UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2233

September Term, 2013

VICKY AND LARRY OREM

v.

HANOVER OFFICE PARK COUNCIL OF UNIT OWNERS

Graeff,
Hotten,
Arthur,

JJ.

Opinion by Hotten, J.

Filed: December 16, 2014

This appeal arises from a dispute between a condominium association and the owners of a unit, regarding rights of access to a stairwell and roof hatch adjacent to the unit. The owners brought a declaratory action against the condominium association, seeking a declaration that they had the right to lock the front stairwell door that led to their unit. Following consideration of cross motions for summary judgment, the circuit court granted judgment in favor of the condominium association. The unit owners appealed, presenting three questions for our review:

> I. Did the [c]ircuit [c]ourt err in finding that the Condominium Documents create an easement for ingress and egress through the Limited Common Element?
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> II. Did the [c]ircuit [c]ourt err in ordering that [a]ppellants cease from restricting [a]ppellee's access through the Limited Common Element thereby denying [a]ppellants' property rights in the Limited Common Element?
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> III. Did the [c]ircuit [c]ourt err in awarding damages in the nature of attorney's fees for a breach of contract under Declaration Paragraph 12, without a finding that the legal action was authorized by resolution of the Board of Directors and that [a]ppellants were in violation of the Condominium Documents?

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

FACTUAL AND PROCEDURAL HISTORY

Underlying Dispute

Appellants, Vicky and Larry Orem, are owners of two adjoining office condominiums ("the Unit") located in a condo complex known as Hanover Office Park and managed by appellee, Hanover Office Park Council of Unit Owners. This matter has been

before this Court previously, and in an unreported opinion,[1] we provided a succinct explanation of the underlying facts, which we quote:

> Units C and D are on the second floor of a two story-building housing 24 condominium units, at least 12 of which are occupied. The building is divided into three sections, with each section having its own entrance door. Units C and D are in the center section and are the only units on the second floor of that section.[] There is a first-floor main entrance door to the center section with a keyed lock. It opens into a first floor lobby with a stairwell to the second floor. At the top of the stairwell is a small second floor lobby. The doors to units C and D are on either side of this second floor lobby. Also located in the second floor lobby, near the door to unit C, is a hatch in the ceiling leading to the roof of the building. When the hatch is open, an attached ladder descends to permit access to the roof. The HVAC units for all of the 24 condominium units in the entire building are on the roof. The roof hatch is the only means of interior access to the roof.
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> The Declarations and Amendments for the Condominium state that the first floor entrance door, stairwell, stairs, and second floor lobby all are "Limited Common Elements." The Limited Common Elements are "reserved for the exclusive use of the . . . owners of the condominium unit or units to which they are adjacent or serve." The roof, in contrast, is defined as a "General Common Element" and is "owned in common by all of the Unit Owners." The Declarations also establish easements in common for all unit owners for "ingress and egress" for "use and enjoyment of[] all General Common Elements."
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> The instant dispute arose around December of 2009 after Vicky Orem discovered that the management company for the Condominium, Site Realty Group ("SRG"), had given a key to the front entrance door to her section of the building to employees of a medical office leasing a unit in another section of the same building. The medical office's HVAC unit was located on the roof and it had requested a key to ensure access to the roof for repairs. Vicky Orem requested that SRG rekey her locks and refrain from providing keys to any other unit owners or tenants. In April of 2010, after the Orems and SRG were unable to reach a mutually agreeable resolution of their dispute, Orem resorted to installing a combination lock of the front entrance door to her section of the building which SRG later removed.

[1] *Vicky Orem, et vir v. Hanover Office Park Council of Unit Owners*, No. 1035, Sept. Term 2011, Filed January 25, 2013.

Following appellee's removal of appellants' lock, the ensuing litigation commenced.

Procedural History

On May 3, 2010, appellants filed a petition for a temporary restraining order, seeking to enjoin appellee from changing the locks on the first floor entrance door. Following a hearing, the petition was denied. Appellants unsuccessfully moved for reconsideration of that order. Thereafter, in October 2010, appellants filed an action seeking injunctive relief and a declaratory judgment which would afford appellants the right to lock the door and refuse to provide keys to appellee or other unit owners, since the stairwell and second floor lobby were Limited Common Elements ("LCEs"). Appellee answered and filed a counter-complaint also seeking a declaratory judgment and injunctive relief. The Hanover Office Park Condominium Declaration ("the Declaration") Paragraph 5 defined General Common Elements ("GCEs") and LCEs as follows:

> (b) General Common Elements. All areas and facilities of the Condominium that are not Units as hereinabove defined or Limited Common Elements as hereinbelow defined, comprise the General Common Elements. [General Common Elements include, but are not limited to the following: (i) the Land; (ii) the roofs, foundations, slabs, columns; pipes, watermains, wires, conduits and air ducts, serving more than one unit; public utility lines] and meters not owned by the utility suppliers; and (iii) parking areas, curbs, driveways, walkways, paths, trees, shrubbery, lawn areas, sidewalks, exterior lighting and devices of common use existing in the [b]uildings Or on the Property rationally of common use or necessary or convenient to the existence, upkeep and use and safety of the Buildings and other Condominium property.
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> (c) Limited Common Elements. The limited common elements of the Condominium are those common elements designated as such on the Condominium Plat and such other common elements as are agreed upon by all of the unit owners to be reserved for the exclusive use of one or more, but less than all of the unit owners. Any area shown on the Condominium Plat such as entrance foyers or stairwells or the like, and designated on the Condominium Plat as a limited common element, is reserved for the

> exclusive use of the owner or owners of the condominium unit or units to which they are adjacent or serve, or to which they are declared to be appurtenant by appropriate designation on the Condominium Plat.

Appellants asserted that because LCEs are within the "exclusive use" of the owners of the units they serve, they were free to restrict others from entering the stairwell and accessing the second floor lobby. They conceded that subject to Paragraph 10 of the Declaration, an easement existed granting access to GCEs.

> Each Unit owner shall have an easement in common with the Unit Owners of all other Units for ingress and egress through, and use and enjoyment of, all General Common Elements by persons lawfully using or entitled to the same. Each Unit shall be subject to an easement for ingress and egress through and use of enjoyment of, all General Common Elements by persons lawfully using or entitled to the same.

However, appellants maintained that although the roof hatch was a GCE, its access to it was through a LCE and not a unit. Accordingly, the easement did not apply.

Appellee filed a counter-complaint seeking damages and injunctive relief. It also sought attorney's fees pursuant to Article XII of the Hanover Office Park Condominium Bylaws which provided:

> (c) Costs and Attorneys' Fees. In any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorney's fees as may be determined by the court.

During oral arguments on the cross motions filed by the parties, appellee raised the issue of its request for attorney's fees and indicated that if the court granted summary judgment in its favor, it would file a motion for attorney's fees. In June 2011, the circuit court issued an order denying appellants' motion for summary judgment and granting appellee's. It found that the Declaration created an easement of ingress and egress through the LCEs to

allow access to the roof. The court ordered that appellants remove the locks to the front door and enjoined appellants from restricting access to the roof in the future.

In July 2011, appellants noted an appeal, and appellee filed its motion for attorney's fees. The circuit court stayed determination on the motion until appellants' appeal was decided by this Court. Thereafter, appellee filed a motion to dismiss the appeal, arguing that the June 2011 order granting its summary judgment was not a final order.

On January 25, 2013, in an unreported opinion, this Court dismissed appellants' appeal and remanded the case back to the circuit court to resolve the issue of attorney's fees. During a December 2013 hearing on the motion for attorney's fees, appellants did not challenge the reasonableness of the fees, but focused on whether the Declaration and Bylaws authorized the recovery of fees based on the circumstances of the litigation. The court granted appellee's motion, awarding it $60,801.50 plus costs.

Appellants noted a timely appeal to this Court, challenging the December 2013 grant of summary judgment and the award of attorney's fees.

STANDARD OF REVIEW

The interpretation of a contract is subject to *de novo* review. *See Clancy v. King*, 405 Md. 541, 556 (2008); *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004); *JBG/Twinbrook Metro Ltd. v. Wheeler*, 346 Md. 601, 625 (1997).

This court's review of a declaratory judgment consists of a review of both the law and the evidence. *See Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cnty.*, 437 Md. 115, 135 (2014). "The trial court's evaluation of the evidence is reviewed under a clearly erroneous standard. *Id*. A court's decision to grant or deny declaratory relief is generally assessed

under an 'abuse of discretion' standard." *Id*. (citing *Converge Services Group, LLC v. Curran*, 383 Md. 462, 477 (2004)).

We review a circuit court's grant of summary judgment *de novo*. *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 506 (2005). "In reviewing the grant of a motion for summary judgment, appellate courts focus on whether the [circuit] court's grant of the motion was legally correct." *Laing v. Volkswagen of Am., Inc*., 180 Md. App. 136, 152-53 (2008) (citations omitted). "The parameter for appellate review is determining whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial. . . ." *Id.* at 153. "Additionally, if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party." *Id*.

The grant or denial of a request for attorney's fees rests within the sound discretion of the trial court. *See Bright v. Lake Linganore Ass'n, Inc*., 104 Md. App. 394, 434 (1995). We will not reverse a trial court's decision to award attorney's fees unless the court abused its discretion. *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 374 (2011) ("The determination of the award of attorneys' fees 'lies within the sound discretion of the trial judge and will not be overturned unless clearly erroneous.'" (quoting *Dent v. Simmons*, 61 Md. App. 122, 127 (1985)).

DISCUSSION

I. Did the Declaration create an easement for ingress and egress through LCEs?

Appellants argue that the court erred in finding that the Declaration granted an easement for ingress and egress through LCEs. They assert that paragraph 10 of the Declaration only provides for an easement for access to GCEs through units. Appellee responds that the drafters of the Declaration intended the roof be accessed by anyone with lawful permission to do so.

There is no dispute that an express easement exists relative to GCEs. However, the question of whether an easement was applicable to LCEs is another matter. We have explained:

> An easement is "a non-possessory interest in the real property of another that can arise either by express grant or implication." *Clickner v. Magothy River Ass'n*, 424 Md. 253, 268 (2012) (citing *Boucher*, 301 Md. at 688, 484 A.2d 630). *See also Condry v. Laurie*, 184 Md. 317, 320, 41 A.2d 66 (1945). . . . "If land is burdened by an easement, the owner of the servient estate is not divested of ownership of the property." *Gregg Neck Yacht Club, Inc.*, 137 Md. App. at 754, 769 A.2d 982 (citing *Greenwalt v. McCardell*, 178 Md. 132, 136, 12 A.2d 522 (1940)). "Rather, the easement area remains the property of the owner of the servient estate." *Id*. (citing *Greenwalt*, 178 Md. at 136, 12 A.2d 522).

Arthur E. Selnick Associates, Inc. v. Howard County, 206 Md. App. 667, 694-95 (2012). An express easement by reservation "often arises when a property owner conveys a portion of his property to another, which would otherwise render the retained part inaccessible, so the reservation permits a right of way." *Rogers v. P-M Hunter's Ridge, LLC,* 407 Md. 712,

729-30 (2009).[2] The owner of the servient land owns the property, and may use it in any way which does not interfere with the easement. *Id*. *See also Greenwalt v. McCardell*, 178 Md. 132, 136 (1940). In *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374 (2006), the Court of Appeals interpreted an express easement in a dispute between a condominium owner and one of the unit owners. It explained that when interpreting an express easement, the rules of contract interpretation apply. *Id*. at 392.

> A court construing an agreement under this test must first 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. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant. Consequently, the clear and unambiguous language of an agreement will not give [way] to what the parties thought that the agreement meant or intended it to mean. *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261, 492 A.2d 1306, 1310 (1985)

Id. at 392-93.

In the instant case, Paragraph 10 of the Declaration provides in relevant part:

> Each Unit owner shall have an easement in common with the Unit Owners of all other Units for ingress and egress through, and use and enjoyment of, all General Common Elements by persons lawfully using or entitled to the same. Each Unit shall be subject to an easement for ingress and egress through and use of enjoyment of, all General Common Elements by persons lawfully using or entitled to the same.

Appellants argue that this easement does not apply to LCEs, which include the stairways and lobbies which could provide access to the roof hatch, since the easement only refers to

[2] "The general rule that the terms 'right-of-way' and easement' are synonymous[.]" *Chevy Chase Land Co. v. United States*, 355 Md. 110, 126 (1999).

access to GCEs through units. They assert that it would be contradictory to read Paragraph 10 as permitting access through LCE's because the drafters could have included the term LCE if they intended them to apply. Applying the rules of contract interpretation, and based on the language of the agreement itself, the easement does not include a right to access through LCEs. It states that there is an easement of ingress and egress through GCEs, but does not mention LCEs. We conclude that the drafters of the Declaration did not expressly include an easement to grant access to LCEs. Accordingly, the circuit court was not legally correct in its finding that the easement applied to LCEs.

II. Did enjoining appellants from restricting access to the LCE deny them property rights?

Since we have determined that there was not a grant of an easement through the LCE, it follows that appellants did not violate the Declarations as determined by the circuit court. We explain.

While easements by reservation frequently arise in the context of right of ways and vehicular traffic, the principles are applicable to express easements generally, including within the context of condominium agreements. In *Miller v. Kirkpatrick*, 377 Md. 335 (2003), the Court of Appeals reviewed a case in which the owners of a dominant estate brought action against the owners of the servient estate after they obstructed a right of way. In *Miller*, the original owner of a large farm divided the land into two parcels, and included in the plat a twenty foot right of way for the benefit of the smaller parcel for access to and from the public road. *Id*. at 342. The Kirkpatrick family purchased the larger parcel and the Miller family purchased the smaller parcel. For nearly 30 years, the parties used the

easement in peace, however, after the Miller family severed a business relationship with the Kirkpatrick family, the relationship quickly soured. *Id*. The Kirkpatrick family began to threaten the Millers with physical harm if they used the right of way, including at least one instance of Mr. Kirkpatrick pointing a shotgun at a member of the Miller family. Eventually the Kirkpatricks erected two barbed wire fences along the road. *Id*. at 343. The Millers filed suit seeking removal of the fences and damages. *Id*. A jury found that there was an easement which granted unrestricted use of the right of way, but the court refused to award damages or order the Kirkpatricks to remove the fences, claiming there was not substantial evidence that the fence interfered with the use of the right of way. *Id*. at 344. The Millers appealed to this Court, and in an unreported opinion we affirmed. *Id*. at 347.

After granting *certiorari*, the Court of Appeals reviewed the case law on express easements by reservation, explaining:

> In every instance of a private easement-that is, an easement not enjoyed by the public-there exists the characteristic feature of two distinct tenements-one dominant and the other servient. Where a right of way is established by reservation, the land remains the property of the owner of the servient estate, and he is entitled to use it for any purpose that does not interfere with the easement. The generally accepted rule for an express easement is that [because] an easement is a restriction upon the rights of the servient property owner, no alteration can be made by the owner of the dominant estate which would increase such restriction except by mutual consent of both parties.
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> * * *
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> The subservient tenement may not obstruct the use of the easement. We said in *Maddran v. Mullendore*, 206 Md. 291, 297, 111 A.2d 608, 610 (1955), that "it is axiomatic that the owner of a servient tenement cannot close or obstruct the easement against those who are entitled to its use in such manner as to prevent or interfere with their reasonable enjoyment."

Id. at 349-50 (internal citations and quotations omitted). Rejecting the trial court's findings, and reversing our ruling, the Court observed that the trial court erred in considering the reasonableness of the interference because any interference "that obstructs an express easement, created by reservation, for ingress and egress is unlawful as a matter of law and should be ordered removed." *Id*. at 354. The Court concluded that the Kirkpatricks could not "unilaterally modify or reduce the right-of-way in a manner or extent that is inconsistent with the intention of the parties as gleamed from the language of the deed granting the right-of-way." *Id.* at 350.

Appellants' ownership rights were infringed by appellee's assertion of an easement in the stairwell. Since there was no easement of ingress and egress through an LCE, then appellants were free to exercise reasonable control over that area without interference from appellee. An owner of the servient land may use their land, in this case the stairwell and the lobby, in any way that does not interfere with its use by others with the right to use the easement. Unlike the circumstances in *Miller*, appellee did not possess an easement over the area it claimed. Accordingly, appellants could reasonably restrict appellee's access. Therefore, the court erred in granting appellee's request for injunctive relief.

III. Attorney's Fees

Finally, appellants maintain that the trial court erred in granting appellee attorney's fees. Appellee responds that the court determined that appellants' locking of the door and prevention of access to the roof justified a finding that appellants had violated the Declaration. As explained previously, since we have already concluded that appellants did

not violate the Declarations, the court's grant of attorney fees, which was predicated on an alleged violation of the Declaration, was erroneous.

"Contract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland. *See, e.g.*, *Atlantic v. Ulico*, 380 Md. 285, 316 (2004)." *Myers v. Kayhoe*, 391 Md. 188 (2006). Both the Declaration and the Bylaws provide that attorney's fees may be recovered by the prevailing party in the event of a lawsuit. Specifically, Paragraph 12 of the Declaration provides:

> Each Unit Owner shall comply with the provisions of this Declaration, the Bylaws, the Rules and Regulations adopted by the Board of Directors and the Council of Unit Owners or its representatives, as lawfully amended from time to time, and failure to comply with any such provision, decision, or resolution shall be grounds for an action to recover sums due, for damages or for injunctive relief. All such actions at law or in equity shall be authorized by resolution of the Board of Directors, and the Condominium shall be entitled to recover all reasonable costs and expenses of such actions, including attorney's fees.

Following a hearing on the matter, the circuit court granted appellee attorney's fees in the amount of $66,801.50.

This Court can only reverse a grant of attorney's fees if the trial court abused its discretion.

> There is an abuse of discretion where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles. An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic. Questions within the discretion of the trial court are much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred. In sum, to be

> reversed the decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. *Falik v. Hornage*, 413 Md. 163, 182-83, 991 A.2d 1234, 1246 (2010) (quoting *Wilson v. Crane*, 385 Md. 185, 198-99, 867 A.2d 1077, 1084 (2005) (internal quotations omitted)).

Kearney v. Berger, 416 Md. 628, 663 (2010).

The Declaration specifies that fees may only be recovered in lawsuits seeking damages or injunctive relief as a result of an owner's violation of the Declaration or Bylaws. Since we have previously determined that appellant's did not violate the Declarations under the circumstances presented, there is no justification for the award of attorney's fees. Accordingly, we shall reverse the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED. COSTS TO BE PAID BY APPELLEE.