Circuit Court for Allegany County
Case No. C-01-CV-20-000324

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 986

September Term, 2023

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EVANS REALTY COMPANY, INC.

v.

THE TOWN OF LONACONING

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Reed,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: August 29, 2024

*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 Rule 1-104(a)(2)(B).

This case stems from a dispute between Evans Realty Company, Inc. ("Evans Realty") and the Town of Lonaconing (the "Town") over the terms of a contract regarding the Town's use of a reservoir on real property owned by Evans Realty. Evans Realty filed, in the Circuit Court for Allegany County, a complaint for declaratory relief that alleged that the contract was not supported by consideration and the Town's use and occupation of the reservoir was an unconstitutional "taking." Following a hearing, the trial court entered an order declaring that the contract was supported by consideration and enforceable, that the Town had the legal right to continue using the reservoir, and that there had not been a taking. Evans Realty noted a timely appeal and raises two questions:

1. Did the trial court err in finding that the contract was supported by consideration and therefore enforceable?

2. Did the trial court err in finding that there had not been a taking by the Town?

Finding no error, we affirm.

## BACKGROUND

In 1983, four brothers – Benjamin Evans, Jr., Aleck Evans, David Evans, Sr., and John "Jack" Evans (collectively the "Evans Family") – owned two businesses related to this appeal. At the time, John Evans was also the Town's mayor.

The first business, the Lonaconing Water Company ("LWC"), owned large tracts of land in Allegany County on which several water reservoirs were located in addition to the equipment designed and used to provide water from the reservoir to the Town (collectively the "Water System"). All four Evans brothers were involved in LWC's operation:

Benjamin Evans served as president; Aleck Evans was vice president; David Evans was secretary; and John Evans was the general manager. The second business, Evans Realty, owned the land on which was located one of the reservoirs (the "Charlestown Reservoir")[1] used by LWC to supply water to the Town. LWC owned and operated all of the equipment related to the reservoir's use. Evans Realty had two officers. John Evans was its president and David Evans was its secretary.

On February 7, 1983,[2] LWC and the Town executed an Agreement of Sale in which LWC agreed to sell the entire Water System to the Town for $663,000.00. The Agreement was signed on behalf of LWC by Benjamin Evans, as president, and David Evans, as secretary. Regarding the Charlestown Reservoir, the Agreement included the following language:

> 2. Leasehold Interest. It is understood and agreed that in addition to the conveyance of the above referenced property, the [Town] shall secure a leasehold interest in a certain portion of an area commonly known and designated as the [Charlestown Reservoir] for a term of ninety-nine (99) years at a cost of One Dollar ($1.00) per year, with the [Town] having the option of renewing said lease for an additional ninety-nine y(99) [sic] years at a cost of One Dollar ($1.00) per year. The terms and conditions of said leasehold shall be the subject of a separate leasehold agreement by and between the [Town] and Evans Realty Company, Inc., the titled owners of said property.

[1] In several of the relevant documents, the reservoir is named "Charleston," but, at the hearing on Evans Realty's complaint for declaratory relief, the parties referred to the reservoir as "Charlestown." We adopt the name used by the parties.

[2] The Agreement of Sale states that it was executed on February 7, 1982. The record, however, indicates that that date was likely a typographical error and that it was actually executed on February 7, 1983. The parties do not suggest otherwise.

On April 19, 1983, LWC executed an Incumbency Certificate, which was signed by Benjamin Evans, David Evans, and John Evans. In that document, the signatories attested that they were "authorized to take all actions and to do all things as such officers required under and pursuant to a certain Agreement of Sale dated February 7, 1983." That same day, David Evans and Benjamin Evans, acting on behalf of LWC, executed a Bill of Sale, in which LWC recognized that, in exchange for the consideration set forth in the Agreement of Sale, LWC was transferring all of its interests in the Water System to the Town. Attached to the Bill of Sale was an exhibit outlining the various properties and equipment that were part of the Water System. The Charlestown Reservoir was included in that exhibit.

Also on April 19, 1983, the Town and Evans Realty executed a Memorandum of Lease (the "Memorandum"), which was signed by David Evans and John Evans as secretary and president, respectively, of Evans Realty.[3] The Memorandum stated that Evans Realty would lease the Charlestown Reservoir to the Town "for ninety-nine (99) years" and that the Town would have the option to renew the lease "for one additional period of ninety-nine (99) years." It further stated that it was "subject to the terms, conditions, and restrictions contained in that certain unrecorded agreement between [Evans Realty] and [the Town] dated the 19th day of April, 1983."[4] In the Memorandum, Evans

[3] Maryland law generally prohibits a lease "above seven years . . . unless the deed granting it is executed and recorded." Md. Code, Real Property ("RP") § 3-101(a). That prohibition may be circumvented by a "memorandum of lease" that is "executed by every person who is a party to the lease[.]" RP § 3-101(e). Although the memorandum of lease must contain certain information, an express rent is not required. *Id.*

[4] No one produced that document.

Realty "reserve[d] the right to use any and all roadways crossing the leased premises for the purpose of ingress and egress from adjoining property owned by [Evans Realty] and not subject to this lease." It did not include any other terms.

That same day, LWC and the Town executed Articles of Sale and Transfer, which were signed by David Evans and Benjamin Evans as secretary and president, respectively, of LWC. In that document, which listed the property that was being sold by LWC to the Town, LWC stated that it was granting all of its "right, title and interest in and to a lease for a term of years dated April 19th, 1983, by and between [Evans Realty] and [the Town] concerning [the Charlestown Reservoir] and more particularly described in [the Memorandum.]"

Following the execution of those documents, the Town began operating the Water System. In 2012 or 2013, the Town erected a fence around the Charlestown Reservoir for safety reasons.

In 2020, Evans Realty filed its Complaint for Declaratory Relief, which is the subject of the instant appeal. In the complaint, Evans Realty alleged that the Town had used the Charlestown Reservoir without compensating Evans Realty since April 19, 1983, and that the lease was not supported by consideration. Evans Realty asked the court to determine the Town's rights and obligations regarding its use of the Charlestown Reservoir and to determine whether that use constituted a "taking" under the United States and Maryland constitutions.

***Hearing***

In January 2023, the trial court held a hearing on Evans Realty's complaint. At that hearing, the court received into evidence various documents, including the Agreement of Sale, Bill of Sale, Articles of Sale and Transfer, Incumbency Certificate, and Lease. In addition, it heard testimony from several witnesses. Tyler Rayner, the Town's Administrator, testified that, according to the Town's records, no payment had ever been made by the Town to Evans Realty for the use of the Charlestown Reservoir. Mr. Rayner testified further that, to his knowledge, the Town had not permitted Evans Realty to use the Charlestown Reservoir property since the 1983 sale. He added that, in his four years as the Town's Administrator, he was never made aware of any prior contact or litigation by Evans Realty regarding payment for the Town's use of the Charlestown Reservoir.

Benjamin Evans, III, the current president of Evans Realty and the son of LWC's former president, Benjamin Evans, Jr., testified that, despite maintaining an ownership interest in the Charlestown Reservoir, Evans Realty had not been permitted to use the property and had not received any payment for the Town's use of the property since 1983. He also testified that, prior to 1983, when the Water System was being operated by LWC, Evans Realty did not receive compensation from LWC for its use of the Charlestown Reservoir.

John Coburn, the Town's Mayor since 1997, testified that he was not aware of any obligation of the Town to Evans Realty. According to Mr. Coburn, Evans Realty had not objected to the construction of the fence around the Charlestown Reservoir, and until recent

communications related to the instant litigation, Evans Realty had never contacted him about the fence.

***Court's Ruling***

Following the hearing, the trial court issued a written opinion with findings of fact and determinations pertaining to Evans Realty's complaint for declaratory relief. Specifically, the court found that, although Evans Realty claimed that the Memorandum was the only document evincing any agreement between Evans Realty and the Town, it "was not the complete expression of the party's transaction[,]" the main purpose of which was for the Town to acquire the Water System. Consequently, the Memorandum "was not the final expression of the party's intention to bargain." The court found that the documents executed in 1983 – the Agreement of Sale, Articles of Sale and Transfer, Bill of Sale, Incumbency Certificate, and Memorandum – served to govern the overall transaction. And even though the Agreement of Sale was between LWC and the Town, the court found that Evans Realty, based on it "shar[ing] similar corporate officers" with LWC, was aware of the overall agreement and consented to be bound to its terms.

The court concluded that the Memorandum was supported by the consideration provided in the Agreement of Sale and its terms "enforceable." Therefore, the Town had "the legal right to continue the occupy the [Charlestown Reservoir property]" for a payment of $1.00 per year as set out in the Agreement of Sale and there was no "taking." In addition, it found that the Town owed Evans Realty arrearages under the Memorandum of $39.00.[5]

[5] Neither of the parties have challenged the arrearages finding.

This timely appeal followed. Additional facts will be supplied as needed below.

## STANDARD OF REVIEW

When reviewing a declaratory judgment following a bench trial, we "'review the case on both the law and the evidence.'" *Vaughn v. Faith Bible Church of Sudlersville*, 248 Md. App. 477, 485 (2020) (quoting Md. Rule 8-131(c)). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Issues of law are reviewed *de novo*. *Vaughn*, 248 Md. App. at 485.

## DISCUSSION

### I.

### *A.*

Evans Realty contends that the trial court erred in finding that any purported lease of the Charlestown Reservoir property was supported by consideration for the Town's purchase of the Water System from LWC set forth in the Agreement of Sale between LWC and the Town. In other words, because Evans Realty was not a party to the Agreement of Sale, it should not be bound by its terms. It argues that it was only a party to the Memorandum, which included no consideration, and thus, received no benefit and the Town suffered no detriment. Therefore, there is no enforceable lease.

The Town contends that the evidence adduced at the hearing supports the trial court's finding that the Memorandum, among several documents, was an integral part of one transaction – the Town's acquisition of the Water System. Because the lease of the Charlestown Reservoir property was a necessary part of that transaction, the consideration

supporting that acquisition also supported the lease referred to in the Articles of Sale and the Memorandum. It further contends that the evidence also supported the trial court's finding that Evans Realty consented to be bound by the terms of the Agreement of Sale, as to the lease of the Charlestown Reservoir property required by the Articles of Sale, even though it was not a named party in any of the other documents related to the transaction. Therefore, the trial court's findings should be affirmed.

***B.***

"Generally, Maryland courts subscribe to the objective theory of contract interpretation." *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019). Under that theory, the "primary goal" of contract interpretation "is to ascertain the intent of the parties in entering the agreement" and to interpret "the contract in a manner consistent with that intent." *Id.* (cleaned up). To that end, our interpretation begins with the language of the contract itself and we "consider the plain language of the disputed contractual provisions 'in context, which includes not only the text of the entire contract but also the contract's character, purpose, and the facts and circumstances of the parties at the time of execution.'" *Id.* at 394 (cleaned up) (quoting *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 88 (2010)).

When the contract's language is not ambiguous, "we give effect to that language as written without concern for the subjective intent of the parties at the time of formation." *Ocean Petroleum*, 416 Md. at 86. But, when its language is ambiguous, "the narrow bounds of the objective approach give way, and [we are] entitled to consider extrinsic or parol evidence to ascertain the parties' intentions." *Credible Behav. Health*, 466 Md. at

394. Contract language is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning. *Impac Mortg. Holdings, Inc. v. Timm*, 245 Md. App. 84, 109 (2020). "'The determination of whether language is susceptible of more than one meaning includes a consideration of the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution.'" *Id.* at 109-10 (cleaned up) (quoting *Calomiris v. Woods*, 353 Md. 425, 436 (1999)).

Parol or extrinsic evidence is generally inadmissible when construing a complete and unambiguous contract. *Tricat Indus., Inc. v. Harper*, 131 Md. App. 89, 108-09 (2000); *Beck v. Beck*, 112 Md. App. 197, 217-18 (1996). But, when a particular document does not purport to be the final agreement on an issue, including consideration for the agreement of the lack thereof, parol evidence may also be considered. *Tricat Indus.*, 131 Md. App. at 108; *see also Venners v. Goldberg*, 133 Md. App. 428, 441 (2000).

In addition, we may construe "multiple documents together as part of a single transaction" in the search for intent. *Ford v. Antwerpen Motorcars Ltd.*, 443 Md. 470, 479 (2015). As the Supreme Court of Maryland has explained:

> A contract need not be evidenced by a single instrument. Where several instruments are made a part of a single transaction they will all be read and construed together as evidencing the intention of the parties in regard to the single transaction. This is true even though the instruments were executed at different times and do not in terms refer to each other.

*Id.* (cleaned up).

We review the trial court's construction and interpretation of a written contract, including whether any ambiguity exists, *de novo*. *Calomiris*, 353 Md. at 434-35. If we agree with the trial court's finding of ambiguity, we "apply a clearly erroneous standard to

[its] assessment of the construction of the contract in light of the parol evidence received." *Id.* at 435.

***C.***

Evans Realty's primary claim is that any purported lease of the Charlestown Reservoir property was unenforceable for a lack of consideration. In making that claim, Evans Realty treats the Memorandum, the document that it signed, as the complete and only agreement between the parties regarding the Charlestown Reservoir property.

"In most instances, the determination of a contract's enforceability is decided by the existence of consideration[.]" *Holloman v. Cir. City Stores, Inc.*, 391 Md. 580, 590 (2006). "Consideration can be supported by either 'a benefit to the promisor or a detriment to the promisee[.]'" *Baltimore Cotton Duck, LLC v. Ins. Comm'r of the State of Maryland*, 259 Md. App. 376, 396 (2023) (cleaned up) (quoting *Harford Cnty. v. Town of Bel Air*, 348 Md. 363, 381 (1998)), *cert. denied*, 486 Md. 396 (2024).

Were we to rely exclusively on the Memorandum, the agreement between Evans Realty and the Town would lack consideration. Its plain language is a clear promise by Evans Realty to benefit the Town with access to and use of the Charlestown Reservoir property for ninety-nine years and an option to renew that period for an additional ninety-nine years. There is no stated benefit to Evans Realty or detriment to the Town in exchange for that promise. More particularly, there is no stated rental payment. Ordinarily, a lease agreement's silence on the rental amount renders it ambiguous. *See State v. Philip Morris, Inc.*, 225 Md. App. 214, 246 (2015) ("Silence creates ambiguity . . . when it involves a matter naturally within the scope of the contract." (quotation marks and citation omitted)).

Here, the statutorily required Memorandum was not intended to reflect all the terms of the parties' entire agreement. As it expressly states, it was "subject to the terms, conditions, and restrictions contained in that certain unrecorded agreement between [Evans Realty] and [the Town] dated the 19th day of April, 1983." Because the referenced "unrecorded agreement" was never produced, it is necessary to look beyond the Memorandum to ascertain the consideration for the use of the Charlestown Reservoir property, and, in particular, to other documents involved in the Town's acquisition of the Water System.[6]

Those documents indicate that LWC agreed to sell the Water System – in which the use of the Charlestown Reservoir was an essential part – to the Town for $663,000.00 in February 1983. LWC was owned and operated by the Evans Family, namely, Benjamin Evans, Jr., Aleck Evans, David Evans, Sr., and John "Jack" Evans. At the time, the only part of that system used but not owned by LWC was the Charlestown Reservoir property. That was owned by Evans Realty, which, like LWC, was also owned and operated by the Evans Family. John Evans, in addition to being a principal and part owner of both LWC and Evans Realty, was also the Town's mayor.

On February 7, 1983, LWC and the Town executed the Agreement of Sale, which was signed, on behalf of LWC, by Benjamin Evans and David Evans. That agreement

[6] As previously noted, neither of the parties, their successor officers, and employees produced that "unrecorded agreement" or copies of it. None of the current officers who testified indicated any awareness of it. The record suggests that the unrecorded agreement referred to in the Memorandum and the Articles of Sale probably did exist at one time. That it possibly did not, does not weigh in on our analysis.

stated, in relevant part, that, in addition to receiving LWC's Water System, the Town was to secure from Evans Realty a leasehold interest in the Charlestown Reservoir property for a term of ninety-nine years at a cost of $1.00 per year, with an option to renew for an additional ninety-nine years at the same amount. The Agreement of Sale, as did the Memorandum, expressly stated that the terms and conditions of the lease shall be set forth in a separate lease agreement between the Town and Evans Realty.

LWC executed the documents finalizing the sale on April 19, 1983. In the Incumbency Certificate, Benjamin Evans, David Evans, and John Evans all stated that they were "authorized to take all actions and to do all things" to effectuate the Agreement of Sale. In the Bill of Sale, David Evans, as secretary, and Benjamin Evans, as president, transferred the Water System to the Town in exchange for the consideration set forth in the Agreement of Sale on behalf of LWC.

Also on April 19, 1983, John Evans and David Evans, acting on behalf of Evans Realty, executed the Memorandum, which, consistent with the terms set forth in the Agreement of Sale, gave the Town the right to use the Charlestown Reservoir property for a period of ninety-nine years and to renew for an additional ninety-nine years. That same day, LWC and the Town executed the Articles of Sale and Transfer, which was signed by Benjamin Evans and David Evans as president and secretary, respectively, of LWC. In that document, LWC granted to the Town all of LWC's "right, title and interest" in the Memorandum between the Town and Evans Realty.

After those documents were signed, the Town began to operate the Water System, and it has continued to operate it without any objection from LWC, Evans Realty, or

anyone associated with those entities until this litigation. Its operation remained unabated even after the Town built the fence around the Charlestown Reservoir in 2012 or 2013.

The evidence indicates that the Memorandum (which, as a matter of law, does not require an expressed rental) was not intended to be the entire agreement between Evans Realty and the Town regarding the Charlestown Reservoir. Rather, it was just one of several documents executed by LWC, Evans Realty, and the Town to effect the Town's purchase of the Water System. That evidence also supports a reasonable inference that Evans Realty executed the Memorandum with full knowledge of the Agreement of Sale of which the lease of the Charlestown Reservoir property was a necessary component of LWC's sale of the Water System for $663,000.00.

We are mindful that LWC and Evans Realty are distinct legal entities separate from each other and their individual members but that, in our view, does not change our analysis. When you consider that both LWC and Evans Realty were owned and operated by the same people, it is reasonable to infer that Evans Realty executed the Memorandum memorializing the actual lease to facilitate the sale of the Water System to the Town. The reasonableness of that inference is bolstered by the fact that Evans Realty, prior to this litigation, did not challenge the Town's use of the Charlestown Reservoir property for thirty-seven years. This is not a situation in which contracting parties have bound a third party without that party's knowledge or input. As discussed above, the Agreement of Sale required the Town to secure a lease from Evans Realty for the Charlestown Reservoir property, and its owners and principals were certainly aware of that. If they were not, Evans Realty would not have executed the Memorandum confirming such a lease.

The facts support the trial court's finding that, notwithstanding the separate legal entities, Evans Realty chose to bind itself to the terms of the Water System sale even though LWC was the direct financial beneficiary of the purchase price because LWC's sale to the Town benefitted all of the Evans Family. *See McClellan v. McClellan*, 52 Md. App. 525, 534-35 (1982) ("A benefit to a third person is sufficient consideration for an agreement or promise." (cleaned up)); *see also Lloyd v. Niceta*, 255 Md. App. 663, 682 (2022) ("'It is basic contract law that courts generally will not inquire as to the adequacy of consideration.'" (quoting *Vogelhut v. Kandel*, 308 Md. 183, 190 (1986))).

By insisting that the Memorandum is a stand-alone document and the sole evidence of a lease agreement, Evans Realty is asking us to ignore the purpose of the overall transaction, the multiple documents implementing that purpose, and other relevant circumstances surrounding its execution. That would be tenable if the Memorandum was the complete and final contract, but it is not. When we consider the related documents and facts in the context of the purpose of the transaction, the intent of parties in regard to consideration for the lease becomes clear. The overall consideration of the sale of the Water System to the Town was consideration for the lease of the Charlestown Reservoir property under the terms set out in the Articles of Sale.

We hold that the trial court did not err in concluding: that the sale benefitted the owners of both corporations; that the lease as memorialized by the Memorandum was supported by consideration; that the Town had the right to occupy the Charlestown Reservoir property under the terms of the Memorandum and Articles of Sale; that the Town was obligated to pay $1.00 per year; and that the arrearages were $39.00.

**II.**

Based on its contention that there is no enforceable lease, Evans Realty contends that the trial court erred in finding that the Town's use of the Charlestown Reservoir property did not constitute a "taking" in violation of the United States and Maryland constitutions. It argues that the Town's continued use of the property and its denial of any and all use and enjoyment of the property by Evans Realty "since April 1983" coupled with the fencing and gating of the rented property constitutes "inverse condemnation."

The Town contends that its use of the Charlestown Reservoir property is not a taking because Evans Realty agreed to its use. In addition, the Town argues an any inverse condemnation claim would be barred by the general three-year statute of limitations.

We hold that the trial court did not err in finding that the Town's use of the Charlestown Reservoir property was not a taking. As discussed in Part I, Evans Realty agreed in 1983 to the Town's use of that property. *See Arthur E. Selnick Assocs., Inc. v. Howard Cnty. Maryland*, 206 Md. App. 667, 702-03 (2012) (noting that there can be no taking when a property owner has voluntarily leased his property to the government). And, as the Memorandum expressly states, Evans Realty only reserved the right to access any of its property "not subject to this lease" "for the purpose of ingress and egress from adjoining property owned by [Evans Realty.]" There is no evidence or indication that that right has been hindered in any way.

Therefore, there is no taking and no inverse condemnation claim, but even if there were, we agree that it would be barred by the three-year statute of limitations. An inverse condemnation claim must be brought within three years of the date the claim accrues. *Litz*

*v. Maryland Dep't of Env't*, 434 Md. 623, 651 (2013). The claim accrues when the taking becomes permanent or stabilized. *Id.* at 654. In this case, any taking would have occurred, at the latest, in 2013, when the Town installed the fence around the reservoir, restricting access inside the fence. No evidence or argument has been advanced that the fence is not on property subject to the lease or that it has in any way hindered Evans Realty's ingress and egress to any adjoining property it may own. But even were there such a claim, it was not raised within three years and would now be barred by limitations.

**JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**