

Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000915

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1898

September Term, 2022

CRAIG MERCIER

v.

PORTER PARKING SOLUTIONS, INC.

Wells, C.J.
Nazarian,
Tang,

JJ.

Opinion by Tang, J.

Filed: October 20, 2023

* 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 concerns a dispute between Craig Mercier (“Mercier”), appellant, and Porter Parking Solutions, Inc. (“PSI”), appellee, over a commercial lease. We shall not decide the substantive issues pertaining to the merits of the case because the Circuit Court for Anne Arundel County did not enter a final, appealable judgment in the action. We shall dismiss the appeal and remand the case to the circuit court for proceedings consistent with this opinion.

BACKGROUND¹

Mercier owns property located at 7454 Shipley Avenue in Harmans, Maryland near Baltimore-Washington International Airport. In 2017, the parties entered into a Commercial Lease Agreement (the “Lease”) with Mercier as the landlord and PSI as the tenant. Mercier had used the property to operate a parking/shuttle business, and PSI continued to use it that way.

In 2019, PSI entered into a Parking License Agreement with Amazon.com Services, Inc. (“Amazon”) that allowed Amazon to use parking spaces on the property for a monthly fee, while reserving certain spaces for PSI. About two years later, Mercier issued to PSI a notice of default and lease termination based on his belief that the agreement with Amazon was a sublease in violation of the Lease.

Thereafter, PSI filed a complaint against Mercier, followed by an amended complaint, seeking, *inter alia*, a declaration that it “is not in default of the [Lease]” because the Parking License Agreement is a license and not a sublease (Count 2). PSI also alleged

¹ Because we are not addressing the merits of the case, we need not provide a detailed recitation of the facts.

that Mercier breached the Lease by engaging in conduct that violated PSI's right to quiet enjoyment (Count 4).

Mercier filed a counter-complaint against PSI, followed by an amended counter-complaint. He asserted multiple causes of action, of which two—Counts 1 and 3—pertain to this appeal. In Count 1, Mercier alleged that PSI breached the Lease by failing to provide 90 days' written notice of its intent to renew the Lease after the first year. Accordingly, Mercier claimed that PSI became a month-to-month tenant with an increased rent obligation, and he requested an amount for past rent due and late fees.

In Count 3, Mercier sought a declaratory judgment. He asserted that PSI is in default of the Lease because the Parking License Agreement is a sublease, and that PSI breached the Lease in other ways. Mercier requested that the court “[a]djudicate and determine the rights and liabilities of the parties” by making the following declarations:

b. Enter a determination that the agreement between Amazon.com Services, Inc., is a sublease and that [PSI] is consequently in default of its duties to [Mercier].

c. Enter a determination that [PSI] has failed to pay rent and that [Mercier] is entitled to all remedies available under the Annotated Code of Maryland, Real Property Article § 8-401.

d. Enter a determination that [PSI] is a Tenant Holding Over and that [Mercier] is entitled to all remedies available under the Annotated Code of Maryland, Real Property Article § 8-402.

e. Enter a determination that [PSI] is in Breach of Lease and that [Mercier] is entitled to all remedies available under the Annotated Code of Maryland, Real Property Article § 8-402.1.

A two-day trial began on September 28, 2022. At the outset of trial, PSI confirmed that it was proceeding on two counts: declaratory judgment (Count 2) and breach of contract (Count 4). Mercier initially stated that he was proceeding on all counts pled but later indicated that he was “going to proceed only on two counts[,]” apparently referring to breach of contract (Count 1) and declaratory judgment (Count 3).

After trial, the court issued a memorandum opinion entered on December 9, 2022.

In the introductory paragraph of the opinion, the court noted the surviving counts:

Prior to the commencement of testimony, both parties dismissed several counts of their respective cases. [PSI] dismissed all but Count 2, (Declaratory Judgment) and Count 4, (Breach of Contract). [Mercier] dismissed all but Counts [1], (Breach of Contract) and Count 3, (Declaratory Judgment). Both parties are seeking attorney fees under their respective Breach of Contract claims.

The court summarized its factual findings and proceeded to address the issues in the following three sections titled: (1) “License v. Lease”; (2) “[PSI’s] Claims”; and (3) “[Mercier]’s Claims[.]” In the first section of the opinion, the court found that the Parking License Agreement is a license and not a sublease. It did not expressly declare whether PSI was “in default” of the Lease as requested in the parties’ operative pleadings.

In the second section, the court addressed PSI’s breach of contract claim and concluded that “there is no breach of the covenant of quiet enjoyment, [PSI’s] request for attorney fees, grounded in the need to have been successful on this point, is DENIED, as there is no breach there are no damages.”

In the third section, the court turned to Mercier’s claims. Before addressing the merits, the court indicated that Mercier had “dismissed all Counts except Count 1, Breach

of Contract[.]” contrary to the court’s introductory pronouncement. The court did not explain the discrepancy, and there is nothing in the record reflecting that Mercier’s claim for declaratory judgment (Count 3) was dismissed.

The court addressed Mercier’s assertion that PSI failed to provide 90 days’ written notice to renew the lease and other purported breaches (*i.e.*, overgrowth on the property, placement of an outdoor speaker, repairs made to the parking lot, and insurance coverage). Ultimately, the court determined that “[t]here is no breach. As the [c]ourt finds no breach there shall be no award of fees.” The court did not expressly declare whether PSI failed to pay rent, was a tenant holding over, and breached the Lease, as requested by Mercier in his operative pleading.

The court concluded the opinion with the following summary:

[T]he [c]ourt finds the existence of a license, not a lease, no finding of breach of contract on the part of either party, hence no attorneys[’] fees to be awarded to either of them. The [c]ourt has issued an accompanying Order.

By separate order, the court purportedly disposed of the parties’ claims as follows:

ORDERED, that the license agreement between [PSI] and Amazon, commencing November [1], 2019 is a licensing agreement and not a sublease thus NOT VIOLATIVE of the lease between [the parties]; and it is further

ORDERED, the injunction entered by the [c]ourt against [Mercier] is partially VACATED, and it is further

ORDERED, that [Mercier] is permanently enjoined from interfering with the contractual relationship between [PSI] and its clients; and it is further

ORDERED, that [PSI’s] claim for Breach of Contract is DENIED; and it is further

ORDERED, that attorneys’ fees are DENIED to both parties and it is hereby

ORDERED, that [PSI's] bond is released this matter now being complete and finite.

On appeal, Mercier primarily challenges the court's treatment of his claims for breach of contract and declaratory judgment.² The issue we raise *sua sponte*, however, is whether this Court has jurisdiction to hear this appeal. *See Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 172 (2015) ("Because the absence of a final judgment may deprive a court of appellate jurisdiction, we can raise the issue of finality on our own motion."). If we lack appellate jurisdiction, the appeal must be dismissed. *See McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019); Md. Rule 8-602(b).

DISCUSSION

Prior to oral argument, we ordered supplemental briefing on the issue of whether the appeal had been taken from a final judgment. The parties filed their supplemental briefs on or before September 29, 2023. On October 4, 2023, PSI filed an additional supplement.

² Mercier stated the Questions Presented in his brief as follows:

1. Did the Circuit Court err in the denial of pretrial Rule 1-341 sanctions?
2. Did the Trial Court err in finding the Appellant waived 90-day prior written notice for renewal of the parties' commercial lease?
3. Did the Trial Court err in finding no breach or contractual attorney's fees were due to the Appellant?
4. Did the Trial Court err in its lack of ruling on the declaratory judgment claim?
5. Did the Trial Court err in believing that the elements shown at trial constituted a license and not a sublease?

At the outset, the parties agree that Mercier’s claim for declaratory judgment was not dismissed or withdrawn. Mercier acknowledges that the circuit court did not “enter any specific determinations” as to the declarations requested in his amended counter-complaint. He focuses on the merits of the case, however, arguing that “there is sufficient cause [for this Court] to reverse [the circuit court’s judgment] and enter judgment in his favor.”³ But to the extent we conclude that the court’s order is not a final judgment, Mercier requests that we issue an opinion that instructs the court “as to the matters” it must decide to render a final appealable judgment.⁴

PSI contends that the circuit court entered a final judgment on Mercier’s declaratory judgment claim when it resolved the “lease v. license” controversy that both parties sought to resolve. As to other declarations requested by Mercier, PSI claims that those requests were not clear from Mercier’s closing argument and were effectively subsumed within his breach of contract claim. PSI argues that the court addressed and denied Mercier’s breach of contract claim in the written opinion, notwithstanding its failure to mention it in the separate order.

³ Among other things, Mercier contends that the court should have adequately explained “the impact and scope of [Mercier’s] waiver of lease renewal at the one year anniversary of the tenancy” and “why the un rebutted testimony and evidence of the breaches was not acceptable[.]” He asserts that the court did not “clearly delineate and terminate the controversy between the parties” because it failed to address the parties’ “ongoing obligations under the lease that have continuously remained in dispute.”

⁴ In this regard, Mercier proposes that we evaluate the factual findings made by the circuit court and, based on any gaps we discern from the record, instruct the court to address “specific issues that potentially remain in controversy” “including the witness testimony and the genuine facts that still may be in dispute.” Mercier’s proposal would essentially require us to address the merits of the case, which we decline to do.

Mercier’s Claim for Declaratory Judgment

Maryland Code (1974, 2020 Repl. Vol.), § 3-409(a) of the Courts and Judicial Proceedings Article (“CJP”) provides that, in general, a court may grant a declaratory judgment in a civil case if it will “terminate the uncertainty or controversy giving rise to the proceeding[.]” “[T]he 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 omitted). A justiciable controversy is “one wherein ‘there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.’” *Id.* at 690 (emphasis and citation omitted).

The Supreme Court of Maryland has explained the requirements for the entry of a declaratory judgment:

[W]hen a declaratory judgment action is brought and the controversy is appropriate for resolution by declaratory judgment, the court must enter a declaratory judgment and that judgment, defining the rights and obligations of the parties or the status of the thing in controversy, must be in writing. It is not permissible for the court to issue an oral declaration. . . . *When entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment.* Although the judgment may recite that it is based on the reasons set forth in an accompanying memorandum, the terms of the declaratory judgment itself must be set forth separately. Incorporating by reference an earlier oral ruling is not sufficient, as no one would be able to discern the actual declaration of rights from the document posing as the judgment. This is not just a matter of complying with a hyper-technical rule. The requirement that the court enter its declaration in writing is for the purpose of giving the parties and the public fair notice of what the court has determined.

Aleti v. Metro. Balt., LLC, 251 Md. App. 482, 519–20 (2021) (emphasis added and citations omitted).

“[A] ruling on substantive counts brought as part of a lawsuit in which a [party] also seeks a declaratory judgment does not render the declaratory judgment claim moot or non-justiciable.” *Id.* at 521. A “party may seek a declaratory judgment ‘notwithstanding a concurrent common-law, equitable, or extraordinary legal remedy[.]’” *Hanover Invs. v. Volkman*, 455 Md. 1, 16 (2017) (quoting CJP § 3-409(c)). “That a separate claim exists upon which suit could be brought . . . ordinarily does not defeat a party’s right to seek and obtain a declaratory judgment[.]” *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 556–57 (1999); *Post v. Bregman*, 349 Md. 142, 160 (1998) (our courts “have not . . . generally blessed the dismissal of a proper action for declaratory judgment because of a ruling on an alternative claim in the same action.”). It follows that, even if a trial court’s rulings on other counts effectively resolve a dispute identified in a separate count for declaratory judgment in the same action, the court is still required to enter a judgment declaring the rights and obligations of the parties. *See Aleti*, 251 Md. App. at 521.

“[W]hether a declaratory judgment action is decided for or against the plaintiff, there should be a declaration in the judgment or decree defining the rights of the parties under the issues made.” *Md. Dep’t of State Police v. Dashiell*, 443 Md. 435, 449 (2015) (citation omitted). The “fact that the side which requested the declaratory judgment did not prevail in the circuit court does not render a written declaration of the parties’ rights unnecessary.” *Harford Mut. Ins. Co. v. Woodfin Equities Corp.*, 344 Md. 399, 414 (1997);

see also *Christ ex rel. Christ v. Md. Dep't of Nat. Res.*, 335 Md. 427, 435–36 (1994) (“[t]he court’s rejection of the plaintiff’s position on the merits furnishes no ground for” failure to render a declaratory judgment); *East v. Gilchrist*, 293 Md. 453, 461 n.3 (1982) (“where a plaintiff seeks a declaratory judgment . . . , and the court’s conclusion . . . is exactly opposite from the plaintiff’s contention, nevertheless the court must, under the plaintiff’s prayer for relief, issue a declaratory judgment”); *Shapiro v. Bd. of Cnty. Comm’rs*, 219 Md. 298, 302–03 (1959) (“even though the plaintiff may be on the losing side of the dispute, if he states the existence of a controversy which should be settled, he states a cause of suit for a declaratory decree”).

As mentioned, the parties agree that Mercier’s claim for declaratory judgment was neither dismissed nor withdrawn. At some point in the written opinion, however, the court apparently concluded that Mercier was only proceeding on his claim for breach of contract. It is unclear whether this was the reason the court did not address Mercier’s claim for declaratory judgment, or whether the court recognized the live claim but assumed that resolution of other issues rendered a written declaration unnecessary. In any event, Mercier’s claim for declaratory judgment remains unadjudicated.⁵ See *Forward v.*

⁵ PSI claims that the circuit court was not required to address Mercier’s declaratory judgment claim because its resolution was unnecessary and moot; the claim implicated the Real Property Code which provides statutory based remedies that takes precedence over the declaratory judgment count; and the court’s resolution of other issues rendered express declarations unnecessary. On that premise, PSI asserts that the court “fully declared the reasoning and final decisions concerning all of [Mercier’s] declaratory judgment issues.” PSI presumes, however, that the court decided not to address Mercier’s declaratory judgment claim for those reasons. We are reluctant to make that presumption based on the record recounted above.

McNeily, 148 Md. App. 290, 308 (2002) (no final judgment where, following disposition on certain factual issues, the court “simply ignored” the request for declaratory judgment).

Mercier’s Claim for Breach of Contract

The court’s failure to dispose of Mercier’s claim for breach of contract, in the separate written order, compounds the finality problem. Maryland Rule 2-602(a) makes clear that a judgment that does not dispose of all claims by and against all parties is not a final judgment:

(a) Generally. Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

(1) is not a final judgment;

(2) does not terminate the action as to any of the claims or any of the parties;
and

(3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Here, the written order was not a final judgment because it did not adjudicate Mercier’s claim for breach of contract. *See, e.g., Pearlstein v. Md. Deposit Ins. Fund*, 79 Md. App. 41, 52 (1989) (order was not a final judgment where it did not dispose of all the counts). Although, in its written opinion, the court rejected Mercier’s breach of contract claim, the opinion does not constitute a final judgment insofar as that claim is concerned.

In *Rohrbeck v. Rohrbeck*, 318 Md. 28 (1989), the Supreme Court of Maryland explained:

To have the attribute of finality, the ruling must be so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.

To be final and conclusive in that sense, the ruling must necessarily be unqualified and complete, except as to something that would be regarded as collateral to the proceeding. *It must leave nothing more to be done* in order to effectuate the court's disposition of the matter. In the first instance, that becomes a question of the court's intention: *did the court intend its ruling to be the final, conclusive, ultimate disposition of the matter?*

On several occasions recently, this Court, in considering whether a particular order or ruling constituted an appealable judgment, looked to whether the order or ruling was “unqualified,” whether there was any contemplation that a further order was to be issued or that anything more was to be done. . . . [I]f the judge did not intend that his ruling finally terminate the litigation, it would not constitute a final judgment. . . . [A] direction by the court that an order is to be submitted constituted a direction to the clerk not to enter judgment until the order had been signed and filed.

Lest there be any lingering question about the matter, *we now make clear that, whenever the court, whether in a written opinion or in remarks from the bench, indicates that a written order embodying the decision is to follow, a final judgment does not arise prior to the signing and filing of the anticipated order unless (1) the court subsequently decides not to require the order and directs the entry of judgment in some other appropriate manner or (2) the order is intended to be collateral to the judgment.*

Id. at 41–42 (cleaned up and emphasis added).

In the instant matter, the court indicated, in its written opinion, that it had issued a separate “accompanying Order.” Based on that, the court clearly did not intend that its opinion would constitute a final determination on the merits of the claims. Because the order did not dispose of Mercier’s claim for breach of contract, no final judgment has been entered.

For the reasons stated, we must dismiss the appeal and remand the case to the circuit court. On remand, the court shall, consistent with this opinion, (1) resolve Mercier's claim for declaratory judgment, and (2) enter a judgment that disposes of all claims before it.

**APPEAL DISMISSED AND CASE
REMANDED TO THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY FOR
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLANT.**