VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 22nd day of October, 2020.

Present: All the Justices

SGT Kang's Group, LLC, Appellant,

against Record No. 191423
Circuit Court No. CL18-4752-00

Board of County Supervisors of Prince William County, Appellee.

Upon an appeal from an order entered by the Circuit Court of Prince William County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court. The circuit court erred by granting Prince William County's motion in limine after erroneously concluding that the recordation of a certain plat operated to grant an ingress and egress easement to the County.

I. BACKGROUND

In the 1980s, two adjoining property owners decided to build an automotive service center and a car wash on their properties. On November 26, 1985, the property owners obtained a special use permit from the County that allowed them to construct and operate these businesses. Among other things, the special use permit required the property owners to dedicate a right-of-way along Route 1 to the County pursuant to a revised land use plan.

On December 5, 1985, the property owners entered into a "Declaration of Easements, Covenants, Conditions and Restrictions" (the "1985 Declaration") in order to facilitate the joint development of their properties. The property owners recorded the 1985 Declaration in the County land records.

The 1985 Declaration granted the property owners reciprocal ingress and egress easements over "all of the curb cuts, driveways, driveway aprons, roads, roadways, streets and walkways" that were to be constructed on the properties. The property owners intended for these easements to provide ingress and egress for pedestrian and vehicular traffic and to serve as parking areas. The 1985 Declaration allowed the property owners to grant additional easements and rights-of-way over the properties and to "effectuate public dedication at any time of any portion or portions of the Roads . . . lying within [the] property." Nevertheless, the pertinent section of the 1985 Declaration stated that:

> [t]he easements and rights-of-way declared, granted, created or conveyed in this Section . . . shall not be construed to nor shall they create any easements, licenses, privileges or rights of any nature whatsoever in the general public or in any parties other than the Declarants and their respective successors in interest owning said Properties.

On April 9, 1986, the property owners recorded a Deed of Dedication (the "1986 Dedication") and a corresponding plat (the "1986 plat"). In pertinent part, the 1986 Dedication stated that it "does hereby create and establish the easements shown on the plats attached hereto and made a part hereof."

Consistent with the terms of the special use permit, the 1986 plat showed a right-of-way running adjacent to Route 1 that was marked as the "Proposed Street Dedication." The 1986 plat, however, also showed "Ingress-Egress" easements running across interior portions of the properties. While the locations of these easements corresponded to the locations of the reciprocal ingress and egress easements that were previously granted in the 1985 Declaration, the 1986 plat did not indicate that the "Ingress-Egress" easements were existing easements. The 1986 plat also did not indicate that any of the easements were "reserved" or otherwise excluded from the 1986 Dedication.

The 1986 plat contained dedication blocks setting forth language similar to that found in the 1986 Dedication. These dedication blocks stated that the property owners "dedicate the easements and right-of-way as indicated on this plat." Like the 1986 plat itself, the dedication blocks did not indicate that any of the easements shown on the plat were "reserved" or excluded from the 1986 Dedication.

County officials signed the 1986 plat and indicated that it was "reviewed" and "approved." The County, however, did not assert any right to use the "Ingress-Egress" easements that were referenced on the 1986 plat for approximately thirty years. SGT Kang's Group, LLC, ("SGT") purchased the car wash property in 2016. Like its predecessor in title, SGT used a portion of the area located within the "Ingress-Egress" easements shown on the 1986 plat for its car wash operations.

In 2018, the County filed a petition for condemnation to acquire a strip of SGT's property in order to widen Route 1. This strip of property was located within the "Ingress-Egress" easements shown on the 1986 plat. SGT used this portion of its property to finish cleaning and drying cars after they were processed through the "tunnel" of its car wash. Although the County made a bona fide effort to purchase the condemned property, SGT rejected the County's offer. Thus, the County and SGT requested a trial to determine the amount of just compensation that the County owed to SGT as a result of the taking.

Before trial, the County filed a motion in limine to prohibit SGT from presenting any evidence regarding its use of the strip of property at issue. The County argued that the 1986 Dedication and plat created a public ingress and egress easement across the strip of property affected by the road-widening project. Therefore, the County maintained that SGT did not have the right to use the property for its car wash operations.

The circuit court granted the County's motion in limine. The circuit court agreed that the 1986 Dedication and plat gave the County an ingress and egress easement over the property at issue. The circuit court further explained that the recordation of the 1986 plat was "controlling" under the pertinent statutes. At the request of the parties, the circuit court entered an agreed order certifying the issues raised in the motion in limine for interlocutory appeal pursuant to Code § 8.01-670.1. This appeal followed.

II. ANALYSIS

This appeal requires the Court to interpret the language of former Code § 15.1-478,[1] the 1985 Declaration, and the 1986 Dedication and plat. On appeal, the Court reviews matters of statutory interpretation de novo. *See Loch Levan Land Ltd. P'ship v. Board of Supervisors*, 297 Va. 674, 683 (2019). Likewise, the Court applies a de novo standard of review when interpreting the language used in a deed or similar written instrument. *See Marble Techs., Inc. v. Mallon*, 290 Va. 27, 33 (2015).

In 1985 and 1986, Code § 15.1-478 addressed the recordation of plats dedicating streets, easements, and rights-of-way to localities.[2] In pertinent part, the applicable version of Code § 15.1-478 stated that:

> [t]he recordation of such plat shall operate to transfer, in fee simple, to the respective counties and municipalities in which the land lies such portion of the premises platted as is on such plat set apart for streets, alleys or other public use and to transfer to such county or municipality any easement indicated on such plat to create a public right of passage over the same; *but nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved.*

[1] Former Code § 15.1-478 was repealed on December 1, 1997, along with the other provisions appearing in former Title 15.1 of the Code of Virginia. 1997 Acts ch. 587.

[2] Code § 15.2-2265 currently applies to the recordation of similar plats.

Code § 15.1-478 (1986) (emphasis added).

In the present case, the 1985 Declaration validly reserved the ingress and egress easements before the 1986 Dedication and plat were recorded. The 1985 Declaration expressly stated that the ingress and egress easements "shall not be construed to nor shall they create any easements, licenses, privileges or rights of any nature whatsoever in the general public or in any parties other than the Declarants."

Although the 1986 plat failed to specify that the "Ingress-Egress" easements were existing easements that were reserved from the dedication, the County had constructive knowledge of the prior reservation. As the 1985 Declaration was recorded in the County's land records, the County had notice of the reservation of the ingress and egress easements. *See, e.g.*, *Porter v. Wilson*, 244 Va. 366, 369 (1992) ("[O]nce a deed is recorded, the admission to record is in law notice to the entire world.").

Moreover, former Code § 15.1-478 did not require the property owners to expressly reserve the easements on the face of the 1986 plat itself. The plain language of the statute only referred to rights "*heretofore* validly reserved." *See* Code § 15.1-478 (1986) (emphasis added). The Court has explained that:

> [t]he word 'heretofore' denotes time past, generally, as distinguished from time present or future, without conveying the idea of comprehending any remote time in this or the last century, and, in its common acceptation, means before; before and up to the present time; before, or down to, this time; hitherto; in time past, previous time, or previously; up to this time; and it may mean in times before the present; formerly.

Two-Way Tronics, Inc. v. Greater Washington Educ. Television Ass'n, 206 Va. 110, 117 (1965) (quotation omitted); *see also* Black's Law Dictionary 874 (11th ed. 2019) (defining "heretofore" as "up to now; before this time").

As former Code § 15.1-478 referred to rights "heretofore validly reserved," it clearly contemplated reservations that were made before a plat was recorded. *See Hurd v. Watkins*, 238 Va. 643, 650 (1989) ("[R]eservations of property made prior to submitting the plat and invoking [Code § 15.1-478] are not prohibited."). Thus, the property owners were not required to reserve the ingress and egress easements from dedication on the face of the 1986 plat in order to validly reserve their private property rights.[3] Under the plain language of former Code § 15.1-478, the recorded 1985 Declaration validly reserved the ingress and egress easements from statutory dedication.

For these reasons, the Court concludes that the circuit court erred when it determined that the 1986 Dedication and plat dedicated the ingress and egress easement at issue to the County. Accordingly, the circuit court's decision granting the County's motion in limine is reversed and this matter is remanded for further proceedings.[4]

This order shall be certified to the Circuit Court of Prince William County.

A Copy,

Teste:

Clerk

[3] Such a contemporaneous reservation, however, may have been effective. *See Hurd*, 238 Va. at 650 (holding that a subdividing property owner effectively reserved a certain parcel from dedication under former Code § 15.1-478 by marking the parcel in bold ink and including the notation "Reserved" on the recorded plat).

[4] In light of our holding, we do not reach the merits of the issues presented in SGT's second and third assignments of error.