

<p><b>PAMELA J. BUCKENMAIER, et al.,</b></p> <p style="padding-left: 40px;"><b>Plaintiffs</b></p> <p style="text-align: center;">v.</p> <p><b>THE KEY SCHOOL, et al.,</b></p> <p style="padding-left: 40px;"><b>Defendants</b></p> <p style="text-align: center;">*   *   *   *   *   *   *   *   *   *   *   *</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p><b>IN THE</b></p> <p><b>CIRCUIT COURT</b></p> <p><b>FOR</b></p> <p><b>ANNE ARUNDEL COUNTY</b></p> <p><b>CASE NO.: C-11-165665</b></p>
---	--	--

**MEMORANDUM OPINION**

On July 9, 2012, Defendant The Key School's Motion to Dismiss (filed 1/20/12), Defendant Ribera Development, LLC's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (filed 2/2/12), and Defendants George E. Graefe III and Linda J. Graefe's Motion to Dismiss (filed 2/3/12) (collectively, "Motions") came before the Court for argument. Defendants, and Plaintiffs Pamela J. Buckenmaier, Chester C. Buckenmaier III, Patricia H. Strott, and Gregory G. Strott ("Plaintiffs") were represented by counsel.

This case involves an effort by Plaintiffs, owners of residential property in the Annapolis Roads subdivision in Anne Arundel County, to stop the possible development of a 70 acre +/- golf course located in the subdivision (the "Property").

Having reviewed and considered the Complaint for Declaratory Judgment and Injunctive Relief (filed 11/23/11, "Complaint"), the Motions and responses, the two documents discussed below, and the arguments of counsel, we will entered summary judgment in favor of Defendants under Counts I and II of the Complaint, and we will dismiss Count III without prejudice in order to allow the parties to conduct discovery. Our reasons follow.

**BACKGROUND**

In 1973, previous owners of the Property filed a declaratory action against every owner of property in Annapolis Roads, and the Annapolis Roads Property Owners Association

CIVIL DEPARTMENT  
2012 JUL 24 P 2: 21

("ARPOA"), as part of a previous effort to develop the Property. Plaintiffs describe that litigation as follows:

In 1973 the then owners of the Annapolis Roads Golf Course filed suit against the Annapolis Roads Property Owners Association (ARPOA) and each and all individual property owners in the Annapolis Roads Community. The golf course owners were seeking a judgment declaring that they could develop the land as they pleased and that the homeowners of Annapolis Roads had no rights concerning the development of the golf course. ARPOA and the homeowners objected stating that from 1927 Annapolis Roads was developed pursuant to a uniform general scheme of development wherein the original developer of the community and its successors agreed "to set aside certain beaches and public parks ... for the perpetual use of the residents of Annapolis Roads.

Paragraph 8 of Complaint.

In 1987, the parties to that action – including the previous owners of the Property, and every property owner in the Annapolis Roads subdivision -- entered into an Agreement of Settlement resolving the case after nearly 14 years of litigation. The Agreement of Settlement required the owners of the Property to impose use restriction on it. Specifically, it provided that they would "execute and record among the Land Records of Anne Arundel County a Declaration of Restrictions on Use of the [Property]." Importantly, the Agreement of Settlement also indicated that "[a] copy of the said Declaration of Restrictions on Use to be recorded is *attached hereto and made a part hereof*["]

The Agreement of Settlement, with the Declaration of Restrictions on Use ("Declaration") attached to it, was circulated among, and signed by, each Annapolis Roads property owner, *including Plaintiffs or their predecessors in title*. On or about September 3, 1987, the fully executed Agreement of Settlement, and the Declaration were recorded in the Anne Arundel County Land Records.

The Declaration, made part of the Agreement of Settlement by reference therein and attachment thereto, provides in pertinent part:

For and in consideration of the premises and no monetary consideration the Declarants do hereby henceforth and forever restrict the subject property to one or more of or any combination of the following uses:

- (1) A golf course, with or without a club house and/or pro shop,
- (2) Other recreational uses,
- (3) Horticultural nurseries,
- (4) Conservation uses,
- (5) Accessory uses including vehicular parking in connection with the uses listed in (1) through (4) above,
- (6) Rights of way and/or easements to provide for access to inaccessible areas,
- (7) Temporary and permanent, primary and accessory structures for uses listed in (1) through (6) above,
- (8) No use.

....

This Declaration of Restrictions on Use does not grant, convey, give or otherwise create in any person, firm, corporation or unincorporated association any right, title, interest or estate in or to the subject property EXCEPT that the Annapolis Roads Property Owners Association Inc., its successors and assigns and/or *any person or persons owning a residential lot(s) in the subdivision of Annapolis Roads may prosecute any legal proceeding to enforce this Declaration provided that the only relief sought is that of an injunction against the violation of the provisions hereof.*

Declaration at p. 2 (emphasis added).

Defendants George and Linda Graefe ("the Graefes") currently own the Property. Plaintiffs allege in their Complaint that Defendant Ribera Development, LLC ("Ribera") is "a contract purchaser, partner or has an executory interest in [the Property.]" Plaintiffs allege further that Ribera's agreement of sale requires it to "diligently pursue ... the approval of the Property through modification to the existing Covenant Restrictions, modification to the Critical Area designation for the Property, modification of the existing zoning and annexation into the City of Annapolis."<sup>1</sup> Plaintiffs also allege that Ribera "has made repeated and consistent efforts to develop the [Property]." Those efforts are said to include unsuccessful attempts to sell it to St. Mary's Parish, the City of Annapolis, and Anne Arundel County. It is alleged that Defendant

---

<sup>1</sup> The Graefe/Ribera relationship appears to be that of owners (Graefes), and their financier-agent-investor (Ribera). That is no more than an impression gained by this judge from the allegations and arguments. In any event, the nature of their business relationship is not material to this decision.

The Key School ("Key School") currently has a contract to purchase the Property, and intends to build athletic facilities on it.

#### RELIEF REQUESTED

In Count I, "Declaratory Judgment", Plaintiffs contend that, "the intent of the Declaration was to impose restrictions upon the property in perpetuity, and that the Declaration did not establish any means by which certain but not all interested parties ... could amend provisions of the Declaration." It argues further that, "Defendants clearly believe in some alternative construction of the Declaration that would authorize certain, but not all interested parties ... to cause the Declaration of Restriction on Use to be amended." Plaintiffs "request that this Court find and declare that the proper construction of the Declaration of Restriction on Use is that it may be amended only by the unanimous consent of all interested parties, including all property owners in the Annapolis Roads subdivision."

In Count II, "Declaratory Judgment", Plaintiffs assert that they "believe and contend" that Key School's proposed uses of the Property "are prohibited use is under the Declaration of Restriction on Use", "not permitted in the existing zoning for the [P]roperty .... ", "were never contemplated by the Annapolis Roads residents or the original parties to the Declaration of Restriction on Use", and "conform to neither the express provisions nor to the 'letter and spirit' of the Declaration of Restrictions on Use." Plaintiffs go on to allege that, "Defendants clearly believe in some alternative construction of the Declaration under which [Key School's proposed use of the Property] would be permitted uses under the terms of the Declaration of Restriction on Use." Plaintiffs "request that this Court find and declare that all ball fields and other types of athletic fields, education facilities and similar extensions of the school campus would not be permitted uses under the Declaration of Restriction on Use."

Finally, in Count III, "Permanent Injunction", Plaintiffs represent that they "have no administrative remedies for resolution of their controversies with Defendants," "and no form of action at law would afford a sufficient remedy for Plaintiffs." Plaintiffs request that the Court issue an order "enjoining Defendants George E. Graefe, III, Linda J. Graefe, and Ribera Development, LLC, their representative, successors and assigns, from making any representations to third parties such as Defendant the Key School inconsistent with the Declaration of Restriction on Use as construed by the declaratory judgments of this Court, and further enjoining all defendants from engaging in any activities that would alter the [P]roperty in furtherance of any use that would be inconsistent with the Declaration of Restriction on Use."

#### MOTIONS

In its motion, Key School asks this Court to dismiss the Complaint because the case is not ripe for adjudication under Md. Courts and Judicial Proceedings Article ("CJP") §3-409(a)(2). Key School argues that is the case because no "antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation." Key School also asks the Court to dismiss the Complaint because Plaintiffs have failed to join necessary parties as required CJP §3-405(a).

In its motion, Ribera argues that declaratory relief is inappropriate because there is no justiciable controversy. It reasons that Key School has not yet purchased the Property and has not taken any action with respect to any proposed use of the Property. It argues that Plaintiffs' Complaint simply alleges that certain uses intended to be made of the Property in the future by Key School will violate the use restriction contained in the Declaration. Next, Ribera argues that Plaintiff's request for a declaration stating that the Declaration may only be amended by the unanimous consent of all Annapolis Roads property owners is inappropriate because no one is considering such an amendment. Finally, Ribera asserts (unencumbered by legal analysis) that

Plaintiffs' remedy is limited by the Declaration's terms to injunctive relief. On those bases, Ribera asks that we dismiss the case, or in the alternative, grant summary judgment to it.

The Motion to Dismiss filed by the Graefes, makes similar arguments, including the claim that the 1987 Agreement of Settlement preclude Plaintiffs from seeking declaratory relief.

## LAW

Maryland Rule 2-322 provides in pertinent part:

(b) Permissive. The following defenses may be made by motion to dismiss filed before the answer, if an answer is required... (2) failure to state a claim upon which relief can be granted.... If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) Disposition. A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix.

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted, courts assume the truth of the well-pleaded facts and allegations in the complaint, as well as the inferences reasonably drawn from them. Afamefune v. Suburban Hosp., Inc., 385 Md. 677 (2005). When moving to dismiss, a defendant is asserting that, even if the allegations of the complaint are true, the plaintiff is not entitled to relief as a matter of law; thus, in considering a motion to dismiss for failure to state a claim, the circuit court examines only the sufficiency of the pleading. Lizzi v. Washington Metropolitan Area Transit Authority, 156 Md.App. 1 (2003), *aff'd. on other grounds*, 384 Md. 199. A motion to dismiss should be evaluated based on the pleadings alone. Howard County v. Connolley, 137 Md.App. 99 (2001).

If a court considers matters outside of the pleadings in ruling on a motion to dismiss, the motion is treated as one for summary judgment. Hrehorovich v. Harbor Hosp. Ctr., Inc., 93 Md. App. 772, 782 (1993). For example, in Castiglione v. Johns Hopkins Hosp., 69 Md. App. 325

(1986), the plaintiff filed an action for breach of an alleged employment contract. The defendant moved to dismiss the action or, in the alternative, to grant summary judgment. 69 Md. App. at 328. Because the trial court based its decision to grant the motion on an exhibit attached to the defendant's supporting memorandum, the Court of Special Appeals reviewed the trial court's decision as a grant of summary judgment. *Id.* at 332. In Haselrig v. Public Storage, Inc., 86 Md. App. 116 (1991), the plaintiff sued for wrongful discharge. The employer moved to dismiss the complaint, or alternatively, for summary judgment, alleging that disclaimers in an employee handbook, which were not referred to in the complaint, precluded the existence of an employment contract. 86 Md. App. at 120. Despite the language of the trial court's order dismissing the case for failure to state a claim, the Court of Special Appeals affirmed the ruling as having granted the motion for summary judgment, not a motion to dismiss. *Id.* at 118 n. 1.

Here, Ribera's motion is styled as one to dismiss, or in the alternative, for summary judgment. Because we will consider the language of the Agreement of Settlement, and the Declaration of Restrictions on Use, we will decide the Motions pursuant to Rule 2-501.

Maryland Rule 2-501 permits a party to file a Motion for Summary Judgment on the grounds that "there is no genuine dispute as to material fact and that the party is entitled to judgment as a matter of law." Pettit v. Erie, 117 Md. App. 212 (1997). In its consideration of a Motion for Summary Judgment, the trial court may not consider questions of disputed facts; instead, it determines whether the undisputed facts entitle a party to judgment as a matter of law. *Id.* See also, Southland Corp. v. Griffith, 332 Md. 704 (1993); Beatty v. Trailmaster Products, Inc., 330 Md. 726 (1993). The purpose of the summary judgment procedure is not to try the case and decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. Miller v. Ratner, 114 Md. App. 18 (1997).

“In order for there to be disputed facts sufficient to render summary judgment inappropriate, ‘there must be evidence on which the jury could reasonably find for the [nonmoving party].’” *Id. citing Seaboard Surety Co. v. Richard F. Kline, Inc.*, 244 Md. App. 223 (1992). “In determining whether a party is entitled to summary judgment under Rule 2-501, the Court must view the facts, including all inferences, in the light most favorable to the opposing party.” *Brown v. Wheeler*, 109 Md. App. 710 (1996).

#### DISCUSSION

Preliminarily, we note that all four Plaintiffs (or their predecessors in title) executed the Agreement of Settlement.<sup>2</sup> In doing so, they bound themselves (and their successors in title) to the terms of the Declaration. They did so with the benefit of legal representation in exchange for readily discernible consideration (*i.e.*, an end to protracted litigation, restrictions to the development of nearby open space, and standing to enforce those restrictions through an injunction). As a result, Plaintiffs enjoy the limited rights afforded by the terms of the Declaration, incorporated by reference as part of the Agreement of Settlement.

Maryland law generally requires that courts give legal effect to clear and unambiguous terms of a contract without resort to extraneous sources that vary or contradict those terms. *See, e.g., Calomiris v. Woods*, 353 Md. 425, 432 (1999). In *Wells v. Chevy Chase Bank*, 377 Md. 197 (2003), the Court of Appeals said:

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.

377 Md. at 224 n.12 (2003); *see also, Taylor v. NationsBank, N.A.*, 365 Md. 166, 178-79 (2001).

---

<sup>2</sup> While the Motions include only the first signature page of the Agreement of Settlement, Plaintiffs acknowledge in their Complaint that “each and every property owner in the Annapolis Roads Community, entered into [the 1987] Agreement of Settlement.”



The question of whether a contract is ambiguous ordinarily is determined by the court as a question of law. Calomiris, *supra* at 434. A written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible to more than one meaning. *Id.* at 436. In Mayor & Council of Rockville v. Rylyns Enters., 372 Md. 514, 581-52 (2002), the Court of Appeals defined "ambiguity" in this context as, "reasonably capable of more than one meaning," and further explained that: "language can be regarded as ambiguous in two different respects: 1) it may be intrinsically unclear . . .; or 2) its intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain."

It would be hard to imagine language less "capable of [having] more than one meaning" than those authorizing Annapolis Roads lot owners to enforce the Declaration, "provided that the only relief sought is that of an injunction against the violation of the provisions [t]hereof." Declaration at p. 2. The language is intrinsically clear: it specifies the one cause of action that Annapolis Roads property owners may bring to enforce the use restrictions enumerated in the Declaration's preceding sentence. The application of the language to the case before us is also certain: Plaintiffs are "prosecuting a legal proceeding to enforce [an alleged] violation of the provisions [of the Declaration]."

Clearly then, the only remedy an Annapolis Roads property owner may prosecute to enforce the terms of the Declaration is to enjoin a violation of its provisions. Indeed, in Count III, Plaintiffs acknowledge that: "by the terms of the Declaration of Restriction on Use, the only form of remedy that Plaintiffs may seek from this Court is an injunction against violation of the provisions of the Declaration."<sup>3</sup> We find as a matter of law that this language is unambiguous.

---

<sup>3</sup> Judge Pamela North has construed the Declaration in that manner as well. In 2005, Ribera filed a complaint for declaratory relief arguing that actions taken by ARPOA in opposing a potential sale had breached the 1987 Agreement of Settlement and/or the Declaration. Rivera Develop't v. AROPA, C-05-104869, Cir. Ct. for A.A.Co. On 7/12/06, Judge North granted ARPOA's Motion for Judgment. In her memorandum opinion J. North said:

Accordingly, our interpretation of the Declaration ends without consideration of extrinsic evidence. Gunby v. Olde Severna Park Improvement Ass'n., 174 Md. App. 189, 243-45 (2007).

We now apply that unambiguous language to the material facts of the case before us, none of which is in dispute.

Plaintiffs allege in their Complaint that they "own [their residential property], which is in and part of the Annapolis Roads subdivision[.]" Thus, they are "persons owning a residential lot(s) in the subdivision of Annapolis Roads" as referred to in the Declaration. Plaintiffs' allegations also demonstrate that they are attempting to enforce the Declaration's use restrictions by "prosecut[ing] ... legal proceeding[.]" Therefore, in prosecuting these proceedings, "the only relief [Plaintiffs may seek] is that of an injunction against the violation of the provisions [t]hereof." In prosecuting these legal proceedings, Plaintiffs seek declaratory relief. Complaint, Counts I and II. To that extent, Plaintiffs have exceeded the limits of their permissible remedies.

Notwithstanding the clear language of the Declaration, Plaintiffs ask us to exercise our discretion under CJP, §3-402, and grant them declaratory relief. Plaintiffs argue that §3-402 allows the Court to declare their rights with regard to Key School's possible development of the Property. It provides:

this subtitle is remedial. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. It shall be liberally construed and administered.

---

the drafters [of the Declaration] ... intended that ARPOA would always have some enforcement mechanism, but it would be limited to seeking an injunction.

...

This gives ARPOA (a nonowner) standing to sue to protect the agreed upon restrictive uses, but limits plaintiffs' legal remedy. Plaintiffs can only seek an injunction, if and only if, the restrictive use provisions are violated.

...

ARPOA is not entitled to oppose a sale or plan that it believes may harm the Annapolis Roads community. It simply may not do so in a court unless it seeks an injunction."

Even if we have such discretion in the face of Plaintiffs' unambiguous waiver of the right to seek declaratory relief, we would not exercise it in this case. Courts enjoy a "measure of discretion to refuse a declaratory judgment." Loveman v. Catonsville Nursing Home, Inc., 114 Md. App. 603, 611 (1996). However, Maryland appellate courts have said that declaratory judgment is intended to supplement relief "in a field not wholly or adequately occupied by subsisting remedies of law and equity." Himes v. Day, 254 Md. 197, 206 (1969) (quoting, Caroline Street Permanent Building Association No. 1 v. Sohn, 178 Md. 434, 444 (1940)). Here, Plaintiffs have reserved to themselves a remedy perfectly suited to stop any use of the Property prohibited by the Declaration: an injunction. See e.g., Colandrea, supra, 361 Md. at 381 (2000) ("An injunction will lie to enforce a restrictive covenant with respect to the use of the land conveyed, provided proper ground therefor exists."); See also, Namleb Corp. v. Garrett, 149 Md. App. 163, 173 (2002).

We note that Plaintiffs' request that we determine, by way of a declaratory judgment, whether Key School's proposed use of the Property violates the Declaration, allows them to avoid the obligation of proving that they have been irreparably harmed by Key School's actions. See, Bey v. Moorish Science Temple of America, 362 Md. 339, 357 (2000). Moreover, a declaratory action would allow Plaintiffs to avoid the trouble and expense of filing a bond under Rule 15-503. As a result, Defendants might be exposed to unreimbursed financial loss for no legitimate reason. The Court of Appeals has stated that, in considering whether to exercise its discretion to issue a declaratory judgment, trial courts should refuse to do so if it would "cause a confusing alteration of the burden of proof." See, Brohawn v. Transamerica Insurance Co., 276 Md. 396, 406 (1975). We believe this is such a case.

We will enter summary judgment in favor of Defendants under Counts I and II.

## INJUNCTION

While Plaintiffs request an injunction in Count III, it is not “against the violation of the provisions [of the Declarations].” Instead, they seek enjoin Defendants from taking action or making representations contrary to the declaration they hoped to receive. Because we will not enter such a declaratory judgment, we will dismiss Count III.

Plaintiffs will be given 90 days to amend Count III. That is because, on March 29, 2012, we granted Defendants' motion to stay discovery pending the ruling made herein. Plaintiffs will be given an opportunity to pursue discovery in order to determine whether Defendants' efforts to develop the Property have violated the terms of the Declaration.

## CONCLUSION

For the reasons above, we will enter summary judgment in favor of Defendants under Counts I and II of the Complaint.<sup>4</sup> We will dismiss Count III, with 90 days leave to amend.

DATED: 7/24/12



---

Paul Garvey Goetzke, Associate Judge  
Circuit Court for Anne Arundel County

Courtesy copies mailed from  
chambers on 7/24/12 to counsel

---

<sup>4</sup> We will enter summary judgment without declaring the rights of the parties. Generally, when the court enters a judgment against a party seeking declaratory relief, it must make such a declaration. *ARPOA v. Lindsay*, 2012 Md. App. LEXIS 60, 66-67 (2012) (in denying declaratory relief, court must file a separate document defining the rights and obligations of parties or the status of the thing in controversy). Here, we were asked to declare that Defendants' actions violate the Declaration. We cannot declare that they did or did not, because, in the case before us, the Declaration precludes us from even considering the question.

PAMELA J. BUCKENMAIER, <i>et al.</i> ,	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
THE KEY SCHOOL, <i>et al.</i> ,	*	ANNE ARUNDEL COUNTY
Defendants	*	CASE NO.: C-11-165665
* * * * *		

**ORDER**

For the reason set forth in the Memorandum Opinion filed with this Order, it is this **24th day of July, 2012**, by the Circuit Court for Anne Arundel County:

**ORDERED**, that the Motion to Dismiss filed on 1/20/2012 by Defendant The Key School, Motion to Dismiss, or in the Alternative, Motion for Summary Judgment filed on 2/2/2012 by Defendant Ribera Development, LLC, and Motion to Dismiss filed on 2/3/2012 by Defendants George E. Graefe, III and Linda J. Graefe's are hereby granted in part as follows:

1. Summary judgment is hereby entered against Plaintiffs, Pamela J. Buckenmaier, Chester C. Buckenmaier III, Patricia H. Strott, and Gregory G. Strott ("Plaintiffs"), in favor of Defendants, The Key School, Ribera Development, LLC, George E. Graefe, III, and Linda J. Graefe ("Defendants"), under Counts I and II of the Complaint for Declaratory Judgment and Injunctive Relief (filed 11/23/11) ("Complaint");
2. Count III of the Complaint is hereby dismissed without prejudice, and Plaintiffs may file an *amended claim for injunctive relief within 90 days after entry of this Order provided that the only relief sought is that of an injunction against the violation of the provisions 1987 Declaration of Restrictions on Use*;
3. The stay of discovery imposed pursuant to the Court's Order entered on 3/29/2012 is hereby lifted, and the parties may obtain discovery during that 90-day period; and,

CIVIL DEPARTMENT

2012 JUL 24 P 2: 21

4. If Plaintiffs do not file an amended complaint within that 90-day period, this Court, on motion, may enter an order dismissing this action with prejudice; and it is, **ORDERED**, that except as provided herein, all pending requests for relief are hereby denied.



Paul Garvey Goetzke, Associate Judge  
Circuit Court for Anne Arundel County

Courtesy copies mailed from chambers  
on 7/24/12 to counsel of record

**For procedural purposes, this Order is entered  
on the date it is docketed by the Clerk of the Court.**