In the Circuit Court for Anne Arundel County

Case No. 02-C-13-184294

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1747

September Term, 2016

KAUFMANN PARK II, LLC

v.

KCC PROPERTIES, LLC

Wright,
Kehoe,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 23, 2018

In 2013, Kaufmann Park II, LLC ("KPII"), appellant, filed, in the Circuit Court for Anne Arundel County, a Complaint seeking declaratory judgment and injunctive relief, arising from KCC Properties, LLC's ("KCC"), appellee's, alleged breach of an Easement Agreement. The circuit court, submitting one issue to a jury and conducted a two-day hearing, entered a Preliminary Injunction in favor of KCC. KPII timely appealed and presents several questions for our review which we have paraphrased and condensed:[1]

> 1. Whether the circuit court erred by reading the 2003 Easement Agreement and the 2002 Agreement of Sale together?
>
> 2. Whether the circuit court erred in issuing a "preliminary injunction" rendering KCC's use of the parking lots exclusive?
>
> 3. Whether the circuit court erred in failing to enforce a release from the Easement Agreement?

[1] KPII asked the following questions:

> 1. Whether the Circuit Court erred by failing to interpret and apply the unambiguous terms of the parties' 2003 Easement Agreement as a matter of law without regard to the 2002 Agreement of Sale, which by the doctrine of merger by deed was merged into the Easement Agreement and, thereupon, became separately unenforceable?
>
> 2. Whether the Circuit Court erred by issuing a nominal "preliminary injunction," without finding facts and making conclusions of law in sufficient detail to permit appellate review, including any facts or law that permit the Circuit Court to specifically enforce the non-exclusive Easement Agreement by imposing on KPII an extra-contractual burden – nowhere referenced in or supported by the terms of the Easement Agreement itself – to reserve 39 "additional" parking spaces on KPII's Lot 1 for the exclusive use of KCC, its invitees, employees, and customers?
>
> 3. Whether the Circuit Court erred in failing to enforce the broad release of the Easement Agreement that KCC issued to KPII in 2007?

For reasons to follow, we answer KPII's questions in the negative, and affirm in part and vacate in part the judgment of the circuit court.

BACKGROUND

At issue in this case is a property dispute concerning an easement. In December 2002, Kauffman Enterprises, a Maryland general partnership, was the owner of Kaufmann's Restaurant located at 329 Gambrills Road (the "Restaurant Parcel"), and also owned two parcels abutting the restaurant on either side, located at 331 Gambrills Road ("Lot 1") and 325 Gambrills Road ("Parcel 2").

On December 21, 2002, Kaufmann Enterprises entered into an Agreement of Sale with Gregory Casten for the sale and purchase of the Restaurant Parcel. The Agreement of Sale included express warranties to induce Casten into entering the sale. At an unknown time, Casten assigned the Agreement of Sale to KCC. The Agreement of Sale provided the following:

> 14. Title Provisions: Encroachments
>
> It is understood and agreed by the parties that the premises shall not be in conformity with this agreement unless:
>
> a. All buildings, structures and improvements, including, but not limited to, any driveways, garages, cesspools and leaching fields, and all means of access to the premises, shall be located completely within the boundary lines of the said premises and shall not encroach upon or under the property of any other person or entity except 1 that portion of the parking area, water wells and drain fields servicing the current facility are located on the adjacent property (the Kaufmann/Edwards Property, Lot 2, Parcel 75, T.M. 30); and
>
> b. No building, structure or improvement of any kind belonging to any other person or entity, shall encroach upon or under the said premises.

> c. The deed to this property upon settlement and conveyance by SELLER to BUYER is together with an easement for the existing parking area located on the "Kaufmann/Edwards property" presently used by the restaurant, subject to the right of the SELLER to reconfigure that parking as required for development of the adjacent property (the Kaufmann/Edwards Property, Lot 2, Parcel 75, T.M. 30). Seller may reconfigure the existing parking used for the restaurant so as to facilitate the development of this parcel. SELLER warrants that the same number of parking spaces will be provided after any such reconfiguration as exist at the time of execution of the Agreement and that access to the parking lot from the street will not be detrimentally affected by the reconfiguration. The parties will execute a shared parking agreement prepared by SELLER in the form attached hereto as Exhibit B.
>
> d. The deed shall also be together with an easement for use and maintenance of the septic system and water wells located on adjacent property at no charge. The water system for the restaurant and the office complex on the adjacent parcel to the north are interconnected. The owners of the restaurant parcel and the adjacent parcels on the north and south and the Buyer will have easements for the access and maintenance of these facilities. Seller will cooperate in any upgrade of the septic or water systems, at no cost to Seller, for as long as Sellers own the adjacent property.

On February 28, 2003, KCC and Kaufmann Enterprises conveyed an easement unto the Restaurant Parcel and recorded the Easement Agreement. The Easement Agreement provided, in relevant part:

> 1. Kaufmann hereby grants to KCC, its successors and assigns, and for use by its customers, employees, and invitees, a permanent easement for access and parking over that area identified as a "Parking Easement" on Exhibits A and B attached hereto. KCC acknowledges that portions of the "Parking Easement" area described on Exhibit A have been improved by Kaufmann for use as an "overflow" parking area, and that the parking surface improvements were constructed as temporary and have not been designed or approved in accordance with County Regulations or by County administrative agencies.

* * *

> 2. The grant of such easements by Kaufmann referred to in Paragraphs 1 and 2 above, is subject however to the reservation of the right by Kaufmann in the course of the development of Lot 1; provided however, that the use of the parking area and the septic dry well structures by KCC for the benefit of the Restaurant Parcel shall not be interrupted or impaired unless and until comparable facilities are constructed and in service in an alternate location on Lot 1[.][sic]

The Easement Agreement also provided that KCC granted Kaufmann a permanent easement for access and parking on portions of the Restaurant Parcel that were improved or available for access and parking by KCC. The parties contracted that the Easement Agreement would run and bind with the land, and that the agreement was completely integrated.

On March 3, 2003, Kaufmann Enterprises conveyed the Restaurant Parcel to KCC by deed which was recorded. Following the sale, Kaufmann Enterprises retained ownership of Lot 1 and Parcel 2. On February 22, 2004, David Kaufmann formed KPII. A week later, on February 27, 2004, Kaufmann Enterprises, David Kaufmann, and William Kaufmann[2] transferred ownership of Lot 1 and Parcel 2 to KPII, in a non-arms-length-transaction, to convert ownership of those assets from a Maryland general partnership to a Maryland limited liability company.

After this transfer of ownership, KPII began developing a commercial office development on Lot 1.[3] The record indicates that in March 2007, K C, Inc. ("KCI"), a subsidiary of KCC, and Kaufmann Enterprises entered into a Confidential Settlement

[2] According to the record, William Kaufmann and David Kaufmann are partners of Kaufmann Enterprises and are members of KPII.

[3] The record does not reflect when this construction began.

Agreement and Mutual General Release. The Settlement Agreement contained a stipulation that KCC would "release and forever discharge KPII . . . from any and all claims, actions, causes of action" and any other claims KCC had or would have with KPII.

According to KCC's complaint, dated December 19, 2013, KPII entered into this development knowingly violating the terms of both the Easement Agreement and the Agreement of Sale. This development work included construction curbs, gutters, and landscaping areas. KCC alleged, below, that KPII "failed to construct and place in service comparable alternate parking facilities for use by KCC." KCC alleged that because of KPII's breach, it lost more than seventy-one (71) parking spaces for patrons and customers of its restaurant property. KCC also noted that, in addition to this breach, KPII was responsible for the towing of restaurant patrons cars from the newly constructed parking area on Lot 1.

In its December 2013 complaint, KCC claimed that KPII violated the Easement Agreement, and it sought a permanent injunction declaring that any improvements in the lot should be removed, that the lot be restored to its condition prior to the breach, and sought a permanent injunction declaring that all of the parking areas located on the newly configured Lot 1 should be available for use by KCC's patrons and customers.

KPII responded in September 2014 denying the allegations in the complaint in full and raising several affirmative defenses.[4] In August 2014, KPII filed a motion to dismiss, or in the alternative, for summary judgment which was denied.

In October 2014, KPII filed a counterclaim and demanded a jury trial. According to the counterclaim, when KCC purchased the Restaurant Parcel from KCI it purchased the restaurant on the Restaurant Parcel from Kaufmann's Tavern, Inc. KPII alleged that KCC did not do its due diligence in researching the purchase of the Restaurant Parcel, including the limitations of the Easement Agreement. KPII also alleged that KCC began violating the Easement Agreement by erecting unpermitted structures that removed improved parking facilities on the Restaurant Parcel and by creating unpermitted structural extensions of the restaurant that attracted more patrons and added surcharges to the dry wells serving the restaurant.[5] KCI was involved in litigation with the Kaufmann's.[6] KPII argued that following the Easement Agreement, it allocated

[4] KPII raised the following affirmative defenses: assumption of the risk, contributory negligence, issue and claim preclusion, accord and satisfaction, the law of nuisance, the doctrine of waiver, the doctrine of *ultra vires*, the doctrine of release, the doctrine of laches, and the doctrine of fraud, including negligent and intentional misrepresentation.

[5] KPII's counterclaim alleged that KCC constructed an outside deck and bar without a permit. The counterclaim also alleged that after this outside deck and bar were constructed without a permit, KCC received notices of violations from the Anne Arundel County Health Department in September 2003, October 2003, and November 2003. Allegedly, this was due to KCC's failure to install a new septic system.

[6] According to KPII's counterclaim, after KCC was informed by Anne Arundel County and the State of Maryland that it was in violation of the law, it sued Kaufmann Enterprises, Kaufmann's Tavern, Inc., and David A. Kaufmann in *KC, Inc. v. Kaufmann's Tavern, Inc., et al.*, Case No. 02-C05-106087.

approximately 2,840 square feet located outside the initial "overflow" parking area on Lot 1 as "comparable facilities" to offset the 2,823 square feet of the initial "overflow" parking area designated by the Easement Agreement. Despite this, KPII alleged that KCC acted in wanton disregard of the Easement Agreement by authorizing restaurant patrons to park in areas that were not marked for their use, by allowing vendors to park and unload on Lot 1, by removing fixtures placed on Lot 1, by erecting unlawful facilities on Lot 1, and by inviting to the Restaurant Parcel more patrons than could reasonably be accommodated, among other reasons. The straw that broke the proverbial camel's back occurred in March 2014. KPII alleged that one night KCC invited several patrons to the Restaurant Parcel, allowed loud music to be "blasted" from the Restaurant Parcel and instructed vehicles to park wherever KCC had designated. Ultimately, KPII argued that KCC acted with malice. KCC denied these allegations, in full, in November 2014.

Trial commenced in two phases. The first phase, a jury trial, commenced on August 28, 2015. KPII made a motion *in limine* to exclude the 2002 Agreement of Sale as evidence because it did not contemplate or refer to the Easement Agreement. Both the parties and the circuit court found the Easement Agreement was unambiguous, but the court allowed the Agreement of Sale as evidence.

KCC presented expert testimony from Wayne Newton, a civil engineer. Mr. Newton testified that after the Easement Agreement approximately seventy-two (72) parking spaces could fit into the easement area. Mr. Newton testified that, after doing an analysis of the number of parking spaces that remained in the easement area, there were thirty-three parking spots. The jury also heard from Gregory Casten, a majority owner of

KCC Properties, who testified that after Lot 1 had been developed, it was KCC's belief that its patrons could park on the entirety of Lot 1. Mr. Casten also testified that KCC would not have purchased the property if it contemplated that it would not have access to Lot 1. Terry Schuman, KPII's engineer, testified that the building overlapped with the easement area. At the close of testimony, the parties submitted two questions for the jury: (1) whether KPII breached the Easement Agreement and (2) whether KCC had committed a nuisance on KPII's lot. The jury returned an advisory verdict, as to the Easement Agreement, and determined that KCC had not committed nuisance on KPII's lot. After the verdict, KPII renewed a Md. Rule 2-509 motion on KCC's Settlement Agreement. The circuit court held oral argument on the motion on September 28, 2015, which it denied.

In December 2015, the circuit court issued a directive stating that it would hold a two day merits hearing on the parties' equitable claims and defenses; the hearing was scheduled for March 7, 2016. At the hearing, KCC argued that any equitable issues that were common to the first trial were barred because the jury did not have an opportunity to weigh the evidence.

Following the hearing on equitable relief, the circuit court issued a preliminary injunction on or about October 18, 2016.[7] The preliminary injunction noted that KPII

[7] Md. Rule 15-505 states:

> (a) **Notice**. A court may not issue a preliminary injunction without notice to all parties and an opportunity for a full adversary hearing on the propriety of its issuance.

must take reasonable action to assure use of the thirty-nine parking spaces and should not interfere with KCC's right to use those spaces. KPII timely appealed on November 1, 2016.

STANDARD OF REVIEW

This appeal arises from a preliminary injunction, which we review *de novo*. *See Ehrlich v. Perez*, 394 Md. 691, 708 (2006). We are not tasked with determining the merits of the parties' arguments because our review of a preliminary injunction is limited. *Id*. Thus, we are bound by determining whether the trial judge exercised sound discretion in assessing the four factors for a preliminary injunction which are: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest. *Id*. at 707-08. Below, KCC had the burden of establishing that it had "a real *probability* of prevailing on the merits, not merely a remote *possibility* of doing so." *Id*. at 708 (emphasis in original).

We will not disturb the circuit court's decision unless the court has abused its discretion. An abuse of discretion occurs "when no reasonable person would take the view adopted by the [circuit court]." *Schade v. Maryland State Bd. of Elections*, 401 Md.

(b) **Consolidation With Trial on Merits**. Before or after commencement of the hearing on the preliminary injunction, the court may order that a trial on the merits be advanced and consolidated with the preliminary injunction hearing, so long as any right to trial by jury is preserved.

1, 34 (2007) (internal citations omitted). We also will not disturb the circuit court's findings of fact if it is supported by competent evidence. *Mavronmoustakos v. Padussis*, 112 Md. App. 59, 74 (1996), *cert denied*, 344 Md. 718 (1997).

Concerning discretionary matters, a trial court must exercise its discretion in accordance with correct legal standards. *Ehrlich v. Perez*, 394 Md. 691, 708 (2006). Where a trial court's determination as to one of the factors for issuing a preliminary injunction involves a purely legal question, *i.e.*, a question of law, we will review the trial court's decision as to that factor without deference. *See id*. at 708 ("We review *de novo* a trial [court]'s decision involving a purely legal question . . . . In the present case, the [trial c]ourt's determination of the likelihood of success on the merits is a question of law. Consequently, we apply the *de novo* standard to that factor[.]" (Citations omitted)).

DISCUSSION

I.

KPII first submits that the circuit court erred in admitting the 2002 Agreement of Sale as evidence, over objection. Further, KPII argues that the Easement Agreement is unambiguous and is precluded by the doctrine of merger. KPII also contends that there is no indication in the record of how, if any, the circuit court construed the phrase "comparable facilities," whether it determined the phrase to be ambiguous, and whether it used the Agreement of Sale to resolve that ambiguity. KCC responds that, contrary to KPII's claim, the 2002 Agreement of Sale is necessary to understand the Easement Agreement and is not precluded by the doctrine of merger.

The determination of whether a contract is ambiguous is a threshold question for the courts subject to *de novo* review. *Auction & Estate Representatives, Inc. v. Ashton* 354 Md. 333, 341 (1999); *Calomiris v. Woods*, 353 Md. 425, 434 (1999). As Maryland adheres to the objective rule of contract interpretation, a contract's construction is a matter for the court if we find that the contract is susceptible of a clear, unambiguous, and definite understanding. *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 59 (2013). However, when a court finds a contract is ambiguous, the meaning of that contract is a question for the trier of fact. *See City of Bowie v. Mie, Poropena, Inc. et al.*, 398 Md. 657, 682 (2007).

Ambiguity does not arise simply because the parties in litigation offer different meanings of a term. Rather, ambiguity arises when, to a reasonably prudent person, the language is susceptible of more than one meaning or is doubtful. *See Baker v. Baker*, 221 Md. App. 399, 409 (2015); *Ubom v. Suntrust Bank*, 198 Md. App. 278, 286 (2011). When a written contract is so ambiguous that extrinsic evidence must be consulted to determine the true intent and real contract of the parties, it presents a mixed question of law and fact, and should be submitted to the jury for their determination, upon proper instructions by the trial court. *See Truck Ins. Exchange v. Marks Rentals, Inc*., 288 Md. 428, 433 (1980). However, extrinsic evidence need only be consulted when the words, used in their ordinary sense, are vague, doubtful, or have more than one meaning. *See Collier v. MD-Indiv. Practice Ass'n, Inc.,* 327 Md. 1, 6 (1992). Our first step then is to "[d]etermine 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," and if "the

language of the contract is plain and unambiguous there is no room for construction." *Calomiris,* 353 Md. at 436.

At the heart of this dispute is the 2002 Agreement of Sale, which referred to the "same number of parking spaces" and referred to an easement which had not been executed, and the 2003 Easement Agreement referring to "comparable facilities." At the beginning of trial, KPII made a motion *in limine* to exclude the Agreement of Sale from evidence at trial. KPII argued that the Easement Agreement existed as a fulfillment of the Agreement of Sale. Thus, once the Easement Agreement went into effect, the Agreement of Sale became inoperable. The circuit court responded by asking whether the Agreement of Sale and the Easement Agreement were *in pari materia*. *Baltimore v. O.R. Co., et al.*, 93 Md. 475 (Instruments relied upon which are connected together by reference to one should be regarded as instruments *in pari materia* and may be resorted to, to ascertain with precision what the whole contract should be.) *Harper v. Hampton*, 1 H & J 622, 650 (Contracts *in pari materia* are to be taken and construed together). BLACK'S LAW DICTIONARY (10th ed. 2014) defines *in pari materia* as: "On the same subject; relating to the same matter; It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject."

Pursuant to this doctrine, the judge asked whether the two documents referenced each another. KPII argued that they were not *in pari materia,* while KCC argued that they were. The court agreed with KCC and, over objection, ruled that the jury could consider the Agreement of Sale, despite finding that the term "comparable facilities" was

unambiguous. Moreover, the circuit court stated it would "have to see where we go with the evidence."

Generally, the admissibility of evidence is vested in the sound discretion of the circuit court. *See Mason v. Lynch*, 388 Md. 37, 48-49 (2005); *Conyers v. State*, 354 Md. 132, 176 (1999); *Hopkins v. State*, 352 Md. 146, 158 (1998); *see also* Md. Rule 5-104(a) ("Preliminary questions concerning . . . the admissibility of evidence shall be determined by the court"). We will not reverse the circuit court's factual determination on ambiguity absent an abuse of discretion. *See Mason*, 388 Md. at 48-50; *Ebb v. State*, 341 Md. 578, 587 (1996); *Williams v. State*, 342 Md. 724, 737 (1996), *overruled on other grounds*, *Wengert v. State*, 364 Md. 76 (2001).

In reading the Easement Agreement in totality, a reasonable person would look to the original use of "comparable facilities" found in the 2002 Agreement of Sale. For ease of understanding, the relevant portion of the Agreement of Sale states:

> The deed to this property upon settlement and conveyance by SELLER to BUYER is *together with an easement* for the existing parking area located on the "Kaufmann/Edwards property" presently used by the restaurant, subject to the right of the SELLER to reconfigure that parking as required for development of the adjacent property (the Kaufmann/Edwards Property, Lot 2, Parcel 75, T.M. 30). Seller may reconfigure the existing parking used for the restaurant so as to facilitate the development of this parcel. SELLER warrants that the *same number of parking spaces will be provided after any such reconfiguration as exist at the time of the execution of the Agreement* and that access to the parking lot from the street will not be detrimentally affected by the reconfiguration. The parties will execute a shared parking agreement prepared by SELLER in the form attached hereto as Exhibit B.
>
> The deed shall also be together with an easement for use and maintenance of the septic system and water wells located on adjacent property at no charge. The water system for the restaurant and the office complex on the

> adjacent parcel to the north are interconnected. The owners of the restaurant parcel and the adjacent parcels on the north and south and the Buyer will have easements for the access and maintenance of these facilities. Seller will cooperate in any upgrade of the septic or water systems, at no cost to Seller, for as long as Sellers own the adjacent property.

(Emphasis added).

The Agreement of Sale contemplated not only an easement for "the same number of parking spaces" but also an easement covering the septic system and water wells. This language is mirrored in the 2003 Easement Agreement:

> The grant of such easements by Kaufmann referred to in Paragraphs 1 and 2 above, is subject however to the reservation of the right by Kaufmann to relocate such parking area and septic dry well structures if required by Kaufmann in the course of the development of Lot 1: provided however, that the use of the parking area and the septic dry well structures by KCC *for the benefit of the Restaurant Parcel* shall not be interrupted or impaired *unless and until comparable facilities are constructed* and in service in an alternate location on Lot 1[.]

(Emphasis added).

In September 2013, after KPII constructed and completed a commercial office building on Lot 1, the parties modified the Easement Agreement. The modified Easement Agreement stated:

> As part of the Easement Agreement KPII and KCC established an easement for shared parking areas as described on Exhibit 'A' and as shown on Exhibit 'B' both attached to the Easement Agreement, to be utilized by the owners and their tenants and guests of both the Restaurant Parcel and Lot 1 (the shared parking areas being called "Shared Parking Areas")[.]

It also noted:

> While the Easement Agreement also addresses septic dry well structures, all matters regarding septic dry well structures under the Easement Agreement have been resolved and are no longer applicable.

We are guided by the record in this case. In using the same standard as the circuit court, and in applying the doctrine of *in pari materia*, it is clear that prior to the amendment, the Easement Agreement was broad in scope and applied to both the septic dry well structures and the parking area. However, after the 2013 amendment, which was preceded by a settlement of the septic issue, the scope became much more limited and covered only the parking area. It becomes evident that "comparable facilities" is referring to the "same number of parking spaces" that the 2002 Agreement of Sale contemplated when it referred to the 2003 Easement Agreement. The circuit court judge did not err when he admitted the Agreement of Sale into evidence, and found no ambiguity.

II.

We next turn to whether the Agreement of Sale should be excluded from review because of the doctrine of merger by deed. The doctrine of merger by deed in this case is inextricably tied to whether or not the document was ambiguous.

The Court of Appeals has explained the doctrine of merger, as it relates to deeds and related agreements, as follows: "[A] *prima facie* presumption arises from the acceptance of a deed that it is an execution of the entire agreement for the sale of the realty, and the rights of the parties in relation to the agreement are to be determined by the deed." *Dorsey v. Beads*, 288 Md. 161, 170 (1980) (quoting *Barrie v. Abate*, 209 Md. 578, 582-83 (1956)). The doctrine, however, is not absolute, and contains one exception, which we explain below.

We have stated:

> One exception to the presumption of merger is "where the agreement contains covenants collateral to the deed or where the deed appears to be only a partial execution of the contract." *Levin v. Cook*, 186 Md. 535, 539 (1946). *Accord Kandalis v. Paul Pet Constr. Co., Inc.*, 210 Md. 319, 322 (1956) ("[A]cceptance of a deed does not effect a merger of collateral agreements where it appears that the deed is only a partial execution of the contract."); CORBIN ON CONTRACTS § 73.4 ("Antecedent promises of a performance that are to be rendered subsequent to the conveyance are not discharged by any so called 'merger.'").

Prime Venturers v. OneWest Bank Group, LLC, 213 Md. App. 122, 137 (2013).

The present case falls within the exception to the general rule. As mentioned above, the Agreement of Sale contemplated the Easement Agreement and promised the subsequent conveyance of a shared parking easement, which was later granted - we will not extinguish that promise under the doctrine of merger.

III.

Appellant next argues that the circuit court erred in granting the preliminary injunction because it established in KCC an exclusive right to use the parking areas on the Restaurant Parcel. The pertinent question, then, is whether the circuit court's preliminary injunction could and did established an exclusive or a non-exclusive easement.

"An easement may be created by express grant, by reservation in a conveyance of land, or by implication." *Kobrine, L.L.C. v. Metzger*, 380 Md. 620, 635 (2004). "An express easement, whether by grant or reservation, must be created by a written memorandum that satisfies the Statute of Frauds." *Id*. at 636. An express easement can be either general or specific. *Rogers v. P-M Hunters Ridge, LLC*, 407 Md. 712, 731

(2009). An easement is specific "when its location is easily discernible, such as from a metes and bounds description, a plat map, or a call." *Id*.

The KPII and KCC Easement was created by deed and intended for a shared parking space, a reciprocal easement. What is essential to answering whether the circuit court could grant KCC an exclusive easement is the language from the 2003 Easement Agreement which states:

> The grant of such easements by Kaufmann referred to in Paragraphs 1 and 2 above, is subject however to the reservation of the right by Kaufmann to relocate such parking area and septic dry well structures if required by Kaufmann in the course of the development of Lot 1: provided however, that the use of the parking area and the septic dry well structures by KCC *for the benefit of the Restaurant Parcel* shall not be interrupted or impaired *unless and until comparable facilities are constructed* and in service in an alternate location on Lot 1[.]

(Emphasis added).

Using the language of the easement as our North Star, we interpret the 2003 Easement Agreement to mandate that, if KPII were to develop Lot 1, it would be able to do so freely, provided that it 1) avoided interrupting or impairing the parking area used by KCC and 2) constructed comparable facilities in an alternate location, for the benefit of KCC and the Restaurant Parcel. The intent of the parties stands out - KPII always had the right to construct on Lot 1, but that right could not and did not extinguish KCC's right to comparable parking facilities which, in the present case, are parking spaces.

When the circuit court judge granted KCC a preliminary injunction,[8] we discern that he did so in a way consistent with both the 2003 Easement Agreement and the amended Easement Agreement. In the Preliminary Injunction order dated October 18, 2016, the circuit court simply enforced what the parties had already agreed to in the Easement Agreement -- that KPII would "take all reasonable action required to assure such *use* of the 39 parking spaces" and would not interfere with KCC's employees, invitees, tenants, and others right to use those parking spaces. At trial, KCC provided testimony that when KPII constructed the building on Lot 1, it lost the use of 39 parking spaces, the difference between the spots it had before construction. Thus, the circuit court was acting within its discretion when it ordered KPII to provide 39 additional parking spaces for KCC's use. In conformity with the 2003 Easement Agreement, *use* implies parking by the two entities on a first come, first served basis. In order to clear up any confusion on this issue out of an abundance of caution, we remand this case to revise the preliminary injunction to mandate *shared* parking privileges for the 39 parking places consistent with this opinion.

[8] In question two of those presented to this court, Kaufmann asks whether the circuit court erred by issuing a nominal "preliminary injunction" without finding facts and conclusions of law in sufficient detail to permit appellate review. We are unable to discern any argument in its brief that goes directly to this point.

Under Md. Rule 8-504(a)(5), an appellant is required to set forth in the brief "argument in support of the party's position." We have stated that it is not this Court's function "to scour the record for error once a party notes an appeal and files a brief." *Fed. Lane Bank, Inc. v. Esham*, 43 Md. App. 446, 457 (1979). Further, it is not this Court's responsibility to fashion coherent legal theories to support appellant's sweeping claims." *Elec. Store, Inc. v. Cellcop'ship*, 127 Md. App. 385, 405 (1990).

IV.

Next, appellants ask this court to determine whether KCC released KPP from the obligations of the Easement Agreement in a prior settlement.

In March 2007, KCC and KPII entered into a Confidential Settlement Agreement and Mutual General Release. This settlement arose out of a 2005 lawsuit between KCI and KPII. In the lawsuit, KCI alleged breach of contract, fraud, and negligent misrepresentation against Kaufmann's Tavern, Inc., Kaufmann Enterprises, and David Kaufmann. The release states in relevant part:

> KCI, does for itself and for its agents, successors and assigns, agree to remiss, release and forever discharge KTI and its officers, directors, employees, agents, successors, assigns, predecessors, parents, attorneys, subsidiaries and affiliates, past or present and all of its officers, directors, employees, shareholders, managers, agents, attorneys, predecessors, successors, assigns, trustees, purchasers, principals, and privies; past, present, and future parent, subsidiary, and affiliated companies (both direct and indirect), divisions, related trade names, affiliated entities of any kind, and insurers, of and from any and all claims, actions, causes of action, suits, accounts, covenants, contracts, controversies, damages, judgments, and demands of whatever kind, or nature that KCI ever had, now has or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing, whether known or unknown and whether suspected or unsuspected, pertaining to or in any manner relating to or arising from any matter, including but not limited to the Lawsuit and the matters alleged or that could have been alleged therein, and in any manner relating to or arising out of the Tavern, APA [Asset Purchase Agreement] and/or Agreement 0f Sale, from the beginning of time to and including the effective date of this Agreement.

KPII contends that KCC's claims are barred by this release agreement. KCC avers that the release agreement does not pertain to the matter at issue here and, even if it did, the breach did not arise until *after* the modification of the Easement Agreement.

Releases are contracts that are construed and applied according to general contract law principles. *Spangler v. McQuitty*, 449 Md. 33, 72 (2016). Therefore, we construe releases according to the intent of the parties and the object and purpose of the instrument -- that intent will control and limit the operation of the release. *Spangler*, 449 Md. at 72. When the scope of the release agreement is stated in clear and unambiguous language, there is no room for construction, and we are bound to presume that the parties meant what they expressed. *See Hashmi v. Bennett*, 416 Md. 707, 723 (2010); *Bernstein v. Kapneck*, 290 Md. 452, 460 (1981). Absent fraud, accident, or mutual mistake, we have no grounds to vary, alter, or contradict a complete and unambiguous release agreement. *See Golub ex rel. Golub v. Cohen*, 138 Md. App. 508, 518 (2001).

KPII relies on the Court of Appeal's decision in *Bernstein,* 290 Md. at 452, which concerned a release for personal injuries by the parents of a child who had been injured in a car accident. *Id*. at 453. The parents of an infant child signed a settlement and release based, in part, on the understanding that the child had suffered specific injuries during the car accident. *Id*. at 453-54. At some time after the settlement, the child developed epileptic symptoms that were diagnosed by a neurologist, indicating a post-traumatic psychomotor seizure disorder that resulted from a brain injury she sustained during the car accident. *Id*. at 455. The child's mother sought to set aside the earlier release on the ground that the release was entered into, executed, and delivered as a result of a mutual mistake of fact. *Id*. On appeal, the Court of Appeals held that the law did not "permit contracts to be reformed or otherwise ignored merely because of uncommunicated mental reservations entertained by one of the parties at the time it was executed." *Id*. at 460.

The Court then construed the language of the release which stated "on account of bodily injuries, known and unknown, and which have resulted or may in the future develop, sustained by Irene Schulman . . . in consequence of . . . the automobile accident occurring on or about July 25, 1975." The Court reasoned that "[i]t is readily apparent from a mere glance at this verbiage that the release could not be more clear, more specific, more complete, more all-inclusive or more all-embracing." *Id*. at 464.

In its brief, KCC avers that KPII misconstrued what was released and notes the release language stating that the release applied to claims "from the beginning of time to and including the effective date of this Agreement. Of note, in KCC's briefs, is that the prior lawsuit involving KCI did not involve the parking easement and the release did not refer to the 2003 Easement Agreement. The language of the release only references the Agreement of Sale. We agree with this interpretation of the release. As we have mentioned previously, the 2003 Easement Agreement lies at the heart of this case. The Settlement Agreement containing the release does not contain clear, specific, complete, or all-inclusive language that KCI and its subsidiaries could never have claims arising out of the 2003 Easement Agreement. KPII could have elected to include that language in the Settlement Agreement; it did not. Therefore, we will not reconstrue the Settlement Agreement in hindsight to create an intent that is not evidenced by the record before this Court.

CONCLUSION

Our duty in this case was to determine whether the circuit court judge acted in its sound discretion when issuing a preliminary injunction in favor of KCC. In order to do

so, the circuit court judge must have found that: (1) [a] likelihood that the plaintiff [would] succeed on the merits; (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff [would] suffer irreparable injury unless the injunction [was] granted; and (4) the public interest. *Ehrlich*, 394 Md. at 707-08. We were not tasked with determining the merits of the parties' arguments - we were simply tasked with determining whether or not the circuit court abused its discretion. Here, the circuit court judge found that KCC would likely succeed on the merits because it lost 39 parking additional spaces when KPII constructed a building on Lot 1. In addition, in balancing the parties' duties arising out of the reciprocal and shared parking easement, the court found that KCC would suffer irreparable injury unless the injunction was granted. Consequently, we hold that the circuit court properly exercised its discretion as required and did not err as a matter of law as to determination of the likelihood of success on the merits. We further direct the circuit court to revise the preliminary injunction to mandate shared parking privileges for the 39 parking spaces as follows:

> Ordered, that thereafter Kaufmann Park shall not interfere with such use of those 39 parking spaces, and shall preclude its employees, invitees, tenants, and others from doing so and as the parking spaces are for the use of Kaufmann Park and KCC Properties on a shared, first-come first-serve basis.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART AND REVISED IN PART AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 85% BY APPELLANT AND 15% BY APPPELLEE.