UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1234

September Term, 2014

OREGON, LLC

v.

FALLS ROAD COMMUNITY ASSOCIATION

Graeff,
Kehoe,
Friedman,

JJ.

Opinion by Kehoe, J.

Filed: January 29, 2016

The case before us marks the latest episode in a long-running controversy between Oregon, LLC ("Oregon"), Baltimore County, and the Falls Road Community Association, Inc. (the "Association") regarding a parking lot on a 2.63 acre parcel of land (the "Property"). The Property is owned by the County and leased to Oregon, where Oregon operates a restaurant—the Oregon Grille.

In his opinion for the Court in *Falls Road Community Ass'n v. Baltimore County*, 437 Md. 115, 121–34 (2014), Judge Robert N. McDonald set out the complicated history leading up to the present litigation. An abbreviated summary is sufficient for our purposes.

In 1985, Oregon signed a lease agreement with the County for a 2.63 acre parcel on which the Oregon Grille now operates. In the mid-1990s, Oregon sought to expand the size of the parking lot on the property. In 1995, the County's Board of Appeals approved the request, subject to several conditions, including one that required the lot to be surfaced with crushed stone or a similar material, "unless otherwise required by law." This condition was reiterated in a 2004 order by the Board of Appeals.

In 2006, the gravel paving was replaced by bituminous asphalt paving. The Association did not agree with this turn of events and filed an action in the Circuit Court for Baltimore County against Oregon and the County seeking: (1) a writ of mandamus that would order the County to remove the paving from the parking lot, and (2) a declaratory judgment stating that (a) such pavement violated the administrative orders issued by the Board of Appeals; and (b) the Board of Appeals' order that the parking lot consist of an

unpaved permeable surface was fully enforceable.[1] In conjunction with its request for the declaratory judgment, the Association asked for an injunction that would require the paving to be removed from the lot.

The circuit court found that the asphalt paving violated the Board of Appeals' administrative orders, but concluded that issuing a declaratory judgment to that effect would not resolve the controversy, as required by Md. Code Ann. (1974, 2013 Repl.) § 3-409 of the Courts and Judicial Proceedings Article ("CJP"). The circuit court acknowledged that, in addition to a declaratory judgment, the Association sought an injunction requiring removal of the asphalt paving. The circuit court, however, concluded that CJP § 3-409 did not expressly authorize injunctive relief. Furthermore, citing the Association's complaint, it noted that:

> There was no request in [the sought declaratory judgment] to order the County to tear up the parking lot. But even if there were, I don't think that that type of injunctive relief is properly a part of declaratory judgment.

The Association appealed and this Court affirmed the judgment. *Falls Road Community Ass'n v. Baltimore County*, 203 Md. App. 425, 452 (2012). The Court of Appeals granted the Association's petition for certiorari and, ultimately, affirmed the circuit

[1]The Association's complaint also argued that Oregon had installed several "canopies" or "tents" in violation of the administrative order, but this issue was not raised in this appeal.

court's judgment on the issue of administrative mandamus, but reversed and remanded the case on the issue of the declaratory and injunctive relief.

The Court of Appeals concluded that the circuit court, in addition to issuing a declaratory judgment, was authorized to grant "further relief 'if necessary or proper.'" *Falls Road*, 437 Md. at 146 (quoting CJP § 3-412). It noted that while the controversy between the parties may not be resolvable through a declaratory judgment alone, the controversy might be resolved through a declaratory judgment that included appropriate ancillary relief. *Id.* at 151. Accordingly, the Court reversed and remanded the case to the circuit court.

On remand, the circuit court issued a a declaratory judgment stating: "the November 2006 paving of the parking lot at the Oregon Grille violated the Board of Appeals' February 8, 1995 order that the parking lot remain a 'non-paved surface.'" Additionally, the court ordered the County to "remove the paved parking lot from its property at the Oregon Grille no later than July 1, 2016." The circuit court also concluded that responsibility for requiring the 2006 repaving lay entirely with the County.

Oregon filed a motion to alter or amend the judgment. In its motion, Oregon listed five points which it requested the court to address in the injunction:

> 1. That Baltimore County shall bear the cost and expense of removing the paving as required under the Order, without recourse to Oregon;
>
> 2. Baltimore County shall restore the Oregon Grille parking lot, at its own cost and expense, without recourse to Oregon, to the condition that complies with the [conditions imposed by] the Board of Appeals;

> 3. Baltimore County, and its own cost and expense, without recourse to Oregon, shall insure that the resulting parking area conform with the applicable provisions of the Americans With Disabilities Act;
>
> 4. Baltimore County, at its own cost and expense, without recourse to Oregon, shall insure that the resulting parking lot is of the appropriate quality and aesthetics suitable to the environment of the Oregon Grille restaurant;
>
> 5. Oregon shall not be financially responsible, under the lease or otherwise, for the costs associated with the removal of the paved parking lot, or restoration of the lot to comply with federal, state, and local laws.

The circuit court denied the motion, concluding that Oregon's concerns regarding which party is financially responsible for the parking lot's removal and reconstruction were "not ripe for adjudication." The court cited *State Center, LLC v. Lexington Charles Limited Partnership*, 438 Md. 451, 484 (2014) for the proposition that "[g]enerally, an action . . . lacks ripeness if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen, [or] upon a matter which is future, contingent, and uncertain." The court explained its reasoning (emphasis in original):[2]

> Oregon's worry—that Baltimore County will seek to force Oregon to pay for the cost of removing the pavement—is "future, contingent and uncertain" in

[2]In its order denying Oregon's motion to alter or amend, the circuit court stated that:

> All of the changes [to its declaratory judgment that] Oregon seeks may be summed up [as] Oregon seeks an Order that will state that Baltimore County is responsible for paying for the removal of the pavement "without recourse to Oregon."

As we will explain in Part III, we do not agree with the circuit court's characterization of the contentions in Oregon's motion.

> at least three respects. First, there is no evidence before this Court that Baltimore County has any legal means through which to compel Oregon to pay the cost of removing the pavement. Second, even were such evidence—e.g., a hypothetical provision of the lease agreement between Oregon and Baltimore County—before the Court, nothing would **require** that Baltimore County seek to enforce such a hypothetical lease provision. Oregon frets about what **might** happen, but only "future, contingent, and uncertain" events will determine whether Oregon's worries will come to pass. Third, this Court's Order directed that the pavement was to be removed by "no later than July 1, 2016." This deadline . . . is almost two years away and Oregon presents no evidence that Baltimore County has taken any steps towards beginning [the removal process]. [R]emoval of the pavement would be a condition precedent to any effort on its part to enforce a hypothetical provision requiring Oregon to pay for the pavement removal and this condition precedent may not come to pass for some time (or, as already noted, never). Therefore, the relief Oregon seeks is not an issue which is ripe for review.

The court denied Oregon's motion to alter or amend, and this appeal followed.[3]

Analysis

I. Standard of Review

We review a court's decision to grant or deny a request for injunctive relief for abuse of discretion. *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394 (2000). However, when the court's decision to grant or deny the request is based on consideration of a purely legal question, this Court reviews the court's decision on the legal question *de novo*. *See J.L. Matthews, Inc. v. Maryland-Nat'l Capital Park & Planning Comm'n*, 368 Md. 71, 94 (2002). Appellant argues, and we agree, that the question before us concerns whether the injunction, as written, complies with Rule 15-502(e)'s requirement that an

[3]The County has not participated in this appeal.

injunction be "specific," and "describe in reasonable detail . . . the act sought to be mandated or prohibited." This is a purely legal question, and thus we review the circuit court's order *de novo*.

II. The Adequacy of the Injunction

The injunction requires the County to "remove the paved parking lot from its property at the Oregon Grill no later than July 1, 2016." Oregon asserts that the injunction is defective pursuant to Md. Rule 15-502(e)[4] because it provides inadequate detail on the parties' respective responsibilities for returning the parking lot to a useable condition after the paving is removed, or which parties are fiscally responsible for the removal and replacement of the parking surface. Oregon also suggests that both its and the County's interests would be better served by an injunction that provides greater detail on each party's specific responsibilities for returning the parking lot to a state that complies with the Board of Appeals' orders.

More specifically, Oregon asserts that the court's order leaves unanswered a number of issues which we summarize as follows:

[4]Rule 15-502(e) states:

> **Form and Scope.** The reasons for issuance or denial of an injunction shall be stated in writing or on the record. An order granting an injunction shall (1) be in writing (2) be specific in terms, and (3) describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be mandated or prohibited.

> (1) whether, in addition to removing the existing parking lot, the County is required: (a) to do nothing further; (b) to restore the parking lot to its condition prior to the 2006 repaving, or (c) install a parking lot that complies with the conditions imposed by the Board of Appeals;
>
> (2) whether the replacement parking lot should be designed and built to comply the Americans With Disabilities Act and other applicable federal, State and local laws; and
>
> (3) whether these actions should be taken at the expense of the County or Oregon.

Oregon elaborated on this last point in more detail in its motion to alter or amend the judgment of the circuit court. In its motion, Oregon argued that, regardless of any general contractual obligation between itself and the County for the payment of these sorts of expenses, it should not be responsible for bearing the costs of resurfacing the parking lot in *this* instance. Oregon points out that the circuit court concluded that, by ordering the parking lot to be repaved in 2006, the County violated the restrictions imposed by the Board of Appeals and that Oregon "was directed by its landlord, to wit, the County, to take action in violation of the government agency's prior orders and/or lease with the government."

Based on these observations, Oregon argued that it would be inequitable for it to be responsible for bearing the expense of resurfacing the parking lot, given that the County was entirely at fault for the paving of the parking lot in the first instance.

We analyze the adequacy of the circuit court's injunction pursuant to two principles. The first is that an injunction must be "fair and equitable [as to what is] to be required of the respective parties." *O.F.C. Corp. v. Turner*, 228 Md. 105, 112 (1962). The second is that

"[a]n injunction must be sufficiently specific to give a defendant a fair guide as to that expected of him." *Harford County Educ. Assn v. Board of Ed. Of Harford County*, 281 Md. 574, 587 (1977).

To be sure, the injunction specifies that the County is required to remove the existing parking lot, but the injunction does not address in what condition the County must leave the parking lot. As written, the injunction gives the County free rein to leave behind anything from a fully-functional gravel parking lot to a deeply-rutted, impassible slough. This uncertainty is unfair to the parties because it leaves them to speculate as to the County's obligations, if any, to restore the site after the pavement has been removed. It is clear to us, and we so hold, that any injunction directed to the County to remove the parking lot must also address the condition of the property after the County has performed its court-ordered obligations. *See Joy v. Anne Arundel County*, 52 Md. App. 653, 663 (1982) (vacating an injunction ordering the defendant to "restore the property to its original topography" as "too vague and overbroad to comply with" [the predecessor to the current Md. Rule 15-502(e)]); *Franzen v. Dubinok*, 45 Md. App. 728, 734 (1980) (An injunction requiring the defendant "to take such actions as shall be necessary to prevent any future flooding of the Plaintiffs' property" was defective because it "lack[ed] specific terms and reasonable detail[.]").

III. Justiciability

The circuit court denied Oregon's motion to alter or amend the injunction because the court concluded that the issues raised by Oregon were not justiciable. The court

characterized Oregon's concerns as "future, contingent, and uncertain" because they are premised upon an attempt by the County "to enforce a hypothetical provision requiring Oregon to pay for the pavement removal." We do not agree.

As the Court of Appeals observed in *Boyds Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 691 (1987), the existence of ripeness, in some instances, is a matter of degree. If a court is satisfied that the "ripening seeds"[5] of a controversy exist, then the court may adjudicate the matter at the outset of the controversy. *Id.* The circuit court observed that Oregon was fretting over what *might* happen, but we believe the facts in the record make Oregon's concerns more concrete than mere speculation. As we noted *supra*, Oregon's concerns can be encapsulated into two broad categories: a) the condition in which the County will leave the parking lot after it has removed the paving, and b) whether the County will charge Oregon for the expense of removing and resurfacing the parking lot.

We believe the seeds of these two controversies have clearly been sown and will almost certainly germinate. As to Oregon's first concern, the injunction is silent on the resurfacing of the parking lot after the paving is removed. It is not speculative for Oregon

[5]The Court explained in *Boyd*s, 309 Md. at 691, that the term "ripening seeds" means:

> [N]ot that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of the full-blown battle which looms ahead. It describes a state of facts indicating 'imminent' and 'inevitable' litigation, provided the issue is not settled and stabilized by a tranquilizing declaration.

to be concerned that the County will not go above and beyond the directive of the injunction; we believe equity is best served by both the County and Oregon knowing *before* the paving is removed what their respective responsibilities will be in resurfacing the parking lot. Oregon's second concern is grounded in the record and is thus not speculative. The County charged Oregon the expense of repaving the parking lot in 2006, the lot that the County has now been ordered to remove. Past history substantiates Oregon's concern that the County will charge it for its removal and replacement. As such, we conclude that their concerns are concrete and imminent and thus ripe for adjudication.

IV. Conclusion

No party has challenged any part of the circuit court's declaratory judgment except for the ancillary injunctive relief ordered by the court. Therefore, we affirm the judgment *except* for the injunction. Turning to the injunction, no party challenges the court's order that the County remove the parking lot. But, as we have explained, the terms of the injunction are incomplete. Therefore, we vacate the injunction and remand the case to the circuit court for further proceedings consistent with this opinion.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED IN PART AND VACATED IN PART. THIS CASE IS REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED BETWEEN OREGON, LLC AND THE FALLS ROAD COMMUNITY ASSOCIATION.