STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 14, 2022)

PRIME HEALTHCARE SERVICES – LANDMARK, LLC,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2021-06454**
	:	
BRIAN BUCCI, INDIVIDUALLY AND IN HIS CAPACITY AS MANAGING MEMBER OF DV I, LLC, AND IN HIS CAPACITY AS MANAGING MEMBER OF DV II, LLC, AND IN HIS CAPACITY AS MANAGING MEMBER OF BB/WW PROPERTIES, LLC; DV I, LLC; DV II, LLC; BB/WW PROPERTIES, LLC; AND HC-116 EDDIE DOWLING HIGHWAY, LLC,	:	
***Defendants*.**	:	

DECISION

CRUISE, J. Before the Court on April 5, 2022 was Landmark's Motion for Summary Judgment and the DV Entities' Cross Motion for Summary Judgment. This case arises from the construction of a Median by the DV Entities on property where an Access Easement was allegedly already granted to Landmark. The Median completely obstructed the Access Easement. The Court reserved its ruling on the matter. For the reasons below, this Court DENIES Landmark's Motion for Summary Judgment and this Court DENIES the DV Entities' Cross Motion for Summary Judgment as genuine issues of material fact remain.

I

Facts and Travel

Three documents are at the center of this case. First, a 2005 Easement Agreement. Second, a 2008 Access Easement Agreement, on which Landmark bases its rights. Third, a 2008 Third Amendment to the 2005 Easement Agreement on which the DV Entities base their rights.

The Current Status of the Parties

Currently, Plaintiff Prime Healthcare Services – Landmark, LLC (Landmark) operates a rehabilitation and cancer treatment center in the Medical Center Property, which refers to the real estate on which the medical facility is located, with an address of 116 Eddie Dowling Highway in North Smithfield, Rhode Island. (Verified Compl. ¶¶ 1, 3, 25-26.) The Medical Center Property consists of Lots 22 and 58 on Assessor's Plat 21. (Defs.' Mem. Ex. B (GIS Map).) Lots 22 and 58 are pictured below:

(Verified Compl. Ex. 1.) Landmark is a current tenant of the Medical Center Property. (Verified Compl. ¶ 2.) HC-116 Eddie Dowling Highway, LLC (HC-116), a limited liability company, is the

current owner and landlord of the Medical Center Property. *Id.* ¶ 3. Landmark currently holds fee title to Lots 49, 23, and 24 on Assessor's Plat 21, located adjacent to the Medical Center Property and which front Eddy Dowling Highway (Frontage Lots). *Id.* ¶ 11; Verified Compl. Ex. 2. Lots 49, 23, and 24 are pictured below.

(Verified Compl. Ex. 2.)

Defendants Brian Bucci (Mr. Bucci) and DV I, LLC, DV II, LLC, and BB/WW Properties, LLC (collectively, DV Entities) own certain parcels of property located at the shopping center known as "Dowling Village" in North Smithfield, Rhode Island, which is located adjacent to the Medical Center Property. (Defs.' Mem. Ex. A (Bucci Aff.) ¶¶ 1, 3.)

(Verified Compl. Ex. 3.)[1] On October 7 and 8, 2021, Mr. Bucci and/or the DV Entities constructed a median (Median) near the southwest corner of the parking lot on the Medical Center Property. (Verified Compl. ¶¶ 43, 45.) At all times prior thereto, no median had ever existed at that location. *Id.* ¶¶ 31, 32, 50.

2005 Easement Agreement Between LMC and the DV Entities

A 2005 Easement Agreement between a Rhode Island non-profit corporation, Landmark Medical Center (LMC), the then-owner of the Medical Center Property, and the DV Entities was executed on September 27, 2005 and recorded on December 15, 2006. (Pl.'s Mem. Ex. 15 (Easement Agreement, Dec. 15, 2006).) LMC was the Grantor and the DV Entities were the Grantees. *Id.* The 2005 Easement Agreement provided the DV Entities with the right to utilize

[1] A complete picture of all the property lines mentioned above can be found in the survey map which is attached to the Verified Complaint as Exhibit 4.

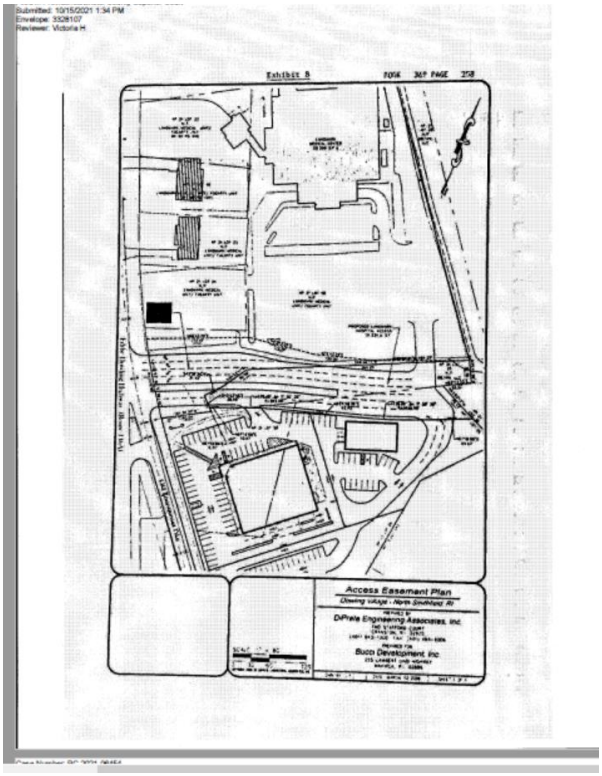
the Landmark Easement Area for purposes of ingress and egress to and from the DV Entities' property and adjacent public streets:

> "2.1 Grant of Easements. The Grantor does hereby grant and convey to each Grantee . . . for its use and enjoyment and for the use and enjoyment of its Permittees, the perpetual, non-exclusive right and easement to *utilize the Landmark Easement Area for the purpose of ingress and egress on foot or by all manner of vehicles to and from the Grantee's Property and the adjacent public streets* upon the terms and provisions set forth in this Easement Agreement. The Landmark Easement Area is shown on the Access Easement Plan by *slanted lines in the area labeled thereon as the "Proposed Dowling Village Access*." (Easement Agreement, Dec. 15, 2006) (emphasis added).

The language in the 2005 Easement Agreement regarding the Landmark Easement Area stated:

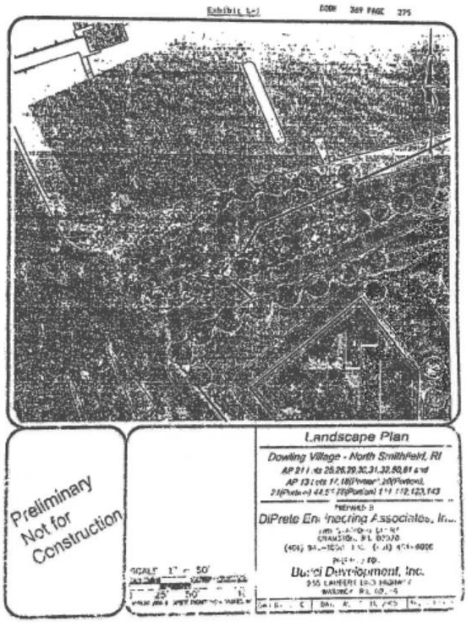
> "The Landmark Easement Area is also depicted on the plan attached hereto and incorporated by reference as Exhibit B . . . The Grantor and Grantee further agree that the purpose of this Easement Agreement is for ingress and egress and the other easement rights specifically granted herein for the mutual benefit . . . of real estate now or hereafter owned by the Grantee adjacent to the Landmark Easement Area which is more particularly described in Exhibit C . . . and real estate owned by the Grantor (which includes the Landmark Easement Area and the Frontage Lots, as that term is hereinafter defined) which is more particularly described on Exhibit D . . . the Grantee is also granting to the Grantor an access easement over . . . the 'DV Easement Area' . . . 'Access Easement Area' shall . . . refer to the real estate comprising both the Landmark Easement Area and the DV Easement Area . . . [I]t being the intention and agreement of the parties that all of the real estate comprising 'Dowling Village' . . . shall be included as part of the Grantee's Property . . . The Grantee's Property also includes Tax Assessor's Lot 25 on North Smithfield Tax Assessor's Plat 21 which has been conveyed to DVI and DVII . . . ." (Easement Agreement, Dec. 15, 2006 at 1.)

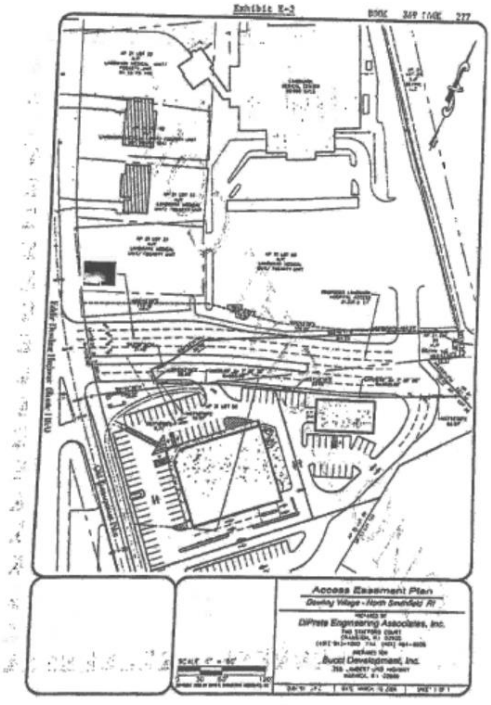
The slanted lines mentioned in Section 2.1 of the 2005 Easement Agreement appear in Exhibit B of the 2005 Easement Agreement. *See generally* Easement Agreement, Dec. 15, 2006, Ex. B. However, Exhibit B is unclear and contains several slanted lines. *Id.* Moreover, the term "Proposed Dowling Village Access" is not clearly presented in Exhibit B. *Id.*



Id. Further, several exhibits attached to the 2005 Easement Agreement, including Exhibits E-1 and E-2, contain pictures of the Landscape Plan and Access Easement Plan. (Defs.' Obj. Ex. C (Easement Agreement, Dec. 15, 2006, Exs. E-1, E-2).) However, Exhibit E-1 is mostly impossible to make out and Exhibit E-2 is the same as Exhibit B. *Id.*[2]

[2] The 2005 Easement Agreement was amended twice, once on March 7, 2007 and once again on November 21, 2007, both of which are immaterial to this case.





Id.

Furthermore, Section 15 of the 2005 Easement Agreement restricted implied easements: "Nothing contained in this Easement Agreement creates any implied easements not otherwise expressly provided for herein." (Pl.'s Mem. Ex. 15, § 15.)

Mr. Bucci submitted an Affidavit in which he states that the Easement Area granted via the 2005 Easement Agreement provided one single point of access from Dowling Village Boulevard to the Medical Center Property, which is labeled in Mr. Bucci's Exhibit A as "Access Point A." (Bucci Aff. ¶ 12.) Access Point A can be seen in the picture below:

(Bucci Aff. Ex. A.)

Thereafter, a corporation named Medistar Rhode Island, LLC (Medistar) purchased the Medical Center Property from LMC. (Verified Compl. ¶ 22.) LMC continued to operate its healthcare business at the Medical Center Property thereafter. *Id.*

On February 8, 2008, Medistar executed a lease whereby Northern Rhode Island Rehab Management Associates, L.P. d/b/a Rehabilitation Hospital of Rhode Island (RMA) became a

tenant at the Medical Center Property. *Id.* ¶ 23; Verified Compl. Ex. 6 (Lease Agreement). From 2008 to 2014, RMA operated its business on the Medical Center Property. (Verified Compl. ¶ 4.)

2008 Access Easement Agreement: Medistar to LMC

In February 2008, Medistar granted an Access Easement to LMC, which was dated February 12, 2008 and recorded February 13, 2008. (Pl.'s Mem. Ex. 7 (Access Easement Agreement, Feb. 12, 2008).) Medistar was the Grantor and LMC was the Grantee. The Access Easement Agreement provided LMC with the easement for passage over and across the Access Easement Area and the right to not have the Access Easement Area blocked by Medistar:

> "WHEREAS, the Grantor Tract currently has access to Eddie Dowling Highway (Rhode Island Route 146A) via an access drive area (the 'Access Drive') more particularly described in that certain Easement Agreement dated September 27, 2005 . . .
>
> . . .
>
> "WHEREAS, to facilitate the use and development of the Grantee Tract, Grantor has agreed to allow the Grantee . . . to pass and repass on foot and in motor vehicles over and across any driveways, or other ways now or hereafter located upon the Grantor Tract (the 'Access Easement Area') . . . .
>
> . . .
>
> "Grantor hereby grants to Grantee its successors, assigns, tenants, customers, invitees and licensees *a permanent and nonexclusive easement for pedestrian and vehicular passage over and across the Access Easement Area. Grantor agrees that at all times, it will not block nor permit nor cause to be blocked the Access Easement Area.* Grantor may, at its expense from time to time, relocate the Access Easement Area, so long as Grantee is afforded the same type and quality of access over the Grantor Tract as exists in the Access Easement Area as of the date hereof.
>
> . . .
>
> "This Agreement shall be *perpetual in nature, shall run with the land and shall benefit and be binding upon the Parties, their heirs, administrators, representatives, successors and assigns. . . .*"

> (Access Easement Agreement at 1-2, Feb. 12, 2008) (emphasis added).

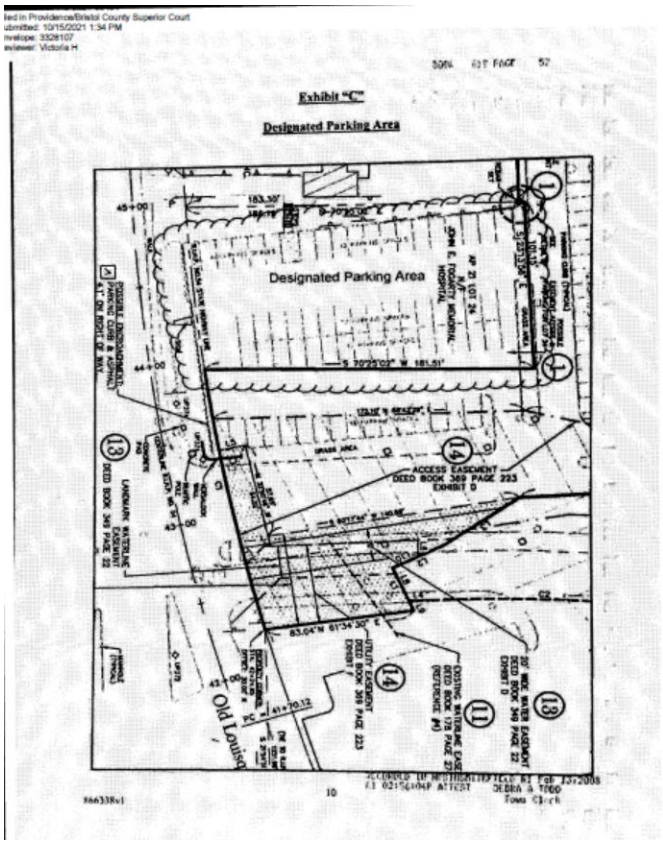
Unlike the 2005 Easement Agreement, the above 2008 Easement Agreement does not contain as an exhibit a picture of the easement area. *See generally id.* However, Exhibit A of the 2008 Easement Agreement describes the easement area, which consists of Lots 22 and 58 on Assessor's Plat 21 (the same lots as the Medical Center Property). (Verified Compl. ¶ 27.) Moreover, in the Verified Complaint, Landmark states the "[2008] Access Easement is also co-extensive with the Medical Center Property . . . ." *Id.*

Mr. Bucci stated in his Affidavit that the DV Entities were not a party to, nor did they have knowledge of, the 2008 Access Easement Agreement. (Bucci Aff. ¶ 35.) Mr. Bucci also stated: "[T]he Access Agreement between LMC and Medistar was of no concern or interest to the DV Entities, as the same controlled the internal workings of the Medical Center Property and did not impact Dowling Village or the Dowling Village Boulevard." *Id.*

Also in February 2008, Medistar and LMC executed a Parking Agreement, which was recorded on February 13, 2008. *Id.* ¶ 28; Verified Compl. Ex. 8 (Parking Agreement). The Parking Agreement provided:

> "LMC grants to MEDISTAR and each and every person, partnership, corporation or other entity now or hereafter owning or having an interest in all or any portion of the Hospital Property the non-exclusive right, privilege, license and easement to use (i) fifty-three (53) parking spaces on the portion of the Parking Property shown on Exhibit 'C' . . . for vehicular and pedestrian ingress, egress and parking, and (ii) all other portions of the parking areas and curb cuts located on the Hospital Property for pedestrian and vehicular ingress and egress to the Designated Parking Area. LMC agrees that, during the term of this Agreement, it shall not erect, construct, or maintain any structures, barricades, fences, landscaping or other obstructions that prevent or materially and adversely impede the use of the Parking Property for the purposes stated herein . . . ." (Parking Agreement.)

Pursuant to Exhibit C of the Parking Agreement, it appears the designated parking area is located on Assessor's Plat 21, Lot 24 of the Frontage Lots and the 2008 Access Easement. (Parking Agreement, Ex. C; Verified Compl. ¶ 30.)



(Parking Agreement, Ex. C.)

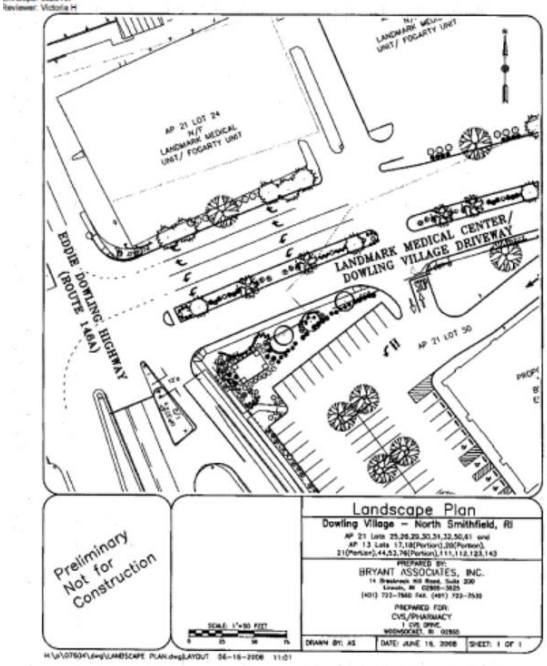
2008 Third Amendment to Easement Agreement Between Medistar and the DV Entities

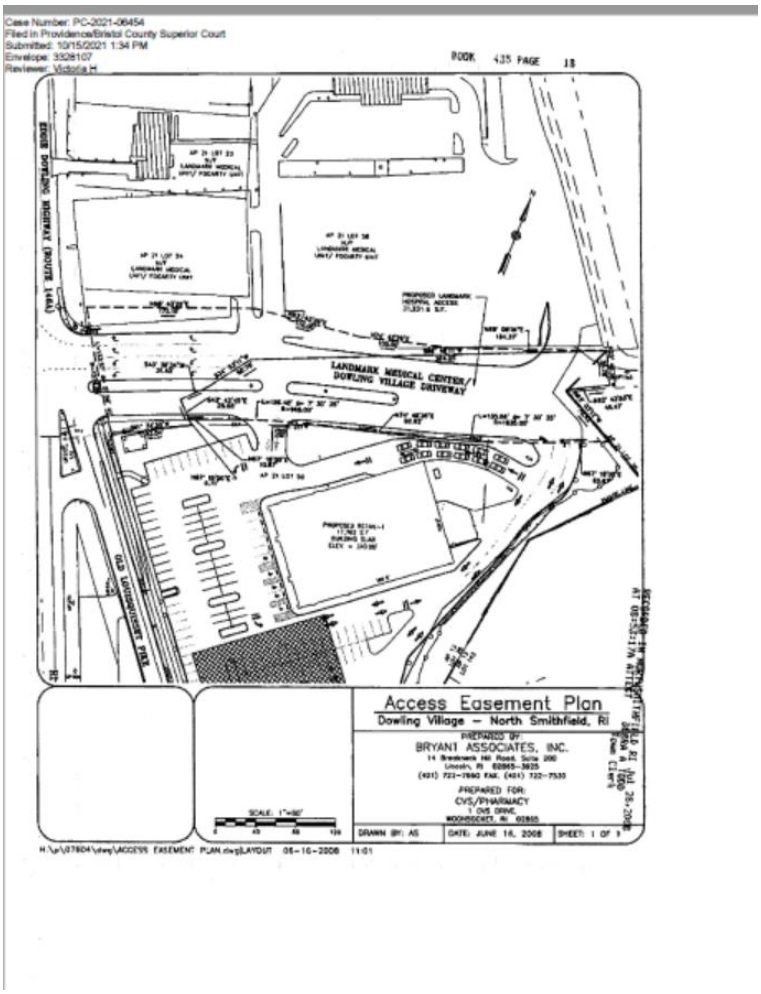
On July 23, 2008, Medistar executed the Third Amendment to the 2005 Easement Agreement with the DV Entities. (Verified Compl. Ex. 9 (Third Amendment 1).) ("Reference is hereby made to that certain Easement Agreement, dated as of September 27, 2005, executed by and between the Grantor and the Grantee . . . .") Medistar was again the Grantor and the DV Entities were again the Grantees. *Id.* The purpose of the Third Amendment was to codify the parties' previous agreement that the DV Entities would leave open the Median and Access Point

B. (Bucci Aff. ¶¶ 17-22, 25-26, 30.) However, the DV Entities maintain that the agreement to leave open the Median was temporary and the median could be closed at any time. (Bucci Aff. ¶ 22.) The Third Amendment provided in relevant part:

> "Grantor hereby approves and consents to each of the Amended Landscape Plan and the Amended Access Plan. Grantor agrees that each of the Amended Landscape Plan and the Amended Access Plan shall be implemented and shall remain in effect until, at any time subsequent to the date of this Third Amendment, *Grantee, at Grantee's sole discretion and election, shall notify the Grantor in writing that it intends to re-implement the Original Landscape Plan and the Original Access Plan*. Upon the date of delivery of such notice, the Grantor and Grantee agree and acknowledge that (i) *the Amended Landscape Plan and the Amended Access Plan shall be of no further force and effect and (ii) the Original Landscape Plan and Original Access Plan shall govern and control*." *Id.* (emphasis added).

The "Original Landscape Plan" refers to Exhibit E-1 of the 2005 Easement Agreement. *Id.* at 1. The "Original Access Plan" refers to Exhibit E-2 of the 2005 Easement Agreement. *Id.* The "Amended Landscape Plan" refers to Exhibit E-1.1 of the Third Amendment, which amended Exhibit E-1 of the 2005 Easement Agreement. *Id.* The "Amended Access Plan" refers to Exhibit E-2.1 of the Third Amendment, which amended Exhibit E-2 of the 2005 Easement Agreement. *Id.*





(Third Amendment Exs. E-1.1, E-2.1.) In short, the Third Amendment amended the 2005 Easement Agreement Original Landscape Plan and Original Access Plan, but gave the DV Entities the power to reimplement both at any time. *See generally* Third Amendment.

Thus, Mr. Bucci stated in his Affidavit that the Original Landscape and Access Plans provided no Access Point B and no median cut through on Dowling Village Boulevard. (Bucci Aff. ¶ 31.)

Thereafter, Medistar sold all of its right, title, and interest in the Medical Center Property to HC-116. (Verified Compl. ¶¶ 2, 35.) As a result, HC-116 became the owner and landlord of the Medical Center Property. *Id.* ¶ 37.

2013 Sale of Assets of LMC to Landmark

On November 26, 2013, on petition by the Special Master, the Superior Court entered an Order pursuant to which the Court authorized a closing on the sale of the assets of LMC to Landmark after execution of an asset purchase agreement on October 18, 2013. (Pl.'s Mem. Ex. 13 (Order Granting Special Master's Petition to Sell, Nov. 26, 2013) (Asset Purchase Agreement, Ex. 14).) The Asset Purchase Agreement stated:

> "1.2 **Sale of Assets** . . . . Seller shall sell, transfer, convey, assign and deliver to the Buyer all of such Seller's respective right, title and interest in, to and under the assets that are owned or held by each Seller or used by each Seller in connection with the operation of the Facilities, except the Excluded Assets, including, without limitation, the following assets and properties (collectively, the ('Assets'):
> " (a) the real property owned by the Sellers or the Landmark Entities and used in connection with the operation of any portion of the Business, as more specifically described on Schedule 1.2(a), together with all buildings, improvements and fixtures located thereupon, *all easements, rights of way, and other appurtenances* thereto (including appurtenant rights in and to public streets) . . . ." (Asset Purchase Agreement 12) (emphasis added).

Thus, LMC assigned to Landmark the real property interests in the Medical Center Property, including the rights that came with the 2008 Access Easement Agreement.

2014 Assignment of Lease Between RMA and Landmark

On March 17, 2014, RMA and Landmark executed an Assignment of Lease whereby RMA assigned to Landmark "all of its right, title, and interest in and to the lease." (Verified Compl. ¶ 36; Verified Compl. Ex. 10 (Assignment of Lease).) As a result, Landmark became a tenant of HC-116, the owner and landlord of the Medical Center Property. (Verified Compl. ¶ 37.)

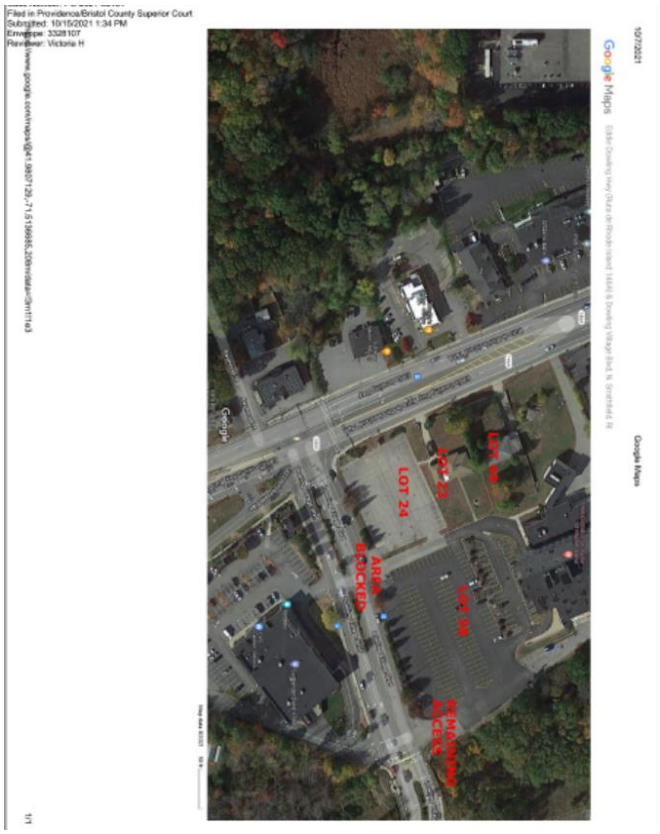
Mr. Bucci and DV Entities' Attempts to Purchase the Frontage Lots

In Spring 2021, Landmark began marketing the Frontage Lots for sale. (Verified Compl. ¶ 38.) On or about May 10, 2021, Mr. Bucci contacted the broker and expressed his interest in

purchasing the Frontage Lots. *Id.* ¶ 39. Landmark alleges that Mr. Bucci's offer was based on his belief that he had an exclusive interest in an easement on the Medical Center Property and owned the waterlines that run thereunder. *Id.* ¶ 40. Landmark, however, rejected Mr. Bucci's offer. *Id.* ¶ 42.

Construction of the Median

In or about October 2021, the DV Entities "exercised their rights pursuant to the terms and conditions of the Third Amendment to Easement Agreement and commenced construction of a curb and median on the Access Easement at Access Point B." (Bucci Aff. ¶ 37.) On or about October 7, 2021, Mr. Bucci and the DV Entities began construction of the Median on the Access Easement described in the 2008 Access Easement Agreement. (Verified Compl. ¶ 43.) The Median was constructed on or near the slanted arrow pictured in Exhibit B of the 2005 Easement Agreement. *See* Verified Compl. Ex. 12 (Google Maps photo showing blocked area); Easement Agreement Ex. 15, Dec. 15, 2006.



Construction of the Median was completed on October 8, 2021. (Verified Compl. ¶ 45.)

Landmark's Verified Complaint

Landmark's allegations are as follows: The Median blocks pedestrian and vehicular passage on the Access Easement, Verified Compl. ¶ 46, and the Median violates Landmark's property rights under the Lease and its interest in the Access Easement, *id.* ¶ 47. Count II of Landmark's Verified Complaint alleges Intentional Interference with Contractual Relations/Business Expectancy based on the DV Entities' construction of the Median. *Id.* ¶ 65. Count III requests Declaratory Judgment that the construction of the Median violates Landmark's rights under the 2008 Access Easement Agreement. *Id.* ¶¶ 68-70. Count IV requests punitive damages. *Id.* ¶¶ 71-72.[3]

[3] During the April 5, 2022 hearing, counsel for Landmark proposed submitting a draft stipulation and amending the Verified Complaint dropping Brian Bucci as an individual from the case and

II

Standard of Review

"'Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law.'" *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011)) (internal quotation omitted); *see* Super. R. Civ. P. 56.

"In deciding a motion for summary judgment, [a] Court views the evidence in the light most favorable to the nonmoving party." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013); *see Beauregard v. Gouin*, 66 A.3d 489, 493 (R.I. 2013). Moreover, the moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). The "nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk*, 82 A.3d at 532. Furthermore, the Rhode Island Supreme Court has warned that "summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (citation omitted).

dropping Count I for injunctive relief. Counsel has yet to submit a draft stipulation or amend the Verified Complaint. *See* Docket, PC-2021-06454.

III

Analysis

"In construing an instrument purporting to create an easement, [the] Court must effectuate the intent of the parties." *Pelletier v. Laureanno*, 46 A.3d 28, 36 (R.I. 2012). If provisions of a written agreement are clear and unambiguous, the Court can interpret the provisions and apply them to undisputed facts as a matter of law. *Carpenter v. Hanslin*, 900 A.2d 1136, 1147 (R.I. 2006). "When the words of a contract are clear and unambiguous, the intent is to be found only in the express language of the agreement." *Young v. Warwick Rollermagic Skating Center, Inc.*, 973 A.2d 553, 560 (R.I. 2009). Interpretation of clear and unambiguous language precludes consideration of extrinsic evidence on the issue of intent. *Carpenter*, 900 A.2d at 1147.

There is no question that Landmark's access to the Access Easement Area, specifically Access Point B, has been completely obstructed by the Median. However, there are questions as to whether the DV Entities had the right to construct the Median in the first place. In this case, the appended exhibits related to the various easement agreements are neither clear nor unambiguous, and there remains a genuine issue of material fact as to the context surrounding each easement agreement. Therefore, even after considering extrinsic evidence to ascertain the parties' intent, the case is not appropriate for summary judgment.

It is unclear whether the 2005 Easement Agreement granted the DV Entities the right to construct the Median. The 2005 Easement Agreement granted to the DV Entities the nonexclusive easement "for the purpose of ingress and egress on foot or by all manner of vehicles to and from [the DV Entities'] Property and the adjacent public streets." (2005 Easement Agreement, § 2.1.) Additionally, the 2005 Easement Agreement contained two exhibits, Exhibit E-1 (The Original Landscape Plan) and Exhibit E-2 (The Original Access Easement Plan) which apparently illustrate

a barrier at the location at which the Median was later constructed. (2005 Easement Agreement, Exs. E-1, E-2.) However, Exhibits 1, 4, and 12 of Landmark's Memorandum, one of which includes a Land Title Survey, does not include illustrations of any such barrier. (Pl.'s Mem. Exs. 1, 4, 12.)

Landmark anticipated that the DV Entities would argue that because the Original Landscape and Access Easement Plans attached to the 2005 Easement Agreement illustrated a barrier across the vehicular exit to the Medical Center Property, they had a purported right to construct the Median that was granted prior to the grant of Landmark's rights under the 2008 Access Easement Agreement. (Pl.'s Mem. 16.) However, Landmark argues that "as is clear from the plain language of the [2005] Easement Agreement, the parties thereto did not intend in the first place to grant a right to the [DV Entities] to implement plans that called for a barrier where the Median is located." *Id.*; *see also* Pl.'s Reply 4 ("There is simply no language in the [2005] Easement Agreement that confers an easement right on the [DV Entities] to install the Median on the Medical Center Property."). Landmark further maintains that the appended drawings illustrating the barrier were only part of the DV Entities' obligations to assure adequate access for ingress and egress after construction of the DV Entities' planned development on adjacent property. (Pl.'s Reply 4.) Landmark relies heavily on the fact that no such barrier had existed at that location until the Median was constructed on October 7 and 8, 2021. (Pl.'s Mem. 10.)

Moreover, Landmark alleges that at the time the 2005 Easement Agreement was executed, the parties "expected future development on property owned by the [DV Entities] that is adjacent to the Medical Center Property . . . [and] [i]n light of such planned development, the parties to the [2005] Easement Agreement agreed to impose certain obligations on the [DV Entities] . . . and included plans related thereto." *Id.* at 16. Landmark maintains that the 2005 Easement Agreement

provisions "demonstrate that the context in which the [] Easement Plans . . . were discussed . . . were as a guide the [DV Entities'] performance of obligations concerning their planned development of their adjacent property – not as a grant of easement rights." *Id.* at 18.

Lastly, Landmark argues that, although DV Entities contend that the 2005 Easement Agreement affected only "Access Point A," Landmark argues that the 2008 Access Easement Agreement upon which Landmark bases its rights applied to both Access Points A and B. (Pl.'s Reply 8; Pl.'s Mem. Exs. 7, 12.)

On the contrary, the DV Entities rely on the illustrations of the barrier in support of their argument that they had a right to construct such a barrier. (Defs.' Obj. 17.) Further, the DV Entities argue that the Easement Area provided in the 2005 Easement Agreement "unmistakably provides one single point of access from" the Dowling Village Boulevard to the Medical Center Property, which is Access Point A as illustrated in Mr. Bucci's Affidavit. *Id.* Thus, this is why the DV Entities constructed the Median on Access Point B. *Id.* at 20.

The DV Entities also address the context in which the 2005 Easement Agreement was made. They assert that subsequent to the entering into of the 2005 Easement Agreement, the DV Entities commenced construction of properties at Dowling Village, which was across from the Medical Center Property. *Id.* at 17-18. The DV Entities allege that they completed "construction of the Easement Area along Dowling Village Boulevard in accordance with the Plans agreed to by the parties set forth in the [2005] Easement Agreement." *Id.* at 18. Thus, "[p]ursuant to the [2005] Easement Plans, [the DV Entities] [were] closing the median and curbing the additional access point . . . as was agreed to by the parties . . . ." *Id.* The DV Entities contend that in May 2008, LMC approached the DV Entities and requested that they leave the median and Access Point B

open. *Id.* at 18. As such, as memorialized in the Third Amendment, the DV Entities agreed to leave Access Point B and the median open, but only temporarily. *Id.*

The DV Entities recognize that the 2008 Access Easement Agreement exists but contends that the 2008 Access Easement Agreement had no Plans, that the DV Entities were not a party to it, nor did they have any knowledge that Medistar had entered into such agreement with LMC. *Id.* at 20. Moreover, the DV Entities argue that the 2008 Access Easement Agreement applied only to Access Point A and did not provide rights to Access Point B. *Id.* at 23.

Based on the above arguments, there are obvious disputes of fact as to the context around which the 2005 Easement Agreement was made and what each party expected from the other when they executed the 2005 Easement Agreement, such that this Court cannot grant summary judgment in favor of either party. Clearly, there is no explicit language in the 2005 Easement Agreement conferring the specific right in the DV Entities to construct the Median where the Median is currently located. The DV Entities rely on the Landscape Plans and Access Plans appended to the 2005 Easement Agreement in support of their argument that they had a right to enter onto the Medical Center Property and install the Median. As Counsel stated during the April 5, 2022 hearing, although what is appended to the 2005 Easement Agreement shows a median, there is no basis to show that there was an intent in the rest of the document to grant the DV Entities a right to construct the Median. (Hr'g Tr. 7:10-14, Apr. 5, 2022.)

It is also unclear what the meaning behind the appended drawings, plans, and other exhibits was. Landmark argues that the drawings illustrating a barrier were part of the DV Entities' obligations to assure adequate access for ingress and egress to public roads after construction of their planned development, but DV Entities rely on the drawings in support of their argument that they had a right to construct the Median.

Importantly, several of Landmark and the DV Entities' exhibits are discolored and difficult to read. For example, both parties make reference to Exhibit E-1 of the 2005 Easement Agreement, but the state of the picture makes it impossible for this Court to analyze. Our Supreme Court has made clear that it is "wholly unrealistic" to demand a Superior Court justice "sua sponte to conduct an independent examination of all discovery materials, pleadings, and case documents in order to determine whether a genuine issue of material fact exists." *Nedder v. Rhode Island Hospital Trust National Bank*, 459 A.2d 960, 962 (R.I. 1983). Rather, "[i]t is clearly the obligation of the party opposing the motion to direct the motion justice's attention to the specific portions of the discovery materials upon which such party relies and to supplement those materials, where needed, by an affidavit executed by an affiant who would be competent to testify to the matters stated therein." *Id.*

IV

Conclusion

For the above reasons, this Court DENIES Landmark's Motion for Summary Judgment and this Court DENIES the DV Entities' Cross Motion for Summary Judgment.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Prime Healthcare Services – Landmark, LLC v. Brian Bucci, et al.**
CASE NO:	**PC-2021-06454**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 14, 2022**
JUSTICE/MAGISTRATE:	**Cruise, J.**
ATTORNEYS:	
For Plaintiff:	**William R. Landry, Esq.** **Joseph V. Cavanagh, III, Esq.** **Robert J. Cavanagh, Esq.**
For Defendant:	**John O. Mancini, Esq.** **Randolph B. Totten, Esq.**