

Circuit Court for Frederick County  
Case No. C-10-CV-22-000525

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 943

September Term, 2023

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RETREAT ROAD, LLC

v.

MISCELLANEOUS METALS, INC.

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Zic,  
Albright,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, James R., J.  
Dissenting Opinion by Zic, J.

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Filed: January 29, 2025

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Retreat Road, LLC (“Retreat Road”), as Landlord and appellant, and Miscellaneous Metals, Inc. (“Miscellaneous Metals”), as Tenant and appellee,<sup>1</sup> entered into a commercial lease agreement (the “Lease”) for the premises commonly known as Unit A at 8301 Retreat Road, Walkersville, MD 21793 (the “Premises”). Retreat Road and Miscellaneous Metals disagreed as to the interpretation of Section 30(c) of the Lease, which addresses entitlement to rent in excess of the payments contained in the Lease, in the event a third party occupies the Premises and agrees to pay such excess.

On September 6, 2022, Miscellaneous Metals filed a complaint in the Circuit Court for Frederick County seeking a declaratory judgment regarding interpretation of the relevant Lease provisions. Miscellaneous Metals alleged that Retreat Road is not entitled to any amounts paid by a third-party occupant that is greater than the amount of the rent and other charges set forth in the Lease.

Retreat Road filed a motion to dismiss on the ground that there was no justiciable controversy because no potential third-party occupant had been identified. The court denied the motion.

Miscellaneous Metals filed a motion for summary judgment on the ground that the Lease unambiguously provided that Retreat Road was not entitled to any rent in excess of that contained in the Lease. The court granted the motion and entered a declaratory judgment in favor of Miscellaneous Metals.

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<sup>1</sup> In some instances, when the Lease and other documents are quoted, the names of the parties are inserted in brackets. In other instances, when they are identified as Tenant and Landlord, the quote is unchanged.

Retreat Road timely appealed.

### ISSUES PRESENTED

Retreat Road presents two issues for our review, which we have recast and rephrased as follows<sup>2</sup>:

1. Whether the circuit court erred by finding there was a ripe, justiciable controversy.

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<sup>2</sup> Retreat Road phrased the questions as follows:

1. Did the [c]ircuit [c]ourt commit an error of law by denying [Retreat Road]’s Motion to Dismiss [Miscellaneous Metals’] Complaint and finding that there was a ripe, justiciable controversy?
2. Did the [c]ircuit [c]ourt commit an error of law by finding that Section 30(c) of the Lease unambiguously denies [Retreat Road] the right to collect excess rent if [Miscellaneous Metals] enters a sublease with or without [Retreat Road]’s prior written consent?

Miscellaneous Metals presented the following questions:

1. Did the [c]ircuit [c]ourt commit error by denying [Retreat Road]’s Motion to Dismiss [Miscellaneous Metals’] Complaint because there was not a justifiable controversy which the [c]ourt could exercise jurisdiction or justified [Miscellaneous Metals’] requested relief?
2. Did the [c]ircuit [c]ourt commit error by granting [Miscellaneous Metals’] Motion for Summary Judgment and finding that the Landlord was not entitled to the excess rent received by its Tenant from a potential sublessee? Specifically, did the [c]ircuit [c]ourt erroneously find that the Landlord was only entitled to collect excess rent if the Tenant failed to obtain Landlord’s consent prior to subleasing the premises?
3. Did the [c]ircuit [c]ourt err by finding that there was no ambiguity in the language of the lease agreement, and alternatively, err in entering summary judgment without permitting Landlord to complete discovery?

2. Whether the circuit court erred by granting summary judgment and finding that Section 30(c) of the Lease is unambiguous, and that Retreat Road may not unreasonably withhold, condition or delay consent to sublease.

For the following reasons, we reverse.

## **BACKGROUND**

### ***The Lease Agreement***

The Lease is dated November 26, 2014. The initial term was twenty years and five months with an option to renew for an additional ten-year term. Section 30 of the Lease provides:

#### **SECTION 30 ASSIGNMENT AND SUBLETTING**

(a) Tenant shall not make or permit an Assignment of this Lease or any interest of Tenant herein, in whole or in part, by operation of law or otherwise, without first obtaining in each and every instance the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned or delayed.

(b) Any consent by Landlord to an Assignment shall be held to apply only to the specific transaction thereby authorized, shall not release the Tenant from any liability under this Lease, and shall not constitute a waiver of the necessity for such consent to any subsequent Assignment, including, but not limited to, a subsequent Assignment by any trustee, receiver, liquidator, or personal representative of Tenant. In the event Tenant executes an agreement to effect an Assignment, such agreement shall provide (i) that the subtenant or other occupier of space shall take subject to this Lease, (ii) that the occupier shall also fulfill all obligations of Tenant under this lease as they pertain to the portion of the Premises set forth in the Assignment, and (iii) that with respect to such portion of the

Premises, the occupier shall be deemed to be the Tenant under this Lease.

(c) If this Lease or any interest herein is assigned or if the Premises of any part thereof is sublet, used, or occupied by anyone other than Tenant without Landlord's prior written consent having been obtained thereto, Landlord may nevertheless collect Rent (including Additional Rent) from the assignee, sublessee, user, or occupant and apply the net amount collected to the Rents herein reserved. Furthermore, in any such event Tenant shall pay to Landlord monthly, as Additional Rent, the excess of the consideration received or to be received during such month for such Assignment (whether or not denoted as rent) over the Annual Rent reserved for such month in this lease applicable to such portion of the Premises so assigned, sublet, or occupied. No such Assignment or collection shall be deemed a waiver of the covenant herein against Assignment by others, or the acceptance of the assignee, subtenant, user, or occupant as Tenant hereunder, or constitute a release of Tenant from the further performance by Tenant of the terms and provisions of this Lease. If this Lease or any interest of Tenant herein is assigned or if the whole or any part of the Premises is sublet or used or occupied by others, after having obtained Landlord's prior written consent thereto, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant, and Tenant shall not be released therefrom in any manner.

The Lease defines "Assignment" as:

[A]ny assignment, transfer, mortgage, or encumbrance, whether voluntarily, involuntarily, or by operation of law, of Tenant's interest in this Lease, any sublease by Tenant, any license by Tenant of space in the Premises, or any concession agreement by Tenant with respect to all or part of the Premises, any agreement by Tenant giving any other person the right to use all or part of the Premises, or such other events determined to be Assignments pursuant to Section 30.

*The Parties' Communications*

On June 10, 2022, Miscellaneous Metals emailed Retreat Road that it was “considering the possibility of subleasing a portion of [its] leased premises.” Miscellaneous Metals wrote: “Please take a look at Section 30 of our lease and confirm to me that provided the Tenant obtains Landlord’s approval of a sublease or assignment, then there is no portion of the consideration that is due to the Landlord.” That same day, Retreat Road responded:

In reviewing a sublease for approval, we would need [for] you to provide us with who the subtenant is, what their use is, the terms of the deal and a copy of the sublease agreement. If you want to pass along the information before getting to the sublease agreement, we can give you a preliminary approval before you start drafting a sublease agreement. There is no fee for this outlined in your lease. Keep in mind that you’re fine to sublease at the same rental rate you’re paying, but Section 30(c) requires that any excess be paid to the Landlord as Additional Rent.

On June 16, 2022, Miscellaneous Metals’ counsel mailed and emailed a letter to Retreat Road stating that “Tenant . . . intend[s] to sublet part of the Premises to a potential subtenant” and that “Tenant will submit for Landlord’s review a sublease agreement and include for Landlord’s preliminary approval a summary of the subtenant’s intended use of the Premises and basic terms.” The letter further stated:

An actual controversy may exist as we believe that our interpretation of Subsection 30(c) is proper, and you have a different understanding. Tenant prefers not to seek a declaratory judgment to resolve this ambiguity, and instead asks that Landlord confirm in writing our interpretation of Section 30(c). Nevertheless, we are confident in our interpretation, and Tenant is prepared to seek a declaratory judgment to address this uncertainty.

Retreat Road’s counsel responded on June 27, 2022, writing that “Landlord wholly disagrees with the positions taken in your letter and is confident that it would prevail if these matters were brought before the courts.” Counsel continued:

We are confident that a court will view the plain language of the Lease as unambiguous and . . . would require Tenant to pay Landlord any of the excess consideration Tenant obtains from its sublessee.

\* \* \*

Landlord does not plan to unreasonably withhold, condition, or delay its consent for Tenant to sublease a portion of the Premises, and Landlord remains open to providing Tenant preliminary consent prior to the drafting of a sublease agreement. With that said, Landlord expects that Tenant will adhere to its obligations under the Lease, including (but not limited to) paying Landlord any excess consideration it receives from its sublessee.

On July 29, 2022, Miscellaneous Metals responded, setting forth the disagreement between the parties:

[Y]our attorney . . . claims that you, the Landlord, are entitled to any rent[] under such a sublease that is in excess of the rent payable by the Tenant to the Landlord pursuant to the Lease. The Tenant disagrees.

On the contrary, it is the position of the Tenant that, in accordance with the terms of the Lease and applicable law, the Tenant is entitled to retain any such excess rent.

This is a significant dispute. If the Landlord refuses to consent to the Tenant’s subletting of the Premises unless it receives such excess rent, the Tenant will suffer substantial damages. Accordingly, the Tenant intends to pursue a declaratory judgment and/or other appropriate legal remedies to resolve this disagreement.

Retreat Road sent a final response on August 12, 2022, restating its disagreement with Miscellaneous Metals’ interpretation of Section 30(c).

***The Procedural History***

As a result of the disagreement, Miscellaneous Metals filed the complaint discussed above. Miscellaneous Metals sought a declaration that Sections 30(a)-(c) were clear and unambiguous and that its interpretation of Sections 30(a)-(c) was correct.

On November 17, 2022, Retreat Road filed a motion to dismiss arguing that Miscellaneous Metals failed “to allege a justiciable controversy[.]” The circuit court denied the motion.

On March 28, 2023, Miscellaneous Metals filed a motion for summary judgment, which Retreat Road opposed. After a hearing on June 12, 2023, by “Opinion and Order” and “Declaratory Judgment,” both dated June 30, 2023, the circuit court granted the motion for summary judgment and entered a declaratory judgment in favor of Miscellaneous Metals.

In its Opinion and Order, the court observed that the dispute between the parties arose when Miscellaneous Metals advised Retreat Road that it intended to sublet the Premises. Retreat Road then asserted a right to any rent that Miscellaneous Metals received in excess of the rent that Miscellaneous Metals owed under the Lease. The court found that the Lease is unambiguous and provides that Retreat Road has no right to excess rent absent a sublease entered into without its consent. It also concluded that Retreat Road could not withhold consent in order to secure an increase in rent. The Declaratory Judgment provides:



- (A) [Retreat Road] may not, as a matter of law, deny [Miscellaneous Metals] [Retreat Road's] consent [to] a proposed sublease of the Premises in order to extract an agreement from [Miscellaneous Metals] to pay [Retreat Road] any excess rents received by [Miscellaneous Metals] from [its] sublessee of all or any portion of the Premises;
- (B) Section 30(a-c), Assignment and Subletting, at pages 32-33 of the Lease, is clear and unambiguous on its face regarding the absence of any right of [Retreat Road] to retain excess rents that [Miscellaneous Metals] receives from a sublessee;
- (C) Section 30(c), Assignment and Subletting, at page 33 of the Lease applies only to situations where [Miscellaneous Metals] acts without [Retreat Road's] prior written consent;
- (D) Section 30(a), Assignment and Subletting, at page 32 of the Lease applies to situations where [Miscellaneous Metals] acts with [Retreat Road's] prior written consent, which consent may not be unreasonably withheld, conditioned or delayed;
- (E) Section 30(a), Assignment and Subletting, at page 32 of the Lease, and [Retreat Road's] Lease obligations related to consent to subletting, do not allow [Retreat Road] to condition its consent on the requirement that [Miscellaneous Metals] pay [Retreat Road] all or any portions of the rents [Miscellaneous Metals] receives from sublessee.

## DISCUSSION

### I. THE CIRCUIT COURT DID NOT ERR IN FINDING A RIPE, JUSTICIABLE CONTROVERSY AND DENYING RETREAT ROAD'S MOTION TO DISMISS.

#### A. Standard of Review

This Court reviews a circuit court's decision to deny a motion to dismiss *de novo*.

*State v. Fabien*, 259 Md. App. 1, 13 (2023) (citing *Myers v. State*, 248 Md. App. 422, 431

(2020)). “[T]he standard of review of the grant or denial of a motion to dismiss is whether the trial court was legally correct.” *Williams v. Ewrit Filings, LLC*, 253 Md. App. 545, 551 (2022) (citation and quotation marks omitted).

## **B. The Parties’ Contentions**

Retreat Road argues that Miscellaneous Metals’ complaint, in which it sought a declaratory judgment, should have been dismissed because the issue was not ripe and there was no justiciable controversy. Retreat Road states that “[t]he parties’ opposing interpretations of Section 30(c) represent nothing more than a difference of opinion based on facts that have not yet occurred, *i.e.*, a hypothetical scenario.” Retreat Road explains that Miscellaneous Metals has never presented a sublessee, sublease, or letter of intent. Retreat Road further contends that the “ripeness doctrine does not apply here, because there is no imminent and practical certainty of [Miscellaneous Metals] subleasing the Premises” and that Miscellaneous Metals’ complaint “is a request for the [circuit] [c]ourt to speculate as to what might happen under Section 30(c) of the Lease if [Miscellaneous Metals] presents [Retreat Road] with a proposed sublease.” Finally, Retreat Road argues that “the declaratory relief requested by [Miscellaneous Metals] was not ripe” because the exchanged emails and letters concern a “purely hypothetical sublease” and “do[] not create an imminent and practical certainty that a sublease will ever materialize.”

Miscellaneous Metals argues that the circuit court did not err in denying the motion to dismiss because the conflicting lease interpretations present a justiciable controversy. Miscellaneous Metals contends that the matter became ripe when it requested confirmation

of its interpretation of the Lease and Retreat Road instead “asserted an interpretation which violated [Miscellaneous Metals’] rights under the Lease and immediately diminished the value of [Miscellaneous Metals’] interest in the Lease.” Miscellaneous Metals relies on Retreat Road’s June 27, 2022 letter to argue that Retreat Road “admits this matter is ripe and, therefore, justiciable” because the letter states that “Tenant is obligated to pay such excess rental to the Landlord, *regardless of whether or not Landlord consents to the sublease.*” Miscellaneous Metals further analogizes to *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74 (2010), to contend that the issue is ripe and justiciable because the communications between the parties indicate that future events will not change the “differing and unalterable interpretations of the Lease” and “the need for judicial determination of which party is entitled to the excess rent.”

### C. Discussion

The Supreme Court of Maryland has held that “the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action.” *Boyd’s Civic Ass’n v. Montgomery Cnty. Council*, 309 Md. 683, 689 (1987) (citation and quotation marks omitted). In order to be justiciable, a case must be ripe. *Id.* at 690. An action for declaratory relief is not ripe “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.” *Id.* (citations and quotation marks omitted). The Supreme Court, in *Ocean Petroleum, Co.*, explained:

“A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have

accrued wherein a legal decision is sought or demanded. To be justiciable the issue must present more than a mere difference of opinion, and there must be more than a mere prayer for declaratory relief. Indeed, the addressing of non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State. A declaratory relief action that requests adjudication based on facts that have yet to occur or develop lacks ripeness and should be dismissed for failure to allege a justiciable controversy.”

416 Md. at 82 (quoting *120 W. Fayette St., LLLP v. Baltimore City*, 413 Md. 309, 356-57 (2010)).

In *Ocean Petroleum, Co.*, the tenant to a commercial lease filed a declaratory judgment action regarding the interpretation of a phrase in the lease. *Id.* at 79. The dispute arose when the tenant exercised the option in the parties’ lease to purchase the property and the parties could not agree upon a purchase price for the property, and specifically, could not “agree on the meaning of the phrase ‘the fair market value of the land only’” in the lease. *Id.* The parties agreed that the lease procedures meant to establish a purchase price could not be implemented until the meaning of “the fair market value of the land” was determined. *Id.* The Court considered whether the parties presented a controversy that was ripe for adjudication. *Id.* at 81.

The Supreme Court held that the issue presented was justiciable because “[t]he parties’ inability to agree stems from their contrasting interpretations of the contractual phrase ‘fair market value of the land,’ and . . . that subsequent factual developments would [not] change the nature of the dispute or the respective rights of the parties and, thereby, render our opinion advisory.” *Id.* at 82. The Court specified: “Were we to decline to

consider the issue at this juncture, and the parties appointed appraisers to determine the lease agreement’s meaning themselves, undoubtedly one of the parties would challenge that interpretation in the courts.” *Id.* at 83.

In this case, Retreat Road and Miscellaneous Metals established their contrasting interpretations of Section 30(c) of the Lease through letters and email communications. While Miscellaneous Metals has not presented a sublease to Retreat Road, future factual developments will not change the nature of the dispute before this Court. Similar to the situation in *Ocean Petroleum, Co.*, should Miscellaneous Metals move forward with finding a sublessee and drafting a sublease without an interpretation of Section 30(c) by the courts, the disputed provision would come into play, and one of the parties would likely challenge the interpretation in the courts.

We conclude that the legal issue presented to the courts is not future, contingent, or uncertain because Retreat Road and Miscellaneous Metals do not agree on the meaning of Section 30(c) in the Lease and the dispute does not rely on the specifics of future facts. There is an actual controversy, the issue is ripe, and, therefore, the case is justiciable.

## **II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT.**

### **A. Standard of Review**

This Court reviews a trial court’s decision to grant summary judgment *de novo*. *Injured Workers’ Ins. Fund v. Orient Express Delivery Serv., Inc.*, 190 Md. App. 438, 451 (2010). “The standard applied by th[is] Court is not whether the trial court was clearly erroneous but whether the trial court was legally correct.” *Id.* This Court is to “conduct an

independent review of the record to determine if there is a dispute of material fact.” *Id.* at 450-51. “A material fact is one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute.” *Id.* at 451 (citation and quotation marks omitted). “[A]ll reasonable inferences must be resolved in favor of the non-moving party.” *Id.*

“The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review.” *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004). “Maryland courts follow the law of objective interpretation of contracts” and “giv[e] effect to the clear terms of the contract regardless of what the parties to the contract may have believed those terms to mean[.]” *Id.* “[A court is to] determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.” *Id.* (quoting *Calomiris v. Woods*, 353 Md. 425, 436 (1999)). “[S]ummary judgment is appropriate when the contract in question is unambiguous or when an ambiguity can be definitively resolved by reference to extrinsic evidence.” *Cochran v. Norkunas*, 398 Md. 1, 16 n.8 (2007) (quoting *Washington Metro. Area Transit Auth. v. Potomac Inv. Props., Inc.*, 476 F.3d 231, 235 (4th Cir. 2007)).

**B. The Circuit Court Erred By Holding That The Lease Is Unambiguous.**

Retreat Road asserts that Section 30(c) of the Lease is capable of more than one reasonable interpretation, and as such, the trial court erred in finding the Lease to be unambiguous. Retreat Road contends that, if and when a third party is occupying the Premises, Retreat Road can collect excess rent: “(1) when the Lease is ‘assigned;’ or (2)

when someone is occupying the Premises without [Retreat Road’s] prior written consent.”

Retreat Road, adding emphasis, relies on the following emphasized words in Section 30(c) to support its interpretation:

(c) If this Lease or any interest herein is assigned *or* if the Premises of any part [t]hereof is sublet, used, or occupied by another other than Tenant *without Landlord’s prior written consent* having been obtained thereto, Landlord may nevertheless collect Rent (including Additional Rent) from the assignee, sublessee, user, or occupant and apply the net amount collected to the Rents herein reserved. Furthermore, *in any such event* Tenant shall pay to Landlord monthly, as the Additional Rent, the excess of the consideration received or to be received during such month for such *Assignment* (whether or not denoted as rent) over the Annual Rent reserved for such month in this lease applicable to such portion of the Premises so assigned, sublet, or occupied.

Retreat Road argues that, based on the definition of “Assignment” under the Lease and the use of the word “assigned” in the opening sentence of Section 30(c), the first scenario described includes “any sublease by Tenant.” The second scenario includes any use or occupancy by anyone other than Miscellaneous Metals without Retreat Road’s prior written consent. Retreat Road then argues that the phrase “any such event” refers to and includes the two scenarios described above. Retreat Road emphasizes that, under its interpretation, Retreat Road is entitled to collect excess rent from any Assignment, including a sublease, regardless of whether Retreat Road gave consent. Retreat Road does not contend that the circuit court’s interpretation of Section 30(c) is unreasonable, only that Retreat Road’s own interpretation “is reasonable and demonstrates that this provision is subject to multiple interpretations[,]” making Section 30(c) ambiguous. Retreat Road

concludes that, because of Section 30(c)'s ambiguous language, the circuit court should have allowed the parties to produce extrinsic and parol evidence to shed light on the parties' intended meaning of Section 30(c), rather than granting summary judgment.

Miscellaneous Metals argues that there is “no ambiguity in the relevant provisions of the Lease” and disagrees with Retreat Road's interpretation. Miscellaneous Metals argues that Retreat Road's interpretation of Section 30(c) would “render meaningless the requirement of Section 30(a) that [Retreat Road]'s ‘ . . . consent shall not be unreasonably withheld, conditioned or delayed[.]’” Miscellaneous Metals asserts that the phrase “in any such event” does not refer to subletting with Retreat Road's consent, but only to subletting without consent because Section 30(a) separately addresses subletting with consent. Miscellaneous Metals further states that Retreat Road incorrectly equates “assigned” with “Assignment” because the definition of “Assignment” includes mortgages and encumbrances, and it would “strain[] credulity” to read those scenarios into Section 30(c). Finally, Miscellaneous Metals argues that, pursuant to the plain meaning of Section 30(c), Retreat Road is only entitled to excess rent when certain transactions are undertaken without Retreat Road's consent.

In determining whether a document is ambiguous, Maryland courts have long adhered to the law of the objective interpretation of contracts. *See, e.g., Cochran*, 398 Md. at 16. “When the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used.” *Sy-Lene of Washington, Inc. v. Starwood Urb. Retail II, LLC*, 376 Md. 157, 167 (2003).



“A contract is not ambiguous merely because the parties thereto cannot agree as to its proper interpretation.” *Fultz v. Shaffer*, 111 Md. App. 278, 299 (1996). Rather, “[a] contract is ambiguous if it is subject to more than one interpretation when read by a reasonably prudent person.” *Sy-Lene*, 376 Md. at 167.

In construing a contract, “Maryland courts should examine the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution.” *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985). “The primary source for determining the intentions of the parties is the language of the contract itself.” *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P’ship*, 109 Md. App. 217, 291 (1996).

The Supreme Court of Maryland has summarized the objective law of contracts as follows:

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 away to what the parties thought that the agreement meant or intended it to mean. As a result, when the contractual language is clear and unambiguous, and in the absence of fraud, duress, or mistake, parol evidence is not admissible to show the intention of the parties or to vary, alter, or contradict the terms of that contract.

*Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261-62 (1985) (citation omitted).

When determining whether an interpretation of a contract is a reasonable one:

the contract must be construed in its entirety and, if reasonably possible, effect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed.

*Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 52 (2013) (citation and quotation marks omitted). As such, we shall construe a contract “as a whole to determine the parties’ intentions.” *Sullins v. Allstate Ins. Co.*, 340 Md. 503, 508 (1995); *see also Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 396 (2019) (“[W]hen interpreting contracts, we also attempt to construe contracts as a whole, to interpret their separate provisions harmoniously, so that, if possible, all of them may be given effect.” (cleaned up)). “No word or clause should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument.” *Orkin v. Jacobson*, 274 Md. 124, 130 (1975) (citation and quotation marks omitted).

Viewing the Lease as a whole and reading its provisions in context, we agree with Retreat Road that Section 30(c) of the Lease is ambiguous. Section 30(c), as distinguished from Section 30(a), addresses Miscellaneous Metals’ right to assign or otherwise transfer its interest in the Premises to a third party. Section 30(a) states that “[Miscellaneous Metals] shall not make or permit an Assignment of this Lease or any interest of [Miscellaneous Metals] herein, . . . without first obtaining in each and every instance the prior written

consent of [Retreat Road.]” “Assignment” is a defined term, quoted above, and not only includes “any sublease” but includes a transfer of Miscellaneous Metals’ interest in the Premises that are not assignments of the Lease. We agree with the circuit court that the plain language of Section 30(a) requires Miscellaneous Metals to obtain Retreat Road’s prior written consent to sublet or otherwise transfer its interest in the Premises.

In contrast, Section 30(c) addresses Retreat Road’s right to collect rent. The first sentence provides: “If this Lease or any interest herein is assigned or if the Premises or any part thereof is sublet, used, or occupied by another other than [Miscellaneous Metals] without [Retreat Road’s] prior written consent having been obtained thereto,” Retreat Road may collect “Rent” and “Additional Rent.” Ordinarily, an assignment of one’s interests includes an intention to transfer one’s rights, in this instance, rights under the Lease. *See Pub. Serv. Comm’n of Maryland v. Panda-Brandywine, L.P.*, 375 Md. 185, 197-98 (2003). The first sentence may reasonably be read as providing for the right to collect rents in the event of an assignment, meaning the intentional transfer of Miscellaneous Metals’ rights under the Lease which, by terms of the Lease, assumes consent **or** in the event of any other transfer of Miscellaneous Metals’ interest in the Premises, including by operation of law, regardless of its nature, and regardless of intent, and without consent.

The second sentence begins, “Furthermore, in any such event,” Miscellaneous Metals shall pay to Retreat Road Additional Rent, defined as “the excess of the consideration received or to be received . . . for such Assignment (whether or not denoted as rent) over the Annual Rent reserved for such month in this lease applicable to such

portion of the Premises so assigned, sublet, or occupied.” The lead-in clause, “in any such event,” may be read as referring to either circumstance discussed in the first sentence. The defined term, Assignment, is a broad term encompassing an assignment of the Lease and other non-assignment transfers of Miscellaneous Metals’ interest in the Premises.

In support of our conclusion of ambiguity with respect to Miscellaneous Metals’ liability for Additional Rent, we refer to Sections 3 and 4 of the Lease. Section 3 of the Lease, entitled Rent, provides that Miscellaneous Metals is liable for Annual Rent. Annual Rent refers to the monthly installments set forth in the Lease. We note, however, in Section 4 of the Lease, entitled Late Payments, Miscellaneous Metals is liable for late charges for late payment of “Annual Rent” or “Additional Rent,” impliedly indicating that it is liable for Additional Rent per Section 30(c).

Sentences three and four in Section 30(c) are expressions of intent by Retreat Road not to waive any of its rights by virtue of the prior sentences. The third sentence provides that an Assignment shall not constitute a waiver of other provisions of the Lease, an acceptance of the third party as a tenant, or act as a release of Miscellaneous Metals.

The fourth sentence provides that if any interest of Miscellaneous Metals as tenant is “assigned,” or any part of the Premises “is sublet or used or occupied by others” with Retreat Road’s consent, nevertheless, Miscellaneous Metals remains liable under the Lease.

In summary, Section 30(c) can be read as providing that Retreat Road has the right to Rent and Additional Rent from both Miscellaneous Metals and a third-party occupant.

Such reading does not render superfluous the consent requirement in subsection (a). That subsection addresses the need for consent, not the collection of rent. Subsection (c) addresses the collection of rent.

Accordingly, we hold that the circuit court erred in holding that the Lease was unambiguous.

**C. The Circuit Court Did Not Err In Finding That Retreat Road May Not Unreasonably Withhold Consent.**

Retreat Road argues that, “as a matter of both law and fact,” the circuit court erred in concluding that it unreasonably withheld consent to a sublease. Retreat Road states that the circuit court’s reliance on *Julian v. Christopher*, 320 Md. 1 (1990), was misplaced because the landlord in *Julian* withheld consent for a sublease until the tenant paid increased rent to the landlord, whereas here, Retreat Road “is not seeking increased rent from [Miscellaneous Metals] as a condition to consent to a sublease.” Relying upon *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 722 (2003), Retreat Road asserts that it was improper for the circuit court to determine that its conduct was unreasonable because the “determination of ‘reasonableness’ is a question of fact that cannot be resolved at the summary judgment stage.”

According to Miscellaneous Metals, “*Julian* makes clear that a landlord who has agreed not to unreasonably withhold consent to a sublease is prohibited from seeking additional rent as a condition of providing such consent[.]” Miscellaneous Metals argues that “Maryland law prohibiting a landlord’s extraction of economic concessions as a condition of reasonably granting consent to a sublease is the uncontradicted, universal rule

in the United States.” Accordingly, Miscellaneous Metals contends that Section 30(a) of the Lease, in light of the holding in *Julian*, prevents Retreat Road from unreasonably withholding consent to sublet, including by seeking “to extract any economic concession . . . as a condition of providing its consent[.]”

In *Julian*, the Supreme Court of Maryland held that “[w]here . . . the refusal to consent was solely for the purpose of securing a rent increase, such refusal would be unreasonable unless the new subtenant would necessitate additional expenditures by, or increased economic risk to, the landlord.” 320 Md. at 10.

Section 30(a) of the Lease states that “consent will not be unreasonably withheld, conditioned or delayed.” Accordingly, the circuit court declared that Retreat Road may not deny consent of a sublease in order to extract additional rent. As explained above, if a sublease is entered into, with or without consent, and ultimately, it is adjudicated that Retreat Road is entitled to the Rent and Additional Rent, it will not change the requirement that Retreat Road may not withhold consent on the ground that it receive additional rent payments. Retreat Road’s effort to distinguish *Julian* is unavailing because, under the Lease, Miscellaneous Metals would be liable for Additional Rent.

**CONCLUSION**

We hold that Miscellaneous Metals presents a ripe, justiciable controversy and that the circuit court did not err in denying the motion to dismiss. We further hold that the circuit court erred in granting summary judgment.

**JUDGMENT OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY REVERSED;  
COSTS TO BE PAID BY APPELLEE.**

Circuit Court for Frederick County  
Case No. C-10-CV-22-000525

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 943

September Term, 2023

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RETREAT ROAD, LLC

v.

MISCELLANEOUS METALS, INC.

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Zic,  
Albright,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Dissenting Opinion by Zic, J.

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Filed: January 29, 2025

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).



I would hold that the circuit court did not err in finding the Lease is unambiguous and affirm the circuit court’s grant of summary judgment, and, therefore, must dissent.

Section 30(c) opens with the following list of circumstances: “If this Lease or any interest herein is assigned or if the Premises of any part thereof is sublet, used, or occupied by another other than Tenant without Landlord’s prior written consent having been obtained thereto . . . .” The second sentence of Section 30(c) then states: “Furthermore, in any such event Tenant shall pay to Landlord monthly, as the Additional Rent, the excess of the consideration received or to be received during such month for such Assignment[.]”

I do not disagree with the Majority’s reading that the phrase “in any such event” in the second sentence refers back to the list of circumstances detailed in the prior sentence of Section 30(c). I respectfully disagree, however, with the Majority’s interpretation of the first sentence. The Majority reads the first sentence of Section 30(c) as “providing for the right to collect rents in the event of an assignment, meaning the intentional transfer of Miscellaneous Metals’ rights under the Lease which, by terms of the Lease, assumes consent **or** in the event of any other transfer of Miscellaneous Metals’ interest in the Premises, including by operation of law, regardless of its nature, and regardless of intent, and without consent.” *Retreat Road v. Miscellaneous Metals*, No. 943, slip op. at 18 (Md. App. Jan. \_\_, 2025).

While I recognize that Section 30(c) is not a model of clarity, in applying the objective law of contract interpretation, I would conclude that the listed circumstances in the opening sentence are all unambiguously modified by the phrase “without Landlord’s

prior written consent.” And so, the second sentence of Section 30(c) should be interpreted to allow Retreat Road to collect “the Additional Rent, the excess of the consideration received or to be received” only when Miscellaneous Metals has acted without obtaining prior written consent. Further, because Section 30(a) establishes the precondition that Miscellaneous Metals must obtain prior written consent for any “Assignment,” reading these provisions of the Lease together, it follows logically that Section 30(c) applies when Miscellaneous Metals has not complied with Section 30(a).

I would, therefore, in context of the entire Lease, read Section 30(c) as describing the obligations of Miscellaneous Metals if Miscellaneous Metals does not obtain the requisite prior written consent under Section 30(a). Thus, I would conclude that the circuit court’s interpretation of Section 30(c), limiting its applicability to those instances where Retreat Road’s written consent has not been obtained prior to Miscellaneous Metals’ subleasing of the Premises, conforms with the established principles of contract interpretation followed by Maryland courts and is the only reasonable interpretation of the Lease.

Accordingly, I would hold that the Lease is not ambiguous and that the circuit court did not err in granting summary judgment and entering a declaratory judgment in favor of Miscellaneous Metals. As such, I respectfully dissent.