence presented that Anne Arundel County formally reviewed or approved this amendment.

In communications with Riva, LLC and others, Joe the Grinder, LLC expressed its position that despite the "ingress and egress" language of the Declaration, it was never required to provide Parcel 17 with the right of ingress from the Traffic Signal across its lot into Parcel 17. Joe the Grinder, LLC asserted that the County only required a one-way easement, stating his position that ingress was the route into Parcel 12 from Parcel 17, and egress was the route

out of Parcel 12 at the Traffic Signal. In contrast, Riva, LLC asserted that the Declaration required vehicles to ingress Parcel 12 at the Traffic Signal, proceed into Parcel 17, and return out of Parcel 17 over Parcel 12 to egress at the Traffic Signal. Riva, LLC asserts that it purchased Parcel 17 in reliance upon the clear and unambiguous "ingress and egress" language provided in the Declaration, so that its patrons and staff could safely access the physical therapy business.

On February 22, 2019, Riva, LLC filed a Complaint for Declaratory Relief, Breach of Agreement, Damages and Attorney's Fees. On July 1, 2019, this Court² entered a partial summary judgment in favor of Riva, LLC finding that the original easement agreement was an unambiguous express easement that granted Riva, LLC ingress and egress across Parcel 12 to and from the Traffic Signal. Following the entry of summary judgment, Riva, LLC filed an Amended Complaint for Declaratory Relief, Damages, and Attorney's Fees requesting that the easement agreement be amended and refiled with an amended site plan showing the precise location that would allow Parcel 17 ingress and egress across Parcel 12 to and from the Traffic Signal in a way that would have minimal impact on Parcel 12 and not disturb the counterclockwise flow of traffic.

Trial was held on February 28, 2020³ to determine, among other things, the location of the ingress easement. Riva, LLC's sole witness was their civil engineer who testified regarding the location of the easement, while Joe the Grinder, LLC presented proffers of what witnesses would have stated had they been allowed to testify to present extrinsic evidence surrounding the County's requirements and understanding of the parties related to the Declaration. At the end of the trial, the Court determined that Riva, LLC was the prevailing party and ordered the easement to be located according to the Easement Site Plan

² The Honorable Donna M. Schaeffer presiding.

³ The Honorable William C. Mulford, II presiding.

attached as Exhibit A to the court's July 28, 2020, opinion. See, Pl. Ex. 22. Joe the Grinder, LLC appealed that decision.

On July 20, 2021, the Court of Special Appeals issued an unreported opinion remanding the case back to trial court. *Joe the Grinder, Riva Road, LLC. v. Riva, LLC*, No. 574, Sept Term, 2020, 2021 WL 3052915 at *1 (Md. Ct. Spec. App. July 20, 2021). The appellate court held *inter alia* that the circuit court erred in concluding that the easement agreement was unambiguous.

The Court of Special Appeals held that the rules governing contract interpretation applied, and in this instance, because of internal inconsistencies between the language and the incorporated site plan, the Declaration is ambiguous. The ambiguity of a contract is determined not only by the plain language of the agreement, but also the exhibits referenced by or incorporated into the document. The Court found that the language of the agreement providing "ingress and egress ... on, over, across and through that portion of Parcel 12" is "most naturally read to provide both To the Light Access and From the Light Access." The Court quoted Black's Law Dictionary's definition for "ingress-and-egress easement" which means "[t]he right to use land to enter and leave another's property." The Court, however, found ambiguity when considering the language in conflict with the incorporated exhibits, depicting a location of the easement that would allow Parcel 17 access through Parcel 12 for egress purposes only. Noting that this access easement was originally required by the County in order for Joe the Grinder, LLC to obtain development permits, the Court of Special Appeals included a footnote to the opinion which stated that "[e]xtrinsic evidence that the County actually mandated a two-way easement in 2015 would undoubtedly lend support to Riva, LLC's interpretation of the 2015 Declaration, but it does not render the entire document unambiguous or preclude Joe the Grinder, LLC from introducing extrinsic evidence to the contrary." *Joe the Grinder, LLC*, 2021 WL 3052915 at *21.

Upon remand, this Court provided the parties the opportunity to present evidence relating to the agreement but not appearing within the four corners of the agreement because it comes from other sources involving the setting in which the Easement Agreement came to be. Riva, LLC presented multiple exhibits and five witnesses, including Anne Arundel County planning and engineering administrators, and Joe the Grinder, LLC's prior attorney who drafted the 2015 Declaration of Easement. Joe the Grinder, LLC also produced multiple exhibits and six witnesses, including Todd Lalumiere, Sole Member of Joe the Grinder, Riva Road, LLC, and Dr. Diego Escobosa, managing member of Village, LLC, the original parties to the 2015 Declaration of Easement.

Riva, LLC's witnesses were:

- 1) Leslie Ann Wallop, managing member of Riva, LLC, the owner of Parcel 17 and principal with Annapolis Family Physical Therapy;
 - a. Ms. Leslie Ann Wallop testified that she became interested in purchasing Parcel 17 upon finding out there was access to the light. Ms. Wallop, on behalf of Riva, LLC, requested a meeting to clarify what ingress and egress meant. Ms. Wallop testified that she was not party to the original easement that was granted to the Parcel 17 owner at the time, Village, LLC, in 2015. Thus, because she was not involved in any sense with the negotiation or creation of the agreement, nor did she have any personal knowledge of the grantor's intention, motivation, obligation, or the County's purported requirements at the time, the Court found very little utility in Ms. Wallop's testimony.
- 2) David Braun, Engineer Administrator for the Anne Arundel County Department of Public Works who was involved in the Dunkin Donuts project review and easement requirements in 2015;
 - a. Mr. David Braun testified that, in general, an easement is assumed to be a two-way grant of access over the servient estate. The Court finds Mr. Braun's testimony reliable in that he testified to his understanding that the County wanted a bi-directional easement from the outset but indicated upon cross examination that at some time during the permitting process, the County agreed, acceded, acquiesced, or chose to no longer challenge Joe the Grinder, LLC's insistence that the grant of easement be unidirectional only.

- 3) Courtney Wilson, Planning Administrator for the Anne Arundel County Office of Planning and Zoning who was also involved in the 2015 review and approval process;
 - a. Ms. Courtney Wilson testified that the County reiterated to Joe the Grinder, LLC that the County's easement requirement was for ingress and egress in 2017 upon a question from Mr. Lalumiere. On cross examination, Ms. Wilson seemed to indicate the County's eventual acquiescence to Joe the Grinder, LLC's insistence on a unidirectional easement as the County granted further permits after the matter was raised.
The Court notes that Ms. Wilson was not properly prepared to testify on behalf of her employer, Anne Arundel County, or was perhaps being purposefully evasive on the witness stand, or perhaps did not fully appreciate the importance of the matters about which she was asked to testify. In any event, the Court did not find Ms. Wilson to be a reliable witness for any matters other than those laid out in the immediately preceding paragraph.
- 4) Anthony Christhilf, Esquire, Joe the Grinder, LLC's counsel, who drafted the Declaration;
 - a. Anthony Christhilf, Esquire testified that he drafted the 2015 easement, and that it was his belief the easement provided for access from the light to Parcel 17 across Parcel 12, and from Parcel 17 to Riva Road across Parcel 12, because he understood that to be the requirement imposed by Anne Arundel County. The Court finds Mr. Christhilf's testimony reliable to the extent that he understood the positions of his Client and the County, and that he drafted the easement itself, but not the site plan, which is what gives rise to the ambiguity. Accordingly, the Court can make no findings pertinent to a resolution of ambiguity based on Mr. Christhilf's evidence.
- 5) Wayne Newton, a Maryland Registered Professional Civil Engineer with Messick & Associates, who, along with Joe the Grinder, LLC's civil engineer, prepared the Easement Site Plan attached to this court's July 28, 2020, Declaratory Judgment Order.
 - a. Mr. Wayne Newton testified that whether or not the Court found there to be ingress and egress versus just egress, there would be no change to the site plan of Parcel 12 because there is no change to the traffic pattern. Mr. Newton testified that the site as it is does not conflict with the site plan, but there are some parking spots where there is a conflict and thus some adjustment would be

needed. The Court finds Mr. Newton's testimony credible in regard to the existing traffic pattern of Parcel 12.

Joe the Grinder, LLC's witnesses were:

- 6) Todd Lalumiere, Sole Member of Joe the Grinder, LLC, and owner of Parcel 12;
 - a. Mr. Todd Lalumiere testified that he never intended to provide a two-way easement across Parcel 12. Mr. Lalumiere testified that he specifically intended to grant a one-way easement to Village, LLC, the owner of Parcel 17 in 2015, to get to the light to make a left-hand turn onto Riva Road. Mr. Lalumiere further testified that the easement agreement also permitted Mr. Lalumiere to move the easement as he was unsure of what the future of the property and the surrounding properties would hold. Mr. Lalumiere also testified that in regard to the modification, he intended and understood that he was to provide a one-way easement to allow patrons from Parcel 17 to join the one-way counterclockwise traffic pattern to cross Parcel 12 and get to the light to make a left hand turn on Riva Road. Mr. Lalumiere testified that the words "ingress and egress" did not jump out to him as he believed it meant "ingress *on to* and egress *off of*" his property. The Court finds Mr. Lalumiere's testimony credible as a party to the 2015 Declaration of Easement, and more specifically, as the party granting the easement.
- 7) Patricia ("Trish") Farrell, Senior Vice President & Principal at MacKenzie Commercial Real Estate Services, LLC, Joe the Grinder, LLC's, and Village LLC's commercial real estate agent;
 - a. Patricia 'Trish' Farrell testified that there was no easement on Parcel 12 prior to Mr. Lalumiere's ownership of the property. Ms. Farrell testified that she understood Mr. Lalumiere was granting an easement to Village, LLC for ingress onto his property and egress off of his property to Riva Road. Ms. Farrell further testified that Mr. Lalumiere only intended for there to be a private easement that was as limited as possible as he originally did not intend to provide any easement. Ms. Farrell testified that she contemporaneously informed Village, LLC that the easement allowed their patrons to cross Parcel 12 to go out to the light at Riva Road. When Riva, LLC became interested in purchasing Parcel 17, Ms. Farrell informed Riva, LLC that they would have access from Parcel 17 to the light, or egress only. Ms. Farrell reiterated she knew Mr. Lalumiere was not interested in providing any easement at all, let alone allowing for more than the agreed upon one-way access granted to Village,

LLC. The Court finds Ms. Farrell's testimony regarding her understanding of the intent behind the grant of easement to be credible and finds it persuasive that she advised the former owner and the eventual purchaser of Parcel 17 of her understanding. This corroborates testimonial evidence of Mr. Lalumiere's intent as Sole Member of Joe the Grinder, LLC.

- 8) Diego Escobosa, M.D., managing member of Village, LLC, the prior owner of Parcel 17;
 - a. Dr. Diego Escobosa testified that on behalf of Village, LLC, he was surprised and ecstatic that Mr. Lalumiere was willing to allow an easement for Parcel 17 patrons to cross Parcel 12 to get to the light. Dr. Escobosa testified that he understood that Mr. Lalumiere was granting a one-way easement and that the easement he signed on behalf of Village, LLC was consistent with this understanding. The Court finds Dr. Escobosa's testimony credible and corroborative as it regards the ambiguity to be resolved by the Court in this matter.
- 9) Vernon Husted, President and founder of Husted Landscape Architecture, Joe the Grinder, LLC's retained site designer and project manager;
 - a. Mr. Vernon Husted testified that after the meeting with the County in 2015, he based the site plan on the County's intentions that there be an easement to connect Parcel 17 to Riva Road and that the easement provide for interconnectivity among the parcels. Mr. Husted later testified that the proposed modification of the easement would be acceptable to the County based on the traffic requirements of the development. Mr. Husted testified that the easement as written was intended to be a one-way easement. The Court finds Mr. Husted's testimony credible, corroborative, and the Court is persuaded that the site plans, incorporated into the grant of easement, were designed to include a one-way easement consistent with the intentions of the parties and acceptable under the requirements of County officials.
- 10) Terry Schuman, Vice President and Professional Engineer for Bay Engineering, Inc, whose company prepared the site plan attached to the Declaration;
 - a. Mr. Terry Schuman testified that not only did he create the easement plans at Mr. Husted's request in regard to the development of Parcel 12, but he also met with Ms. Wollup and did the site planning for Parcel 17 upon the purchase of Parcel 17 by Riva, LLC. Mr. Schuman testified that he expressed to Ms. Wollup

the easement that had been granted to the prior Parcel 17 owners by Mr. Lalumiere and that it was a one-way easement. The Court finds Mr. Schuman's testimony credible and specifically that it corroborates the testimony of Joe the Grinder, LLC's other witnesses on the meaning of the grant of easement.

- 11) Kenneth Schmid, traffic consultant and founder of Traffic Concepts, Inc.
 - a. Mr. Kenneth Schmid testified that the biggest problem in the area where Parcels 12 and 17 are located is with left runs onto Riva Road, coming out of the properties. Mr. Schmid testified that a cross easement was proposed as a solution, or an access easement to the light that would eliminate left turns out of Parcel 17 per the Parole Urban Design Concept Plan. Plaintiff's Exhibit 10. Mr. Schmid testified that the mitigation proposal he prepared for the County included the discussed access easement for Parcel 17 to, not from, the Traffic Signal, which would provide connectivity. Mr. Schmid testified the County's response included, in regard to the drive aisle widths, a private access easement for access to the Traffic Signal and for shared parking, meaning a one-way easement with the one-way direction already in existence so that it was consistent. Mr. Schmid testified that the easement could not be considered a two-way easement as there was no easement area to enter from Riva Road onto Parcel 12 to get to Parcel 17 in the 2015 easement agreement. Mr. Schmid later testified that the site has changed since 2015 and that where the easement is now, at the back of the property, is where it should have been from the beginning. Mr. Schmid further testified that the easement in the back is what the Parole Master Plan calls for, a connection across the back of the parcels and that this allows for cross traffic to completely avoid the Dunkin' Donuts operation and thus is the most efficient way to get people out to the light, in a one-way direction, without impacting the internal operation of Parcel 12. The Court finds Mr. Schmid to be a credible witness and further that the easement was and is a one-way easement. Not only was it intended to be by the grantor, Mr. Lalumiere, but the County agreed and ratified it to be one in its approval of the plans that were consistent with the already existing counterclockwise traffic pattern.

DISCUSSION

As the Court of Special Appeals explained in its opinion of this case prior to remand, "[i]n construing an easement, we apply principles of contractual

interpretation.” *Joe the Grinder, LLC*, 2021 WL 3052915 at *16. The primary goal for the construction of a grant of an easement “is that a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible.” *Miller v. Kirkpatrick*, 377 Md. 335, 351 (2003). “[T]he 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). “The language of the agreement itself is of foremost importance.” *Maryland Agricultural Land Preservation Foundation v. Claggett*, 412 Md. 45, 62 (2009). If the language of the easement is “plain and unambiguous,” a court must presume that the parties intended what they expressed in the language. *Id.* at 63 (quoting *White v. Pines Community Improvement Association, Inc.*, 403 Md. 13, 32 (2008)).

“Contractual language is ambiguous where a reasonably prudent person could ascribe more than one reasonable meaning to it.” *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 394 (2019); see also *Calomiris v. Woods*, 353 Md. 425, 436 (1999). The Court of Special Appeals directed that there was ambiguity in the Declaration when considered with the incorporated attachments, concerning whether it provided “for both To the Light Access and From the Light Access across Parcel 12 or only To the Light Access.” *Joe the Grinder, LLC*, 2021 WL 3052915 at *18. In other words, there is ambiguity concerning the “ingress and egress” language in the “access easement” going through Joe the Grinder LLC’s property allowing Riva, LLC to drive to and from Parcel 17, to access the Traffic Signal. “Where a court determines contractual language to be ambiguous, the narrow bounds of the objective approach give way, and the court is entitled to consider extrinsic evidence or parol evidence to ascertain the parties’ intentions.” *Credible Behavioral Health*, 466 Md. at 394.

Black’s Law Dictionary defines “extrinsic evidence” as “evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or circumstances

surrounding the agreement.” See, Evidence, Black's Law Dictionary (11th ed. 2019). When language of a contract, including an easement agreement, is ambiguous, the court should consider, among other things, “the facts and circumstances of the parties at the time of execution.” *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 418 (2014). Ambiguous language within a contract allows a court to consider several extrinsic factors such as “negotiations of the parties, the circumstances surrounding the execution of the contract, the parties’ own construction of the contract and the conduct of the parties.” *Mascaro v. Snelling & Snelling of Baltimore, Inc.*, 250 Md. 215, 229 (1968). The Court’s task “is not to discern the actual mindset of the parties at the time of the agreement, but rather, to ‘determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.’” *Huggins*, 220 Md. App. at 417 (quoting *Dumbarton Improvement Ass’n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 52 (2013)).

At trial, Joe the Grinder, LLC, emphasized the intentions of the two signatories of the easement agreement—Joe the Grinder, LLC and Village, LLC—concerning the provisions of the agreement. However, this court cannot ignore the importance of the County’s involvement in the easement agreement. The County exercised its authority to issue permits on condition that the applicant provide an approved easement agreement in accordance with its conditions and in furtherance of the goals of the development plan in effect for the geographic area. Because the requirements enumerated in the Declaration did not arise in the usual course of negotiated terms in a contract between parties, but instead as the result of the imposition of conditions by the permitting authority, the role of the County is key evidence to a determination in this action. Therefore, when examining the evidence of “circumstances surrounding the execution of the contract,” this court must consider the County’s role as well as that of Joe the Grinder, LLC and Village, LLC to determine what a “reasonable person in the position of the parties would have meant” at the time this agreement was made.

FINDINGS OF FACT

1. Prior to Joe the Grinder, LLC purchasing the property, Joe the Grinder, LLC investigated whether the old PNC bank, which existed on the site and which already had a counterclockwise, one-way traffic configuration and a drive-thru, could be redeveloped for use as a Dunkin' Donuts operation.

2. A counterclockwise traffic pattern and existing drive-thru are highly desirable characteristics for a Dunkin' Donuts drive-thru operation.

3. The Parole Urban Design Concept Plan states, in part that: "The plan proposes a road addition to the rear of the uses fronting on Riva Road. This roadway is necessary to distribute internally oriented traffic without first gaining access to Riva Road. The proposed scheme would also enable traffic seeking access to Riva Road to exit at one of several signalized intersections." Plaintiff's Ex. 10 at 113.

4. The Traffic Signal at Riva Road and Admiral Cochrane Drive is one such signalized intersection.

5. The 2015 Declaration dated October 8, 2015, which is recorded in the Land Records of Anne Arundel County in Book 28898 page 328 states that "the County has required the Declarant [Joe the Grinder, LLC] to establish a use in common access easement over and through Parcel 12 for vehicular traffic between Parcel 17 and the Traffic Signal at the intersection of Riva Road and Admiral Cochrane Drive." Plaintiff's Ex. 1 at 1.

6. The 2015 Declaration further states that it "creates and establishes for the benefit of Parcel 17, [Village, LLC], its successors . . . [A] non-exclusive, perpetual easement as and for a right of way for vehicular ingress and egress (the "Easement") on, over, across and through that portion of Parcel 12 described on the attached Exhibit A and depicted on the attached Exhibit B." *Id.*

7. The 2015 Declaration then states that “Declarant reserves and maintains the right to relocate the Easement . . . and the Easement Area . . . to a different location on Parcel 12, provided the Relocated Easement shall continue to provide a use in common right of way for vehicular ingress and egress for the benefit of Parcel 17 over Parcel 12 to Traffic Signal.” *Id.*

8. As part of the first trial that occurred in February 2020, the Court entered a Declaratory Judgment and Order dated July 28, 2020, in favor of Riva, LLC, including a plat showing a new easement area at the mid-point of where Parcels 12 and 17 abut. Plaintiff’s Ex. 32. That Declaratory Judgment Order was reversed by the Opinion. Defendant’s Ex. A at 22.

9. The easement area Mr. Braun drew in red ink on Defendant’s Ex. J is consistent with the location depicted on Exhibit B to the 2015 Declaration and Defendant’s Exhibit Z, which Mr. Husted submitted to the County in May 2015.

10. Under Maryland law, “if the contract is ambiguous, the court must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract.” *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 167–68 (2001) (quoting *County Comm’rs of Charles County v. St. Charles Assocs. Ltd. P’ship*, 366 Md. 426, 445 (2001)). This is equally true in easement cases. See, e.g., *Miller v. Kirkpatrick*, 377 Md. 335, 251 (2003) (quoting *Buckler v. Davis Sand & Gravel Corp.*, 221 Md. 532, 538 (1960)) (“[T]he primary rule for the construction of contracts generally, – and the rule is applicable to the construction of a grant of an easement – is that a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible.”).

11. Additionally, extrinsic evidence can include “the context of [a] transaction or the custom of the trade in a determination of ambiguity.” *Calomiris v. Woods*, 353 Md. 425, 436 (1999). Here, the context of the transaction, by which Anne Arundel County requested a use in common easement to satisfy the

Parole Urban Design Concept Plan, which contemplates inter-parcel connectivity to “enable traffic seeking access to Riva Road to exit at one of the several signalized intersections” supports a one-way to the signal access easement which would enable traffic from Parcel 17 to exit at the Traffic Signal at Riva Road and Admiral Cochrane Drive. Plaintiff’s Ex. 10 at 113.

12. Under Maryland law, 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.” *City of Bowe v. MIE Props., Inc.* 398 Md. 657, 680 (2007).

13. Here, after reviewing the entire grant of easement and after considering reliable evidence to demonstrate intent and resolve ambiguity, the Court finds that the intention of the parties to the 2015 Declaration supports a one-way to the light easement. Moreover, the Court finds that a “to-and-from-the-light” as argued by Riva, LLC easement would defeat, rather than effectuate the intention of Joe the Grinder, LLC and Village, LLC. The Court finds that a bidirectional easement, such as that urged upon it by Riva, LLC would frustrate Joe the Grinder, LLC’s ability to safely operate its business on the burdened parcel.

14. The Court finds that the extrinsic evidence presented at trial establishes that the 2015 Declaration should be read as a “to the light” one-way easement and should not be construed as a “to and from the light easement.”

15. The fact that Exhibit B to the 2015 Declaration depicts a one-way easement to the light is also important in settling any ambiguity in the 2015 Declaration. *See, e.g., Emerald Hills Homeowners’ Ass’n v. Peters*, 446 Md. 155, 170 (2016) (“It is well-settled that reference to a plat in a deed incorporates that plat as part of the deed.”).

16. The Court finds that the easement area should be located at the easement area depicted on Exhibit B to the Second Amended Declaration. Plaintiff's Ex. 9.

17. The Court finds that the current easement area being utilized by Riva, LLC must be terminated, closed off, blockaded, and repaired to its original contours all of which shall be paid by Riva, LLC as requested in Joe the Grinder, LLC's Amended Counterclaim.

18. To the extent Riva, LLC seeks to gain access through Parcel 12 to the Traffic Signal, pursuant to the Second Amended Declaration, Riva, LLC shall pay the installation and cost of any such improvements.

19. As the Second Amended Declaration (Plaintiff's Ex. 9) is already recorded in the land records of Anne Arundel County, the Court finds that no new site plan recordation is required.

20. A trespass occurs under Maryland law when there is "(1) an interference with a possessory interest in [one's] property; (2) through the [opposing party's] physical act or force against that property; (3) which was executed without [one's] consent." *United Food & Com. Workers Intern. Union v. Wal-Mart Stores, Inc.*, 228 Md. App. 203, 234 (2016), aff'd 453 Md. 482 (2017).

21. The Court finds that Riva, LLC trespassed on Joe the Grinder, LLC's property in January and April of 2020 when it entered the property without Joe the Grinder, LLC's permission or consent and altered the property of Joe the Grinder, LLC.

22. The Court directs that the parties prepare and submit a stipulation as to the amount due and owing to Joe the Grinder, LLC resulting from the trespass within 20 days of the docketing of the accompanying Order. To the extent no stipulation can be reached, the Court will schedule further proceedings to determine the damages owed to Joe the Grinder, LLC for this trespass.

23. The Court finds that Joe the Grinder, LLC is the prevailing party and is entitled to an award of attorney's fees in accordance with Maryland Rules 2-705 and as provided for in the 2015 Declaration which states that "the prevailing party in any such litigation [concerning the 2015 Declaration] shall be entitled to . . . reasonable attorney's fees of any such action." Plaintiff's Ex. 1.

24. The Court directs that the parties prepare and submit a stipulation as to the amount due and owing to Joe the Grinder, LLC relative to attorney's fees within 20 days of the docketing of the accompanying Order; to the extent no stipulation can be reached, the Court will schedule further proceedings to determine the amount owed.

25. This Declaratory Judgment and Order conforms to the instructions provided to the trial Court by the Court of Special Appeals in the Opinion and satisfies MD. CODE ANN. CTS. AND JUD. PROC. ART. §3-411.

A handwritten signature in black ink, appearing to read "Robert J. Thompson", written over a horizontal line.

Robert J. Thompson,
Judge, Circuit Court for Anne Arundel
County