Circuit Court for Prince George's County
Case Nos. CAE19-05434 & CAE22-06920

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 0657, 0836

September Term, 2022

TARIQ RUSHDAN

v.

JUNIOR MILLER

Beachley,
Shaw,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: July 3, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case concerns consolidated appeals from two separate cases heard in the Circuit Court for Prince George's County before the Honorable John P. Davey. Broadly speaking, the legal issues presented concern whether the trial judge abused his discretion in denying a post-trial motion, and, separately, whether appellant presented sufficient argument and/or authority in his brief to support his contentions. To resolve these issues, it is useful to set forth in some detail the facts and procedural background of the two cases.

I.

FACTS AND PROCEEDINGS IN CAE 19-05434[1]

Junior Miller ("Mr. Miller") was named by the Prince George's County Orphan's Court as the Personal Representative of the estate of Mr. Miller's mother, Cynthia R. Scott ("the Estate"). One of the assets of the Estate was a house located at 7920 Roxbury Court in Hyattsville, Maryland ("the Property"). On January 27, 2019, Mr. Miller, in his capacity as personal representative of the Estate, entered into a written contract to sell the Property to Tariq Malik Rushdan ("Mr. Rushdan"). The sales price was $108,000. The contract did not require Mr. Rushdan to make a down payment and the contract had a "walk-away clause" that allowed Mr. Rushdan to escape liability under the contract in the event that he could not get a mortgage loan acceptable to him within fifteen (15) days of the date of the contract.[2] In the event that Mr. Rushdan could secure financing for the purchase, the parties

[1] Most of the facts set forth in Part I are undisputed; but, to the extent that some of the facts once were disputed, our summary is based on findings of fact by the trial judge, which, for purposes of this appeal, neither party disputes.

[2] The "walk-away clause" and the provision regarding closing read:

(continued . . .)

were required to go to closing within forty-five (45) days from the date the contract was signed.

Not long after Mr. Miller executed the written contract on behalf of the Estate, he began to have "second thoughts" as to whether he wanted to go through with the sale. Apparently because of these "second thoughts," Mr. Miller would not allow Mr. Rushdan access to the house. This denial of access prevented Mr. Rushdan from securing financing.

On February 12, 2019, Mr. Rushdan filed, in the Circuit Court for Prince George's County, a complaint against Mr. Miller in which he alleged that Mr. Miller, as Personal Representative of the Estate, breached a written contract to sell the Property to him for $108,000.00. He asked for specific performance of the sales contract. On the same date he filed a lis pendens on the Property.[3]

(. . . continued)

> **MORTGAGE or THIRD-PARTY FINANCING**. It is agreed that Buyer may require a new mortgage loan to finance this purchase. The application for this loan will be made with a lender acceptable to Buyer, and unless a mortgage loan acceptable to Buyer is approved without contingencies other than those specified in this contract within 15 (fifteen) days from the date of acceptance of this contract, Buyer shall have the right to terminate this contract. Buyer shall return any surveys and copies of leases received from seller. Seller acknowledges that there may be a new institutional mortgage being placed on the property and closing may be extended a reasonable amount of time to accommodate the mortgage financing process.
>
> **Closing**. Closing will be held on or about 45 days from today, at a time and place designated by Buyer. Buyer shall choose the escrow, title and/or closing agent. Seller agrees to convey clear title by a general warranty deed, free of any liens, judgments, or any other encumbrances. Taxes will be prorated at closing.

Mr. Miller filed an answer to the complaint along with a counter-claim against Mr. Rushdan and a third-party claim against one Michelle Thornton.[4]

A bench trial before the Honorable John P. Davey was held in the circuit court on November 18, 2020. The primary issue presented was whether the January 27, 2019 Agreement was a binding contract. At trial, Mr. Miller called three witnesses, one of whom was Jessica Alexander, a real estate appraiser. Ms. Alexander opined that at the time of Cynthia Scott's death (October 15, 2018) and at the time the contract for the sale of the Property was executed, the Property was worth $135,000.00. She admitted, however, that when she inspected the Property in April of 2019, the Property had been "gutted." She was unable to express an opinion as to the value of the Property as of the date of her inspection.

[3] In *DeShields v. Broadwater*, 338 Md. 422 (1995), the Maryland Court of Appeals (now known as the Supreme Court of Maryland) said:

> The doctrine of *lis pendens* is well-established in Maryland. . . . It literally means a pending lawsuit, referring to the jurisdiction, power, or control which a court acquires over property involved in a lawsuit pending its continuance and final judgment. Under the doctrine, an interest in property acquired while litigation affecting title to that property is pending is taken subject to the results of that pending litigation. . . . Thus, "[u]nder the common-law doctrine of lis pendens, if property was the subject of litigation, the defendant-owner could transfer all or part of his or her interest in the property during the course of litigation, but not to the detriment of the rights of the plaintiff." Janice Gregg Levy, Comment, *Lis Pendens and Procedural Due Process: A Closer Look After Connecticut v. Doehr*, 51 Md. L.Rev. 1054, 1056 (1992).

Id. at 432-33 (some citations and footnote omitted).

[4] The counter-claim and third-party complaint were dismissed after the bench trial concluded. In this appeal, no one contends that the dismissal was erroneous.

At the conclusion of the November 18, 2020 bench trial, counsel for Mr. Rushdan said, in closing argument:

> [T]he appraisal [by Ms. Alexander] did not represent the condition of the [P]roperty at the time it was appraised[.] . . . [T]he appraiser said, and I'm sure the [c]ourt heard it, that when she saw the [P]roperty, it had been gutted, meaning that the [P]roperty was no longer habitable, no longer livable.

Despite counsel's knowledge that the Property was not in the same condition as when his client entered into the sales contract, Mr. Rushdan's counsel only asked the court to specifically enforce the contract. In this regard, counsel for Mr. Rushdan said:

> He [Mr. Miller] . . . changed his mind, but he had signed the contract and Mr. Rushdan, Your Honor, is entitled to specific performance.
>
> We'd ask that the counter-claim be denied and that (inaudible) performance be granted <u>because that is what's appropriate and that's what's just</u>.

(Emphasis added.)

Judge Davey held the matter under advisement for one week. On November 25, 2020, he filed a seven-page opinion along with a written order. The order read as follows:

> **ORDERED**, that the January 27, 2019 Purchase and Sale Agreement (Plaintiff's Exhibit No. 1) is valid and enforceable; and it is further,
>
> **ORDERED**, that Junior Miller signed the January 27, 2019 Purchase and Sale Agreement in his capacity as Personal Representative of the Estate of Cynthia R. Scott; and it is further,
>
> **ORDERED**, that the Personal Representative, Junior Miller, shall execute all necessary documents to transfer the property located at 7920 Roxbury Court, Hyattsville, Maryland, in accordance with the Purchase and Sale Agreement; and it is further,
>
> **ORDERED**, that Rushdan has fifteen (15) days to secure financing (and if financing is received, notify Seller) or notify Seller that he is

terminating the Purchase and Sale Agreement or that he waives his right to finance the sale; and it is further,

ORDERED, that Rushdan is to schedule closing within forty-five (45) days and to notify the Seller of the time and place; and it is further,

ORDERED, that Rushdan is to purchase the property for $108,000.00 and to pay 100% of the closing costs; and it is further,

ORDERED, that Paragraph 7. Inspection of the Purchase and Sale Agreement is null and void because it is incomplete; however, Buyer or his financing representatives may access the property in his effort to secure financing in accordance with paragraph 8. Access; and it is further,

ORDERED, that all time limits in the Purchase and Sale Agreement shall commence on the date this Order is docketed, unless either party appeals this Order, in which case, the sale shall be **STAYED** until the appeal is resolved; and it is further,

ORDERED, that this case is closed statistically.

(Emphasis added.)

Mr. Miller, on December 3, 2020, filed an *In Banc* appeal of the judgment entered on November 25, 2020. Counsel for Mr. Rushdan, on December 14, 2020, filed a motion for post-judgment access to the Property, which Mr. Miller opposed.

Almost one year later, while the *In Banc* appeal was still pending, Mr. Rushdan, on November 17, 2021, filed a pleading entitled "Motion for Damages for Destruction and Waste of Property." Movant alleged that on November 2, 2021, he had gained access to the Property to inspect it and when he did so, he discovered "that the interior walls of the [P]roperty had been removed. The plumbing had been removed. The HVAC system had been removed." In movant's words "[t]he interior of the [P]roperty had been effectively gutted."

Paragraphs 6-8 of the motion asserted:

> 6. Plaintiff contacted Defendant through counsel, and Defendant did not deny the destruction of the property. Defendant stated that the property was sold "as is."
>
> 7. At the time of the parties entering into the contract for the sale and purchase of the property, the property was habitable and ready for occupancy.
>
> 8. Defendant's actions in wasting and gutting the property have caused the property to loose [sic] value.

Attached to the motion, as exhibits, were ten pictures of the interior of the Property and an affidavit by Mr. Rushdan, in which he said, in Paragraph 4, that when he visited the Property on November 2, 2021, he "found":

> that the property had been damaged. The drywall had been removed from all the walls. Some of the wall studs were removed. Toilets were removed. The HVAC system was dismantled and appeared to be destroyed. All of the appliances had been removed and much of the electrical wiring had been dismantled. There appearing to be missing plumbing pipes.

Paragraphs 5 and 6 of his affidavit read:

> 5. Mr. Miller was present during my inspection. He did not utter any surprise or dismay at the condition of the property. In fact, Mr. Miller made no comment at the time.
>
> 6. It is clear to me from my experience as a housing agent for the Department of Veterans Affairs, the property's value has been greatly diminished by the damage that I observed.

Movant also attached, as Exhibit 11, an estimate by an employee of Urban Foundation Remodelers, Inc., dated November 11, 2021. According to Exhibit 11, the estimated cost "to bring [the] house [up] to Prince George's County building code after, been [sic] vandalized" was $78,454.

In his motion, Mr. Rushdan asked the court to: 1) reduce the sales price of the Property "to account for the loss of value of the [P]roperty attributable to [Mr. Miller's] actions"; 2) "[t]oll the date for the closing on the [P]roperty until" the motion can be heard and addressed; and, 3) "order Defendant to explain to the [c]ourt the reason he damaged the [P]roperty."

Mr. Miller, by counsel, filed an opposition to the motion on December 1, 2021.

The *In Banc* panel, on February 14, 2022, filed a written opinion and order in which it affirmed the judgment Judge Davey entered on November 25, 2020.

Two days later, on February 16, 2022, Judge Davey filed a Memorandum Order denying Mr. Rushdan's motion for "Damages for Destruction and Waste of Property."

In his memorandum, Judge Davey said:

> In this case, Plaintiff cannot disguise a new lawsuit for a claim of waste by filing a post-trial motion in a matter that is already adjudicated. Plaintiff initiated this lawsuit seeking specific performance. The [c]ourt granted Plaintiff relief when it ruled that the Agreement was valid and enforceable. Plaintiff has options under Maryland law to pursue relief for this new alleged tort. A post-trial motion seeking damages in a resolved matter is not one of them.

The judge also said the following:

> Plaintiff has his judgment and whatever time remains after the stay was lifted to perform under the valid contract. Additionally, Plaintiff has other methods of obtaining relief for new claims of breach of contract or waste. However, the [c]ourt has no authority to entertain those new claims in the form of a post-trial motion for damages.

Mr. Miller, on April 1, 2022, filed a pleading titled "Emergency Motion to Terminate the Lis Pendens." After Mr. Rushdan filed an opposition to that motion, Judge Davey, on May 12, 2022, filed a written opinion and an order, saying:

> Plaintiffs [sic] did not exercise their right to appeal the *in banc* decision within 30 days. Plaintiff's [Mr. Rushdan's] argument that this [c]ourt cannot terminate a lis pendens fails when faced with the plain language of Maryland Rule 12-102 and related case law. Maryland law clearly states that a lis pendens creates a cloud on the title to real property and may be terminated during or after litigation. Similarly, Plaintiff's argument regarding any prejudice from the termination of a lis pendens lacks merit. The lis pendens in this matter served its purpose and survived even longer than the end of this litigation. Both parties had an opportunity to appeal this [c]ourt's prior Order. The Property is no longer subject to litigation in the above-captioned matter when this case was dismissed upon *in banc* review. Thus, Plaintiff does not (and cannot) argue that the lis pendens created *in the above-captioned matter* must terminate as a matter of law under Maryland Rule 12-102(c)(2)(A).

Judge Davey then declared the rights of the parties saying:

> It is appropriate in this matter for the [c]ourt to declare that Plaintiff waived his right to finance the sale under the terms of the Purchase Sale Agreement and Order of Court. This [c]ourt has authority to grant "further relief" based on a prior declaratory judgment under the Maryland Uniform Declaratory Judgments Act. Md. Code Ann., Cts. & Jud. Proc. § 3-412(a) ("Further relief based on a declaratory judgment or decree" as is "necessary or proper[.]"). Plaintiff misconstrues this [c]ourt's previous Order (Docket Entry No. 85) as barring *any* further relief in this matter. However, the [c]ourt clearly stated that the parties may not seek entirely new claims for relief, such as breach of contract or waste, in a lawsuit based upon declaratory relief. Defendant does not seek damages.
>
> This [c]ourt's Order (Docket Entry No. 67) provided that "Rushdan has fifteen (15) days to secure financing (and if financing is received, notify Seller) to transfer the property located at 7920 Roxbury Court, Hyattsville, Maryland, in accordance with the Purchase and Sale Agreement." The Order further provided that "Rushdan is to schedule closing within forty-five (45) days and notify the Seller of the time and place." Plaintiff had until March 31, 2022, to consummate the sale, assuming that 45-day timer began on

February 14, 2022, after entry of the *in banc* panel's Order. Plaintiff does not deny that the 45-day window elapsed. Instead, Plaintiff argues that Defendant is estopped from seeking the instant relief because of the doctrine of unclean hands.

The equitable doctrine of unclean hands is designed to "prevent the court from assisting in fraud or other inequitable conduct." *Mona v. Mona Elec. Group, Inc*., 176 Md. App. 672, 714 (2007). The doctrine derives from the maxim that says, "he who comes into equity must come with clean hands." *Id*. at 713. The doctrine of unclean hands is available "to deny relief to those guilty of unlawful or inequitable conduct with respect to the matter for which relief is sought." *Id*. at 714. Rather than protecting the parties or punishing the wrongdoer, the doctrine of unclean hands "protects the integrity of the court and the judicial process by denying relief to those persons 'whose very presence before a court is the result of some fraud or inequity.'" *Id*. For the doctrine to apply, "there must be a nexus between the misconduct and the transaction" in dispute because what is material is that the petitioner "dirties [their hands] in acquiring the right [they] now assert," rather than the mere fact that the petitioner's hands are dirty. *Id*. In other words, the petitioner's "misconduct must be directly related to the subject of the suit" in some substantial and significant way. *See id*. Courts possess broad discretion in determining whether and how to apply the doctrine of clean hands, and they "are not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion." *Id*. at 717 (quoting *Smith v. Cessna Aircraft Co*., 124 F.R.D. 103, 107 (D. Md. 1989)). However, "[a] party is not guilty of fraudulent or illegal conduct by merely breaking a contractual obligation." *Greentree Series V, Inc. v. Hofmeister*, 222 Md. App. 557, 571 (2015).

In this case, Plaintiff repeatedly asserts that he did not complete the sale within the timeframe provided because Defendant destroyed various parts of the Property after he entered into the Agreement. Plaintiff initiated this lawsuit to enforce what this [c]ourt ruled to be a valid and enforceable agreement. As a Buyer, Plaintiff then had an opportunity to purchase the Property under the terms of that Agreement within the 45-day timeframe provided in this [c]ourt's Order (Docket Entry No. 67). The doctrine of unclean hands does not apply in this case when: (1) the Seller granted the Buyer an opportunity to inspect and then finance the purchase of the Property; and (2) the Agreement had a financing contingency clause that create[s] a condition precedent that permitted Plaintiff to walk away from the sale. There is no prejudice or unlawful conduct when Plaintiff continues to seek multiple extensions on a financing condition clause that, by its design,

> protects *him*, rather than the Defendant. Plaintiff permitted the 45-day window to elapse, and, in doing so, reneged on his obligation. It is not enough that Plaintiff is unsatisfied with his purchase.

(Footnote omitted.) (Emphasis added.)

The court's order entered on May 12, 2022 read:

> **ORDERED**, that on Defendant's Motion to Terminate the Lis Pendens (Docket Entry No. 85) filed April 1, 2022, is **GRANTED**; it is further,
>
> **ORDERED**, that, pursuant to Maryland Rule 12-102(c)(2), the lis pendens on the subject property located at 7920 Roxbury Court, Hyattsville, Maryland shall be **TERMINATED AS A MATTER OF LAW** upon 30 days after entry of this Order of Court or, if applicable, 30 days after entry of any appellate order regarding the above-captioned matter; it is further,
>
> **ORDERED**, that pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-412(a), the parties' Purchase Sale Agreement is terminated due to Plaintiff-Buyer's failure to consummate the sale in accordance with the Agreement and within the 45-day time provided by the Order of Court (Docket Entry No. 67); it is further,
>
> **ORDERED**, that this matter be closed statistically.

On May 23, 2022, Mr. Rushdan filed a motion to reconsider the court's order dated May 12, 2022.

On Monday, June 13, 2022, Mr. Rushdan filed an appeal to this Court in CAE19-05434. After the appeal was filed, Judge Davey, on June 27, 2022, denied the motion to reconsider.

II.

CASE NO. CAE22-06920

While CAE19-05434 was still pending, Mr. Rushdan, on March 10, 2022, filed a complaint in the circuit court for Prince George's County against Mr. Miller.[5] The complaint recites much of the procedural background in CAE19-05434 that we have summarized above. Mr. Rushdan alleged, accurately, that the circuit court entered judgment in his favor in November 2020 and ordered specific performance of the contract for sale of the Property. The plaintiff further alleged that on November 2, 2021, he had the Property "professionally reviewed," and as a consequence of that review, it was "determined that between the time of initial contract and the entry of judgment," Mr. Miller had caused $78,000 worth of damage to the Property. According to the complaint, the damage occurred because Mr. Miller removed the walls and fixtures of the Property and destroyed the "heating, ventilation and air conditioning equipment" and damaged the floors of the Property.

In his complaint, plaintiff asked for a preliminary and permanent injunction against Mr. Miller to prevent him from taking any action to alter the Property before "the [d]efendant is required to reduce the price to the now lower value of the [P]roperty." The complaint further alleges that the injunction was requested in order to preserve the status quo and "to allow the [c]ourt sufficient time to adjudicate the issues and render effective relief." Plaintiff's complaint also states that due to the damages done to the Property by

[5] The complaint is unclear as to whether Mr. Miller was being sued individually or as personal representative of the Estate.

Mr. Miller, plaintiff was "unable to comply with the timetable that the [c]ourt issues [sic] in the judgment of CAE19-05434."

In a separate count, captioned "breach of contract," plaintiff did not, *per se*, ask for damages; instead, he asked that the sales price be reduced from $108,000 to $30,000. In the penultimate count, he asked for punitive damages based on the breach of contract claim,[6] and in the last count, he asked that Mr. Miller be held in contempt even though plaintiff never alleged that Mr. Miller violated a court order.

Mr. Miller filed a motion to dismiss, or in the alternative, a motion for summary judgment as to the complaint filed on March 10, 2022. Mr. Miller contended that the lawsuit was barred by the doctrine of res judicata and/or collateral estoppel.

On July 7, 2022, Judge Davey filed an "Order of Court" in which he said, among other things:

> In this case, the May [12,] 2022 Order renders moot any contract dispute. The May 2022 Order declared that "the parties' Purchase Sale Agreement is terminated due to Plaintiff-Buyer's failure to consummate the sale in accordance with the Agreement and within the 45-day time provided by the [Judgment]." The doctrine of collateral estoppel bars relitigation of the contract's validity. Under Maryland law, the doctrine of collateral estoppel, "precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action." *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. The Fund for Animals, Inc*., 451 Md. 431, 463 (2017). A party asserting collateral estoppel must show that: (1) the issue that was decided in a prior litigation is identical to the issue that the party seeks to re-litigate; (2) the court issued a final judgment on the merits; (3) the party that seeks to re-litigate the issue was either a party to, or in privity with a party to, the prior adjudication; and (4) the party that seeks to re-litigate the issue was given a fair opportunity to be

[6] In Maryland, punitive damages cannot be awarded in a cause of action for pure breach of contract. *St. Paul at Chase Corp. v. Mfrs. Life Insurance Co.*, 262 Md. 192, 236 (1971).

> heard on the issue. *Id*. at 464. The [c]ourt already resolved whether this contract was enforceable based upon Defendant's Motion to Terminate the Lis Pendens (Docket Entry No. 85) in CAE19-05434, in which Defendant requested that [t]his [c]ourt terminate the [lis pendens] and void the Agreement. In granting that Motion, the May [12,] 2022 Order directly addressed the validity of the Agreement in CAE19-05434—the same Agreement that gave rise to this matter. The [c]ourt explicitly discussed Plaintiff's failure to consummate the sale within the timeline provided and declared that the Agreement expired on that basis. The parties in this case are identical to the parties in CAE19-05434.
>
> The [c]ourt rules now, as it did in the May [12,] 2022 Order, that it has no authority to enforce an expired contract. Plaintiff's remedy is that he walked away from a bad deal. Upon consideration of the motion, any opposition thereto, as well as the record herein, it is this 27th day of June, 2022, by the Circuit Court for Prince George's County, Maryland, hereby,
>
> **ORDERED**, that Defendant's Motion to Dismiss (Docket Entry No. 7) filed June 19, 2022, is **GRANTED**.

For the above reasons, Judge Davey granted summary judgment as to CAE22-06920.

III.

QUESTIONS PRESENTED

Under the heading "Questions Presented," appellant sets forth five questions (which we have reordered) that he wants us to answer in this consolidated appeal:

> [1]. Was it proper for the trial court to deny appellant post-trial relief for appellee's damages to adjudicated property?
>
> [2]. Does the trial court have the authority and duty to protect the appellant's inchoate interests in the disputed res while the matter is pending before the court?
>
> [3]. Can a litigant unilaterally alter the status quo of property that is under the jurisdiction of the court for resolution?

[4]. Did appellee have a duty to preserve the property during the trial?

[5]. Was appellee a bailee of the property during the pendency of the contract[?]

IV.

APPEAL FILED IN CAE22-06920

As mentioned, Judge Davey granted appellee summary judgment on the grounds that his lawsuit was barred by the collateral estoppel doctrine. Appellant's opening brief, under the heading "CONCLUSION," asks us to, inter alia, "[r]einstate CAE22[-]06920 and direct the trial court to grant [a]ppellant damages for the lost value and use of the [P]roperty[.]"

In his opening brief, appellant does not make any argument in support of his position that CAE22-06920 should be "[r]einstate[d]." In fact, in the argument section of his opening brief, the grant of summary judgment is not mentioned nor is the collateral estoppel doctrine either mentioned or discussed. Moreover, in his "Questions Presented" section of his opening brief, appellant does not raise the issue of whether the court erred in granting summary judgment in CAE22-06920.

A question not raised in the questions presented portion of appellant's brief, pursuant to Md. Rule 8-504(3), is not preserved for appellate review. *Mirjafari v. Cohn*, 183 Md. App. 701, 707 n.2 (2009); *Green v. North Arundel Hospital*, 126 Md. App. 394, 426 (1999). More important, the issue of whether summary judgment should have been

granted in CAE22-06920 was not argued (in any fashion) in his opening brief; instead, appellant raised the issue for the first time in his reply brief.

In *Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241-42 (2004), the Court set forth the rule here applicable:

> We have long and consistently held to the view that "if a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it." *DiPino v. Davis*, 354 Md. 18, 56 (1999); *Klauenberg v. State*, 355 Md. 528, 552 (1999); *Moosavi v. State*, 355 Md. 651, 660-61 (1999). *See also* Maryland Rule 8-504(a)(5). The three-line conclusory footnote in Oak Crest's brief does not adequately present the issue; it gives no reasons or no basis for challenging the Circuit Court's ruling that § 8.11 [of a Residence and Care Agreement] was substantively in conflict with HG § 19-345(b). Nor is it permissible to present that argument in a reply brief. In *Federal Land Bank v. Esham*, 43 Md. App. 446, 459 (1979), the [Appellate Court of Maryland] correctly noted that, although reply briefs are permitted under the Rules of appellate procedure, their function is limited to responding to points and issues raised in the appellee's brief. <u>An appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief</u>. It is impermissible to hold back the main force of an argument to a reply brief and thereby diminish the opportunity of the appellee to respond to it. We have echoed similar sentiments. *See Fearnow v. C & P Telephone*, 342 Md. 363, 384 (1996); *Warsaw v. State*, 338 Md. 513, 517, n. 4 (1995).

(Emphasis added.)

For the above stated reasons, we hold that the issue of whether summary judgment should have been granted is not preserved for appellate review.

Even if it were permissible to bring up for the first time in a reply brief the issue of whether summary judgment should have been granted, appellant would not prevail. In his reply brief, his <u>only</u> argument in regard to the grant of summary judgment is worded as follows:

> On . . . June 27, 2022, the trial [c]ourt dismissed [p]laintiff's complaint for relief in CAE22-06920, regarding the damage to the property. The [judge] ruled that the issue of the damage to the property was precluded by the failure of [a]ppellant to litigate the issue in CAE19-05434. The issue of the condition of the property was not before the [c]ourt in CAE19-05434 and [a]ppellee concealed the destruction of the property from [a]ppellant. Thus, neither issue preclusion nor collateral estoppel should be applied to CAE22-06920, nor CAE19-05434.

The above argument is based on a false premise. As can be seen by reading the parts of Judge Davey's opinion granting summary, the judge did not rule that the doctrine of collateral estoppel applied because appellant failed to litigate the issue of damages in CAE19-05434. Instead, he granted summary judgment in CAE22-06920 because, in CAE19-05434, he had previously ruled that the sales agreement was terminated due to appellant's failure to go to settlement within 45 days as provided by the agreement and therefore Mr. Rushdan could not enforce that contract or receive damages for any breach of it, as he was attempting to do in CAE22-06920. In other words, because appellant's premise is invalid, so is appellant's argument based on that premise.

V.

QUESTIONS RAISED AS TO CAE19-05434

A. Question 1. "Was it Proper for the Trial Court to Deny Appellant Post-Trial Relief for Appellee's Damages to Adjudicated Property?"

The only request for the court to award "post-trial relief" for damages was made by appellant when he filed, on November 17, 2021, what he called a "Motion for Damages for Destruction and Waste of Property."

After a trial in the circuit court, the Maryland Rules of Procedure allow a party to file four types of post-trial motions. They are : 1) Motion for Judgment Notwithstanding the Verdict (Md. Rule 2-532); 2) Motion for New Trial (Md. Rule 2-533); 3) Motion to Alter or Amend Judgment – Court decision (Md. Rule 2-534); and 4) Motion to Revise Judgment (Md. Rule 2-535). Filing any of the aforementioned motions within ten (10) days after a final judgment has been entered, stops the thirty (30) day clock for filing an appeal until a disposition of the motion has been made.

In reviewing the grant or denial of a post-trial motion, we look to the nature of the relief requested, and not to the way that a party labels his or her motion. *Pickett v. Noba*, 114 Md. App. 552, 557 (1997). Using that test, we shall treat appellant's post-trial motion "for [d]amages for [d]estruction and [w]aste of [p]roperty" as a "motion to alter or amend judgment" filed pursuant to Md. Rule 2-534.[7] That Rule reads, in material part, as follows:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

A trial judge, who considers a motion to alter or amend judgment, has very broad discretion as to whether to grant or deny such a motion. This was made clear in *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002), where Judge Charles Moylan, speaking for this Court said:

[7] At oral argument in this case held on June 2, 2023, counsel for appellant agreed that we should treat the motion appellant filed on November 17, 2021 as a motion to alter or amend judgment pursuant to Md. Rule 2-534.

> [T]he discretion of the trial judge [in considering a Motion to Alter or Amend Judgment] is more than broad; it is virtually without limit. What is, in effect, a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight. The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been earlier but were not. Losers do not enjoy *carte blanche*, through post-trial motions, to replay the game as a matter of right.

In support of his contention that Judge Davey abused his discretion in denying his motion to alter or amend judgment, appellant cites only two cases, one of which is *Vucci v. State*, 18 Md. App. 157 (1973). David John Vucci, on July 18, 1971, was incarcerated at the Patuxent Institute. *Id*. at 160. On that date he and a large number of other inmates attempted to escape by cutting a hole in one of the perimeter fences of the Institute. *Id*. Vucci managed to get outside of the perimeter fence, whereupon he was shot by a guard. *Id*. At trial, Vucci made a motion for judgment of acquittal, claiming:

> that he had the absolute right to depart from the confines of Patuxent Institution because he was being illegally detained there since he had not been examined for the purpose of determining his status as a defective delinquent within six months from the date he was received by the Institution, as required by Code (1957), Art. 31B.

Id. at 159. That motion was denied. *Id*. at 160. The issue on appeal was whether the trial judge erred in denying that motion. This Court, unsurprisingly, held that the trial judge did not err because, under Maryland law, it is clear "that even if a person, confined under color of law, is illegally confined because of violations of statutory procedures required with respect to his continued confinement, he is . . . not entitled to resort to self-help but must apply for his release through regular legal channels." *Id*. at 159. How that case is in

anyway relevant to any issue raised in this appeal, is a mystery. And, in his brief, appellant provides no explanation as to how he contends that the *Vucci* case is relevant.

In any event, appellant places prime reliance on the case of *Weaver v. ZeniMax*, 175 Md. App. 16 (2007).[8] Christopher Weaver, up until 2002, was chief technology officer and a member of ZeniMax's Board of Directors. *Id*. at 23. Under Weaver's employment contract, he was entitled to very lucrative benefits in the event that ZeniMax failed to renew his employment agreement. *Id.* at 27.

Weaver filed a complaint against ZeniMax seeking a declaratory judgment regarding the question of whether he was entitled to the lucrative benefits set forth in his employment contract. *Id*. But, prior to leaving his job with ZeniMax and prior to filing suit, Mr. Weaver used a master key and made unauthorized and improper intrusions into the offices, computers, files, email accounts and trash bins of at least three of his fellow employees. *Id*. at 28. His purpose was to investigate whether, as he suspected, certain ZeniMax executives, including the chief executive officer and chairman of the board of directors and the president of ZeniMax were attempting to force him out of the company. *Id*. at 23, 28.

After litigation commenced, ZeniMax filed a motion for sanctions or dismissal of Weaver's complaint based on his pre-litigation conduct and his initial failure to produce some of the documents he had unlawfully obtained. *Id*. at 29. The trial judge recognized that no rule or statute gave the court authorization to sanction Weaver for conduct that

[8] Approximately one-half of the argument section of appellant's brief concerns the *Weaver v. ZeniMax* case.

occurred before the commencement of litigation. The trial court, nevertheless, "asserted that it had inherent authority, in 'extraordinary circumstances,' to sanction such [pre-litigation] conduct" by dismissing the case if extraordinary circumstances existed. *Id*. at 34. To determine whether dismissal of plaintiff's case was an appropriate sanction, the trial judge used a five-part test: 1) Did the plaintiff act willfully, wrongfully, and in bad faith?; 2) Does an adequate nexus exist between the misconduct precipitating the motion for the dismissal sanction and the matter in controversy in the case?; 3) Is the risk of prejudice to the party seeking sanctions impossible to discount absolutely, or, alternatively, is the taint this evidence would import to the judicial process impossible to remove if permitted to be included in the plaintiff's case?; 4) In the absence of sanctions, would the promotion and safeguarding of the efficient and orderly administration of civil disputes be irrevocably undermined by the public policy favoring the disposition of cases on their merits?; and 5) Do no other lesser sanctions exist to account for and to deter this type of unilateral self-help, and lawless behavior? *Id*. at 35-36. The trial judge in the *Weaver* case answered all of those questions in the affirmative and dismissed Weaver's claim. *Id*. at 37.

On appeal, this Court, recognized, as did the trial judge, that "no rule or statute provides for dismissing a case or sanctioning a plaintiff for improperly seeking and obtaining evidence prior to the commencement of the litigation." *Id*. at 41. Nevertheless, a circuit court's authority "is not limited to that provided in the rules or by statute" because "Maryland courts have recognized the inherent authority of courts in numerous contexts." *Id*. at 41-42 (quotation marks and citation omitted). In *Weaver*, we went on to note that

courts have certain implied or inherent powers under the Maryland Constitution "[i]n order to accomplish the purposes for which they are created[.]" *Id*. at 42 (quotation marks and citation omitted).

Despite acknowledging that courts have implied or inherent power to impose sanctions for plaintiff's conduct prior to commencement of litigation, this Court reversed the trial judge's decision to dismiss Weaver's case because we were not persuaded that any of the documents improperly obtained by Weaver would cause "substantial prejudice to ZeniMax or the judicial process." *Id*. at 47-48.

In his brief, appellant argues:

> The conduct of [a]ppellee herein is no less egregious than the conduct of Weaver in the cited case. In both instances, a litigant engaged in extraordinary conduct to undermine the judiciary system of justice. In both circumstances, the litigant took actions to thwart the trial court's ability to conduct the trial free from taint. In both cases, the litigant went around the authority of the court to gain an advantage in the litigation. In [a]ppellee's case, he sought to reduce the value of the property so that [a]ppellant would not receive the benefit of his contract if he prevailed in the legal action.

Appellant's reliance on *Weaver* is misplaced. Appellant gives no reason, and we can think of none, why we should utilize the five-point test applied by the trial court in *Weaver*. In this case the issue presented is whether the trial judge abused his broad discretion in denying a motion to alter or amend judgment. The test mentioned in *Weaver* was designed to answer the question of whether the sanction of dismissal should be used against a plaintiff as punishment for pre-litigation misconduct. Here, appellant was the plaintiff and, of course, he did not ask for dismissal. Moreover, no pre-litigation (or post-litigation) misconduct on the part of the plaintiff is alleged.

In this case, no one argues that Judge Davey made any error when, on November 25, 2020, he entered the original judgment in this case upholding the sales contract between the parties and ruling that plaintiff was entitled to specific performance of that contract. At the November 18, 2020 trial in this matter, counsel for appellant already knew that the Property had been gutted; nevertheless, counsel for appellant asked the trial judge to grant specific performance of the contract because, in his words, that was "what's just."

Judge Davey, in his November 25, 2020 order, gives appellant 100% of what he asked for, i.e., an order granting appellant specific performance of the contract.

In his post-trial motion, appellant asked Judge Davey, in effect, not to give specific performance of the contract that the parties signed, but, instead, give specific performance to a revised contract where the sales price would have been slightly less than $30,000 even though the agreed upon sales price was $108,000. A party who elects a bench trial and at trial convinces a judge to give him everything he asks for, can have no plausible expectation that the same trial judge will alter or amend the judgment. This is true because once a plaintiff is given all that he or she prays for in a complaint, the case is over unless the defendant files a successful appeal (here the appeal by defendant was unsuccessful) or the defendant files a post-trial motion that is granted.

In his brief, appellant does not even mention, much less discuss, the reasons Judge Davey gave for denying his motion to alter or amend judgment. Additionally, appellant failed to explain why we should hold that the judge abused his discretion. Under such circumstances, we hold that appellant did not meet his burden of demonstrating that Judge

Davey abused his discretion in denying appellant's "Motion for Damages for Destruction and Waste of Property." We make this holding mindful of the fact that there can be a finding of an abuse of discretion only "where no reasonable person would take the view adopted by the [trial] court[ ] . . . or when the court acts without reference to any guiding rules or principles." *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005) (quotation marks and citation omitted).

B. <u>Question 2</u>

Appellant asked the question, "Does the trial court have the authority and duty to protect the appellant's inchoate interests in the disputed res while the matter is pending before the court?" Appellant's brief is silent as to how we should answer that question, but he apparently takes the position that the trial court does have such authority and duty. Nevertheless, appellant sets forth no argument in his brief to support his implied contention. In fact, in the argument section of appellant's brief, Question 2 is not even mentioned. This violates Maryland Rule 8-504(a)(6), which requires a party's brief to contain argument in support of the party's position on each issue. *Mills v. Galyn Manor Homeowner's Ass'n., Inc.*, 239 Md. App. 663, 684-85 (2018). In *Mills*, we said:

> The Homeowners do not, however, provide any argument explaining how the circuit court erred. We, therefore, decline to address the merits of this perceived error on appeal. *See* Md. Rule 8-504(a)(6) (requiring an appellate brief to contain an "[a]rgument in support of the party's position on each issue"); *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 712 (2013) ("Because they have failed to brief us appropriately, we conclude that appellants have waived their right to appeal from this portion of the court's order."); *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457-58 (1979) ("In prior cases where a party initially raised an issue but then failed

> to provide supporting argument, this Court has declined to consider the merits of the question so presented but not argued.").

(Footnote omitted).

For the above reasons, we decline to address Question 2.

C. Question 3

The third question presented by appellant is "Can a litigant unilaterally alter the status quo of property that is under the jurisdiction of the court for resolution?" Nowhere in appellant's brief does he indicate how he wishes us to answer that question, but, once again, he presumably wants us to answer that question in the negative. In the argument section of his brief, appellant never even mentions Question 3 or gives any hint as to how the answer to that question would be material. Moreover, there is no indication that this question was presented to Judge Davey for decision. *See* Md. Rule 8-131(a) (except for certain issues of jurisdiction, an appellate court will not ordinarily decide any other issue that was neither raised nor decided below.).

Under Maryland law, only a trial judge can commit reversible error when he/she rules or fails to rule on an issue. *Apenyo v. Apenyo*, 202 Md. App. 401, 424-25 (2011) (citing *DeLuca v. State*, 78 Md. App. 395, 397-98 (1989)). Moreover, in a civil case, appellant, to be successful, must show that the error by the trial judge resulted in prejudice to him/her. *Crane v. Dunn*, 382 Md. 83, 91 (2004). In regard to Question 3, appellant does not point out how Judge Davey erred or how appellant was prejudiced by the "error."

For all the above reasons, we decline to decide Question 3.

D. Question 4

The fourth question presented is: "Did appellee have a duty to preserve the property during the trial?" That question is a bit puzzling, because there is no indication in the record that appellee failed to do anything concerning the Property, good or bad, "during the [November 18, 2020] trial."

In any event, in regard to question 4, appellant not only fails in his brief to say what his position is as to that question, but also fails to put forth any argument regarding that question presented. This violates the rule set forth in *Mills*, which we have quoted, *supra*. We shall therefore decline to answer Question 4.

E. Question 5

In appellant's fifth question presented, he asked "Was appellee a bailee of the property during the pendency of the contract[?]" Presumably, although he does not say so in his brief, appellant contends that he was the bailor and appellee was the bailee of the property destroyed.

In his post-trial motion, and in other pleadings, the "property" allegedly damaged or destroyed was real property or fixtures not personal property. Black's Law Dictionary (11th ed. 2019) provides the following definition of "Bailment":

> A delivery of personal property by one person (the *bailor*) to another (the *bailee*) who holds the property for a certain purpose, usu. under an express or implied-in-fact contract. Unlike a sale or gift of personal property, a bailment involves a change in possession but not in title. Cf. PAWN.
>
> "The customary definition of a bailment considers the transaction as arising out of contract. Thus Justice Story defines a bailment as 'a delivery of a thing in trust for some special object or purpose, and upon a contract

> express or implied, to conform to the object or purpose of the trust.' [Joseph Story, *Bailments* 5 (9th ed. 1878)]. There has, however, been a vigorous dissent to this insistence on the contractual element in bailments. Professor Williston . . . defines bailments broadly 'as the rightful possession of goods by one who is not the owner' [4 Samuel Williston, *Law of Contracts* 2888 (rev. ed. 1936)]. . . . It is obvious that the restricted definition of a bailment as a delivery of goods on a contract cannot stand the test of the actual cases. The broader definition of Professor Williston is preferable." Ray Andrews Brown, *The Law of Personal Property* § 73, at 252, 254 (2d ed. 1955).
>
> "Although a bailment is ordinarily created by the agreement of the parties, resulting in a consensual delivery and acceptance of the property, such a relationship may also result from the actions and conduct of the parties in dealing with the property in question. A bailment relationship can be implied by law whenever the personal property of one person is acquired by another and held under circumstances in which principles of justice require the recipient to keep the property safely and return it to the owner." 8A Am. Jur. 2d *Bailment* § 1 (1997).

Because no personal property was involved in this litigation, there was no bailment. Therefore, the duties owed by a bailee are irrelevant.

In any event, appellant presents no argument whatsoever in his brief concerning Question 5. Therefore, we decline to address it.[9] *Mills*, *supra*. Even if we were to address the point, appellant would not prevail.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] The relationship between appellant and appellee, once the real estate contract was signed and until it was terminated, was that of an owner (Mr. Miller as personal representative of the Estate) and equitable owner (appellant). *See DeShields v. Broadwater*, 338 Md. at 439-40.