Circuit Court for Montgomery County
Case No. 484108V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1513

September Term, 2021

4607, LLC

v.

1788 HOLDINGS LLC, ET AL.

Arthur,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 11, 2023

*This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

**During 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.

The instant appeal is the latest chapter in a protracted dispute between appellant, 4607, LLC ("Seller"), and appellees, 1788 Holdings, LLC, Cobbler-Friendship Holdings, LLC, and The Chevy Chase Land Company of Montgomery County ("Purchasers"), about a contract they signed in 2015 in which Purchasers agreed to buy from Seller two parcels of land located on Willard Avenue in Chevy Chase, Maryland (the "Property"). Exhibit F of the Purchase Agreement specified the method of calculating the final purchase price, which required identifying the total tract area of the Property, including the portion of the Willard Avenue right-of-way ("ROW") that Seller could claim for purposes of calculating the Property's development potential. The formula for calculating the purchase price is somewhat complicated because it includes its development potential under Montgomery County law, but ultimately boils down to multiplying the total tract area by $240 per square foot.

The Purchase Agreement provided that, in the event that the parties were unable agree on what portions of the Property were included in the total tract area, they would submit the dispute to an independent law firm (the "Third Firm") for a determination that would be "final and binding . . . absent manifest error[.]" The parties went to closing without agreement on a final purchase price, but with an amendment to the Purchase Agreement by which with Purchasers agreed to pay Seller $1.75 million at closing and execute a Deed of Trust Note (the "Note") by which they would pay Seller the remaining $1.75 million, plus interest, on an estimated purchase price of $3.5 million. The maturity date on the Note was January 31, 2020.

The parties were unable to reach an agreement on the square footage and each brought action against the other in the Circuit Court for Montgomery County, Maryland. The court granted Purchasers' motion to compel arbitration and dismissed Seller's breach of contract complaint (Civil Action No. 481170V). Accordingly, as directed under the arbitration provision of the Purchase Agreement, the parties submitted their dispute to Francoise M. Carrier, Esq. of Bregman, Berbert, Schwartz, and Gilday, LLC, as the Third Firm. Simultaneously, Seller appealed the decision of the circuit court. On review, we affirmed the circuit court's order to compel arbitration, but concluded that "the circuit court erred in dismissing Count I of the complaint without resolving Seller's claim of entitlement to a contractual award of attorneys' fees and costs as the prevailing party." *See 4607, LLC v. Cobbler-Friendship Holdings, LLC, et al.*, No. 1173, Sept. Term 2020, slip op. at 19 (filed Oct. 8, 2021) ("*Cobbler*"). Before the court could address attorneys' fees on remand, however, the parties filed a joint motion to stay the remand of the contract action pending the outcome of *this* appeal.

This appeal arises from the determination by the Third Firm that the total square footage was 10,730 square feet, which, based on the parties' formula, yielded an estimated final purchase price of only $2,847,840. Seller filed a petition to vacate or, in the alternative, to modify or correct the arbitration award (Case No. 481170V) pursuant to Maryland Code (1973, Repl. Vol. 2020), Courts and Judicial Proceedings Article ("CJP"), sections 3-223 and 3-224, arguing that the arbitrator's award was "manifestly erroneous" and requested attorneys' fees under Paragraph 18(b) of the Purchase Agreement.

Purchasers counter-filed a motion to confirm the arbitration award and requested attorneys' fees and a judgment against Seller for a total amount of $338,855.09. The circuit court confirmed the award, finding no basis in statute or common law upon which to modify or vacate the arbitral award, and issued a judgment in favor of Purchasers for $338,855.09, representing the amount overpaid by Purchasers as the estimated purchase price, plus interest. The court also directed Purchasers to submit a verified petition for attorneys' fees. On October 5, 2021, Purchasers filed, with supporting documentation, an application seeking $332,945.95 in attorneys' fees.

Seller filed a motion to alter or amend the final order and judgment. On November 4, 2021, the court (1) denied Seller's motion to alter or amend the final order, and (2) granted Purchasers' application for attorneys' fees. Seller noted another appeal on November 29, 2021, presenting four questions for our review, which we have reframed as follows:[1]

[1] Seller's questions presented, taken verbatim, are as follows:

I. "Did the Circuit Court err when it analyzed a purported arbitration award based on an overly deferential standard of review ('manifest disregard of controlling law') rather than the contractually agreed-upon standard of review ('manifest error'), which would have allowed the Circuit Court to review the plain and indisputable factual errors in the purported arbitration award?

II. Did the Circuit Court err when it declined to vacate or amend the 'arbitration award' based on clear errors of fact committed therein?

III. Did the Circuit Court err when it considered the issue of any purported 'overpayment'?

IV. Did the Circuit Court err when it granted Appellees' request for attorneys' fees based on Paragraph 18(b) of the Purchase

(Continued)

I. Did the circuit court err when it confirmed the Carrier Arbitration Award when it determined that it was not based on a manifest, palpable error of law or fact?

II. Did the circuit court err when it considered the issue of Purchasers' overpayment of the final purchase price in the amount of $338,855.09?

III. Did the circuit court err when it awarded Purchasers attorneys' fees as the prevailing party pursuant to Paragraph 18(b) of the Purchase Agreement?

For the reasons set forth below, we conclude that the circuit court applied the appropriate common law standard of review of "manifest disregard of controlling law" after determining that there were no statutory grounds for *vacatur* under the Maryland Uniform Arbitration Act ("MUAA"), codified at Maryland Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings Article, §§ 3-201 *et seq.* that applied to the facts of this case. *Second*, we hold that the circuit court had subject matter jurisdiction to consider Purchasers' overpayment in the amount of $338,855.09 and the court did not err in entering judgment in that amount when it confirmed the arbitral award. With respect to the award of attorneys' fees, however, we hold that the court erred in failing to address the overlap of the attorneys' fees from Case No. 484108V (arbitral award), the underlying action, and Civil Action No. 481170V (contract action). Accordingly, we vacate the fee award and remand the case to reconcile the attorneys' fees between the two cases.

Agreement, and the excessive amount awarded therefor ($332,945.95)?"

BACKGROUND

2015 Purchase Agreement

The Property contains two parcels of land on Willard Avenue directly across from the GEICO property in Chevy Chase, Maryland (an area commonly referred to as Friendship Heights).[2] In the parties' first appeal, we concluded that Exhibit F of the Purchase Agreement constituted an enforceable agreement to arbitrate a dispute concerning the final calculation of the total tract area of the Property, including the portion of the Willard Avenue ROW that Seller could claim for purposes of calculating the Property's development potential. *See 4607, LLC v. Cobbler-Friendship Holdings, LLC, et al.*, No. 1173, Sept. Term 2020, slip op. at 12-13, 15 (filed Oct. 8, 2021). In doing so, we summarized the process for calculating the square footage and the final purchase price under the agreement:

> The price to be paid for the Property was to be resolved based on a formula that depended on a calculation of square footage. That calculation, in turn, depended on a legal determination of the areas that should be included in it. **Exhibit F to the Purchase Agreement therefore provided a process in which each of the parties was to arrive at its own determination of square footage—the "Seller Determination" and the "Purchaser Determination"—and, if different, attempt to reconcile them. The final step in the process, if the parties could not reach resolution earlier, was submission of the dispute to "a third independent Law Firm (the 'Third Firm')," for arrival at a "Third Determination."** The agreement provided that the average of calculations of "the two closest determinations . . . will be final and binding on the Seller and Purchaser for purposes of calculating the

[2] Parcel 1 is identified as Lot 2 in Block "A" in the plat book for the subdivision known as "Lester B. Cook's Subdivision of Friendship Heights." Parcel 2 consists of: (1) all of outlots "A" and "B" in Block A, and (2) part of Lot 9. These land records were taken from Plat Books 9 at Plat No. 664 and Plat Book 1 at Plat No. 45 recorded among the Montgomery County, Maryland Land Records.

> Square Footage," and, ultimately, the purchase price, "**absent manifest error by the Third Firm.**"

Id. at 1-2 (emphasis added). With respect to the Exhibit F process, we explained that:

> **Exhibit F** . . . established a phased process for resolving the purchase price following expiration of the Review Period. In the first phase, contained in paragraphs (A) and (B) of Exhibit F, Seller and 1788 Holdings were each to retain law firms to arrive at determinations of the Square Footage: the Seller Determination and the Purchaser Determination. Seller and 1788 Holdings were to exchange those determinations simultaneously within ten days of the expiration of the Review Period. If that process did not resolve the purchase price, the parties agreed in paragraph (C) of Exhibit F to jointly retain a Third Firm to reach a Third Determination of the Square Footage. Paragraph (C) set deadlines for the identification, retention, and completion of the Third Firm's work pursuant to which the Third Determination was to be completed within 15 days of completion of the Seller and Purchaser Determinations.
>
> **Paragraph (C)** imposed the following requirements with respect to submission of the matter to the Third Firm: (1) neither Seller nor 1788 Holdings was to "directly communicate with the Third Firm regarding the calculation of the Square Footage"; (2) "[a]ll communications with the Third Firm shall be conducted jointly by Seller's Law Firm and Purchaser's Law Firm"; (3) the Third Firm was to be instructed "not to communicate with Seller or Purchaser without simultaneously communicating with the other"; and (4) the Third Firm was to be provided "[a]ll data and other relevant information affecting the calculation of the Square Footage that were available to the Law Firms that conducted the Seller Determination and the Purchaser Determination," along with copies of those determinations. The Third Determination was then to be used to arrive at a final and binding determination of the Square Footage as follows: "The average of the calculations of the Square Footage under the two closest determinations (of the Third Determination, the Seller Determination and the Purchaser Determination) **will be final and binding on the Seller and 1788 Holdings for purposes of calculating the Square Footage, the FAR**[3] **and the Purchase Price, absent manifest error by the Third Firm**."

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[3] The Purchase Agreement defined "FAR" as:

> …three (3) multiplied by the entire amount of the square footage of the Property, plus the maximum amount of any square footage to which the

(Continued)

> **Paragraph (D)** of Exhibit F set forth how the purchase price was to be determined if the process described above was not completed by the closing date for the transaction. In that event, the parties were to close with an estimated purchase price of $3.5 million, to be paid with a cash payment of $1.75 million and execution of a note with a principal balance of $1.75 million, subject to a later adjustment once the actual purchase price was determined. Pursuant to section 2(a) of the Purchase Agreement, the note was to bear interest at five percent per year.

Id. at 4-5 (emphasis added).

Attorneys' fees are addressed in Paragraph 18(b) of the Purchase Agreement, which provides: "In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs at both the trial and appellate levels." In addition, Section 6(h) the Note executed by Purchasers prior to closing the transaction also contained a provision for attorneys' fees that stated: "[u]pon the occurrence of any Event of Default hereunder, the Maker shall be liable to pay the Lender its reasonable attorneys' fees and costs, whether suit be brought or not."

Determining the Purchase Price by Compelling Arbitration

Without having reached an agreement on the square footage, the parties closed the deal on December 1, 2015. They entered into a series of related agreements to address the next steps in arriving at a final purchase price. First, Seller and 1788 Holdings executed an amendment to the Purchase Agreement that same day, which recited that they were

> owner of the Real Property is entitled to include for purposes of calculating the development potential of the Real Property, as determined in accordance with Montgomery County laws, rules, regulations and ordinances (the 'Square Footage'), without regard to whether Purchaser is able to use all of such FAR on the Property and/or on any other property.

"currently in the process of calculating the Square Footage, the FAR and the Purchase Price in accordance with the Process described in Section 2(b) and Exhibit F" and would close the transaction on the basis of the estimated purchase price of $3.5 million. Second, 1788 Holdings, LLC assigned to Cobbler-Friendship Holdings, LLC all its rights and obligations under the Purchase Agreement with the provision that 1788 Holdings was "not . . . released from any of its obligations under the Purchase Agreement." Third, Cobbler-Friendship Holdings, LLC executed a Deed of Trust Note (the "Note"), in which it promised to pay to Seller the principal amount of $1.75 million, plus interest, with a maturity date no later than January 31, 2020. Fourth, Seller conveyed the Property to Cobbler-Friendship Holdings, LLC for a total price of $3.5 million.

Seller's Square Footage Determination

On December 3, 2015, Seller retained attorney Robert R. Harris, Esq., of Lerch, Early & Brewer, LLP to calculate Seller's Determination on the total square footage entitled to be included within the Property. On December 28, 2015, Mr. Harris drafted a letter to the Maryland-National Capital Park and Planning Commission ("M-NCPPC"), in which he concluded, based upon the research provided by Soltesz Inc., a multi-disciplinary engineering firm, that the square footage of the Property was 15,520 square feet, which would yield a purchase price of $3,724,800. *Cobbler*, No. 1173, slip op. at 6. Relying upon the presumption of property interest to the centerline of the right-of-way upon dedication as codified in Maryland Code (1974, 2015 Repl. Vol.), section 2-114 of the Real

Property Article,[4] Mr. Harris concluded that Seller was entitled to include 40-ft. out of the 80-ft. of the Willard Avenue ROW. Mr. Harris arrived at 15,520 square feet by adding the following square footage:

- 9,351 sq. ft. (current lot area of the Property);
- 1,379 sq. ft. (10-ft. dedication recorded in 1936, in Plat Book 9, Plat No. 664);
- 2,272 sq. ft. (portion of the Willard Avenue ROW dedicated in 1910 via Plat Book 2, Plat No. 119); and
- 2,518 sq. ft. (remainder of Willard Avenue ROW to existing centerline).

Specifically, Mr. Harris concluded that presumption codified in RP § 2-114(b) applied because he found "no evidence that the subject right-of-way was ever conveyed in fee simple to Montgomery County nor is there any evidence that the County ever paid any consideration whatsoever for the right-of-way." He explained, for example, that "[t]he first

[4] Section 2-114 provides:

> (a) Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, done, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.
>
> (b) If the transferor owns land on the opposite side of the street or highway, the deed, will, or other instrument shall be construed to pass the right, title, and interest of the transferor only to the center of that portion of the street or highway upon which the 2 or more tracts coextensively bind.
>
> (c) The provisions of subsections (a) and (b) of this section do not apply if the transferor in express terms in the writing by which the devise, gift, or grant is made, either reserves to the transferor or grants to the transferee all the right, title, and interest to the street or highway.

RP § 2-114.

evidence of the creation of this right-of-way is Plat No. 119, recorded in Plat Book 2, dated January 4, 1910" which appeared to show the roadway dedication as 30-ft. in width, but contained no "direct evidence of who [] dedicat[ed] the land" and it was unclear from the subsequent land records how the roadway dedication grew from 30-ft. to 80-ft. because of "the imprecision in many of [the] plats, partially because of their age, but, as well, inconsistencies and outright conflicts between them." The "bottom line," according to Mr. Harris, was that "in the absence of more conclusive evidence" the ROW "should be equally attributed to the properties on each side of Willard Avenue reflecting the original dedication and its expansion over time."

On January 4, 2016, Carol S. Rubin, Esq., counsel for M-NCPPC, responded to Mr. Harris's letter, stating that she agreed with Mr. Harris's assessment "that there is a presumption of property interest to the centerline of the right-of-way upon dedication" and requested that he provide a copy of the title report "to back up his opinion." Ms. Rubin recommended that GEICO, as the current owner of the property on the opposite side of Willard Avenue, "disclaim any interest in the right-of-way beyond the centerline[.]" Upon confirmation from GEICO that it would not oppose Seller's claim to the centerline, Seller provided Purchasers with a copy of Mr. Harris's letter and Ms. Rubin's response.

Purchasers' Square Footage Determination

More than four years passed without any further action. Then, in an email to Seller dated January 28, 2020[5]—three days before the expiration of the Note—Purchasers transmitted their determination that the tract area of the Property was 13,002 square feet, yielding a purchase price of $3,120,840. Purchasers' Determination was based on the research conducted by VIKA Maryland, LLC, a civil engineering and site design firm ("VIKA"), and the legal opinions of Steven Robins, Esq., of Lerch, Early & Brewer and Timothy Dugan, Esq., of Bean Kinney & Korman, P.C. Mr. Dugan arrived at 13,002 square feet by adding the following square footage:

- 9,341 sq. ft. (current lot area of the Property); and
- 1,379 sq. ft. (10-ft. dedication recorded in 1936, in Plat Book 9, Plat No. 664); and
- 2,272 sq. ft. (portion of the ROW dedicated in 1910 via Plat Book 2, Plat No. 119).

Mr. Dugan concluded that "Plat No. 119 shows that the subject property straddled both sides of the dedicated right of way" and "[i]n such circumstances, the land area on either side of the dedicated right of way takes the density attributable to one-half of the dedicated strip of land fronting on its property." Because the difference between Seller and Purchasers' Determinations was greater than five percent, Seller recommended that the

[5] We note that the first line of the email reads: "You have not responded to my email of January 21, 2020. As I have previously advised you, the Tract Area of your parcel as computed by VIKA is 13,002 square feet, and that computation is supported by the legal opinions of both Steve Robins of Lerch Early and, most recently, Tim Dugan of Bean Kinney, both of which have been provided to you." As such, it is unclear exactly when Seller was notified of Purchasers' determination, but given the first line of the email, it seems unlikely that it was *on* January 28, 2020, as implied in Seller's brief.

parties "promptly employ the resolution procedure which had been agreed to in Exhibit F . . . [of] the October 6, 2015 Purchase Agreement."

The Note expired on January 31, 2020, without any payments made by Purchasers. Over the next two months, the parties attempted unsuccessfully to coordinate joint submissions to be made to the Third Firm as envisioned by the Exhibit F process.

Civil Action No. 481170-V – Breach of Contract Complaint

After failing to reach an agreement on the amount of square footage for calculating the purchase price, on April 6, 2020, Seller filed, among other things, a two-count complaint in the Circuit Court for Montgomery County, Maryland, in Civil Action No. 481170V.[6] *Cobbler*, No. 1173, slip op. at 8. In Count I, Seller alleged that Purchasers breached the Purchase Agreement by, among other things, refusing to act in good faith to determine the final purchase price as outlined by Exhibit F and failing to pay the minimum $1,275,600 due on the Note. *Id.* Seller requested: (1) a judgment of $1,275,600 in compensatory damages and prejudgment interest, (2) an order requiring Purchasers to engage in good faith in the Exhibit F process, and (3) an award of attorneys' fees and costs pursuant to both Paragraph 18(b) of the Purchase Agreement and the Note. *Id.* In Count II, Seller sought a declaratory judgment to determine the final sales price of the Property, and declare that the 2,518 square feet by which the Seller Determination exceeded the

[6] Later in April, Seller also filed a separate action to foreclose on the Property for nonpayment on the balance due on the Note. *See Roy L. Kaufmann and/or Glenn W.D, as the Appointed Substitute Trustees of Seller, LLC v. Cobbler-Friendship Holdings, LLC, et al.*, No. 481587V (filed Apr. 24, 2020).

Purchaser Determination was appropriately included in the calculation of purchase price. Alternatively, Seller requested that the court appoint an independent Third Law Firm to provide for a Third Determination as outlined in Exhibit F of the Purchase Agreement. Seller also requested an award of attorneys' fees and costs pursuant to both the Purchase Agreement and the Note. *Id.*

In July 2020, Purchasers filed a motion to dismiss the complaint and to compel arbitration pursuant to Exhibit F of the Purchase Agreement. *Cobbler*, No. 1173, slip op. at 9. As we explained in *Cobbler*, "during a hearing in August 2020, with the foreclosure sale looming, Seller agreed to postpone the foreclosure in return for Purchasers' agreements to (1) pay $1,275,600, which was the amount of the outstanding principal balance based on the Purchaser Determination, and (2) submit the dispute, including all of the information included in the Seller and Purchaser Determinations, to the Third Firm to provide the Third Determination." *Id.* at 9. On August 26, 2020, Purchasers paid Seller $1,275,600 due on the Note and thereafter both parties agreed to retain Françoise M. Carrier, Esq., of Bregman, Berbert, Schwartz, and Gilday, LLC as the Third Firm to issue a Third Determination.

Then, following another hearing on November 16, 2020, the court granted Purchasers' motion to compel arbitration and dismissed Counts I and II of Seller's complaint. *Id.* at 11. Seller appealed, arguing that Exhibit F was not an enforceable arbitration agreement. *Id.* at 12.

We held the trial court did not err in granting Purchasers' motion to compel arbitration. *Id.* We explained that

> [u]nder the plain language of paragraph (C), the parties agreed to a process for attempting to reconcile their own determinations; a method for selecting and retaining an independent Third Form; the permitted manner of communications with the Third Firm (*i.e.*, through counsel and not ex parte); the materials required to be provided to the Third Firm; the specific calculation that the Third Firm was to perform in arriving at the Third Determination; and the way in which the Third Determination would be used to determine the final purchase price. Most notably, the parties agreed that the outcome of the process "will be final and binding on the Seller and Purchaser for calculating the Square Footage, the FAR and the Purchase Price, absent manifest error by the Third Firm.'"

Cobbler, No. 1173, slip op. at 15. With respect to Seller's breach of contract complaint, we held that "the circuit court erred in dismissing Count I . . . without resolving Seller's claim of entitlement to a contractual award of attorneys' fees and costs as the prevailing party." *Id.* at 19. Accordingly, we concluded that, "based on Seller's concession that its damages are limited to attorneys' fees it seeks to recover as the prevailing party, that is the only claim the circuit court must confront on remand." *Id.* at 19 (emphasis added).

Carrier Third Determination Award Letter

While the first appeal proceeded, Ms. Carrier issued the Third Determination on the square footage. In a letter dated October 29, 2020, Ms. Carrier concluded that Seller was entitled to include only 10,730 square feet of the Property, which, based on the parties' formula, would yield a final purchase price of $2,575,200. She arrived at 10,730 square feet by adding the following square footage:

- 9,351 sq. ft. (the current lot area of the Property); and

- 1,379 sq. ft. (10-ft. dedication recorded in 1936 via Plat Book 9, Plat No. 664).

In her research, Ms. Carrier "consulted the Montgomery County Zoning Code . . . and Zoning Map, opinions provided by land use counsel to both parties, numerous plats and deeds related to the Subject Property and its surroundings, and exhibits prepared by engineering firms retained by both parties."[7] She started from the presumption that, absent evidence to the contrary, a property's gross tract area for density purposes typically goes to the middle of the adjoining street pursuant to RP § 2-114.

Ms. Carrier accepted that the existing Willard Avenue ROW was approximately 80-ft. in width. Then, using a process of elimination, she determined that 10-ft. out of the 80-ft. was dedicated by the owner of the subject Property in 1936, via Plat No. 664. An additional 40-ft., Ms. Carrier concluded, was dedicated by the GEICO property, as reflected by the following land records: (1) Plat No. 5074 depicted a 20-ft. strip of land dedicated in 1957, and (2) "[a] strip of land of varying width [20-ft.] was conveyed to Montgomery County by the owner of the GEICO Property by deed dated July 29, 1994[.]" With respect to the remaining 30-ft., which represented the original Willard Avenue ROW, Ms. Carrier noted that "[t]he Land Records do not provide a clear picture of how the . . . original ROW of Willard Avenue[] came to be owned by Montgomery County." She ultimately concluded, however, that neither the subject Property's owners nor their predecessors in interest ever "dedicated any of that land for the Willard Avenue ROW."

[7] Included in the award letter was list of 23 documents that Ms. Carrier relied upon in reaching her calculation.

Ms. Carrier explained that Plat No. 119, dated January 4, 1909, suggested that "the entire Willard Avenue ROW . . . came from land south of the Subject Property." However, she did not rely solely upon Plat No. 119, but traced the chain of title of the Property back to a 1919 deed, which played a "pivotal role" in her analysis. The chain of title history revealed that the land that became part of the Lester B. Cook Subdivision of Friendship Heights, upon which the Subject Property sits, was conveyed to Florence S. Thomas by Mr. and Mrs. Bushong in 1919 as part of a tract of 6.367 acres ("Six-Acre Tract"). In 1925, Ms. Thomas conveyed the Six-Acre Tract to Lester B. Cook, who subdivided the land that later became part of the Property in 1936. The legal description of the 1919 deed "specifie[d] that the property conveyed contain[ed], 'clear of the Old Glen Echo Railroad and the Chevy Chase and Glen Echo Railroad,' 6.367 acres of land," which, in turn, lead to Ms. Carrier's conclusion that "the entire Six-Acre Tract was *north* of the ROW for the Glen Echo Railroad." (Emphasis supplied by Ms. Carrier). Plat 45, "the earliest plat available for this area in the land records," showed the Glen Echo Branch Railroad ROW occupying what is now the Willard Avenue ROW. Thus, Ms. Carrier concluded that "the land underlying the Glen Echo Railroad, which became the original Willard Avenue ROW, was not part of the Six-Acre Tract" and therefore did not became part of the Cook Subdivision, which in turn, never became part of the Property. As a result, Ms. Carrier concluded in the Third Determination, which operated as the arbitration award, that Seller was entitled to claim density *only* from the 10-ft. dedicated in 1936, but not from any other portion of the Willard Avenue ROW.

Events Following Third Determination

On November 18, 2020, pursuant to CJP § 3-222(a),[8] Seller submitted to Ms. Carrier an affidavit from Mr. Harris detailing alleged errors made in her award letter and urged Ms. Carrier to "modify/correct [her] October 29, 2020 opinion letter" in accordance with Exhibit F of the Purchase Agreement. In his affidavit, Mr. Harris expanded upon his earlier opinion that the presumption codified in RP § 2-114 applied because, among other reasons, Ms. Carrier's reasoning that the deeds for the 4607 Willard Avenue property describe the ROW line as a boundary "conflicts with her own conclusion that the right-of-way was dedicated to [Montgomery] County, not purchased" and "ignores the principle that properties . . . that later identify a boundary line along a right-of-way are presumed to have dedicated to the centerline of that ROW." Mr. Harris also alleged that Ms. Carrier misconstrued the 1994 deed as a conveyance of an additional right-of-way from GEICO to the County instead of as a conveyance from one GEICO entity to another GIECO entity.

The Purchasers, meanwhile, objected to any reconsideration of the award, arguing that none of the grounds listed under CJP § 3-222 or in the Purchase Agreement warranted modification. Purchasers also disagreed with Seller's contention that the award letter was the result of "manifest error" and noted that Ms. Carrier's determination was "based on a much deeper dig into the land records" than the prior determinations of both parties.

[8] Section 3-222(a) of the Maryland Code, Courts & Judicial Proceedings Article states that "[a] party may apply to the arbitrators to modify or correct an award within 20 days after delivery of the award to the applicant."

On December 9, 2020, Ms. Carrier declined to reconsider the Third Determination explaining that "[m]y work under this engagement is limited to the tasks I am directed to do by both parties."

Case No. 484108V – Underlying Motion to Vacate Arbitration Award

On November 24, 2020, Seller, in a separate cause of action from the contract case, filed a petition to vacate or, in the alternative, to modify/correct Ms. Carrier's award pursuant to CJP §§ 3-223, 3-224, and the Purchase Agreement. Seller reiterated the arguments raised in Mr. Harris's affidavit and requested the court vacate the arbitration award because it was "manifestly erroneous, manifestly disregarded controlling and applicable law . . . and was based on a failure to recognize controlling precedent." In the alternative, Seller requested the court order "a 'rehearing' before a new Third Firm" or that the court modify the award by concluding that "the Property's density includes the additional 2[,]518 square feet – to the center line of the Willard Avenue right-of-way[.]" Seller also asked for "reasonable attorneys' fees and costs pursuant to Paragraph 18(b) of the Purchase Agreement, incurred in enforcing its rights under the Purchaser Agreement, and Md. Code, Cts. & Jud. Proc. § 3-228(b)[.]"[9]

The Purchasers responded with a counter-petition to confirm the arbitration award, arguing that there was no basis in statute or common law upon which to vacate or modify the arbitration award, and requested a judgment ordering Seller to pay Purchasers

[9] Section 3-228(b) provides that "[a] court may award costs of the petition, the subsequent proceedings, and disbursements." CJP § 3-228(b).

"$338,855.09 plus pre-judgment interest at a per diem amount of $92.84 from November 1, 2020, and post-judgment interest at the judgment rate until the award is paid in full." Purchasers also requested attorneys' fees.

Following a hearing before the Circuit Court for Montgomery County, on September 9, 2021, the court issued a memorandum opinion and corresponding order that (1) denied Seller's petition to vacate or, in the alternative, to modify/correct the arbitration award and (2) granted Purchasers' petition to confirm the award. First, the court identified the limited grounds for vacating an arbitral award outlined under the CJP § 3-224(b), including that "[t]he court shall vacate an award if . . . [t]he arbitrators exceeded their powers[.]" CJP § 3-224(b)(3). Relying on *Downey v. Sharp*, 428 Md. 249 (2012), the court clarified that "the issue of whether an arbitrator exceeded the arbitrator's authority is different from the issue of whether the arbitrator was legally correct." The court determined that there was no basis upon which to vacate the award under CJP § 3-224(b) because:

> (a) Ms. Carrier was lawfully hired by Petitioner and Respondents to execute the arbitration process in Exhibit F; (b) Ms. Carrier executed the arbitration process in Exhibit F by obtaining information from the parties that could assist in her determination of the Square Footage of the Property, reviewing the controlling and applicable laws, and issuing the Arbitration Award, accordingly; (c) neither party made a request to postpone the hearing upon sufficient cause being shown for the postponement nor did . . . Ms. Carrier refuse to hear evidence material [to] the controversy; and (d) the Purchase Agreement contained an arbitration clause that the parties mutually agreed about.

The court also concluded that "[n]either modification nor correction [was] warranted" under CJP § 3-223. Then, the court reviewed the applicable common law grounds for

vacatur of arbitral awards; namely, the "completely irrational" standard and the "manifest disregard of controlling law" standard. The court defined "manifest disregard of law" as "beyond and different from a mere error in the law or failure on [Ms. Carrier's] part to understand or apply the law[.]" The court found that "Ms. Carrier clearly understood and followed the law in making her determination" especially given that she "meticulously outlined how she reached her determination and went as far as indicating which documents from the parties she relied upon and others she considered." Accordingly, the court confirmed the arbitration award.

Turning next to Purchasers request that Seller reimburse them, the court held that Purchasers overpaid Seller in the amount of $338,855.09 by virtue of the final purchase price totaling $2,847,840 instead of the estimated $3.5 million. The court entered a judgment in favor of Purchasers for the amount they overpaid on the principal ($177,760) plus pre-judgment interest ($161,095.09) for a total amount of $338,855.09.[10] Finally, because the court was confirming the arbitral award, it determined also that Purchasers were the prevailing party entitled to attorneys' fees under Paragraph 18(b) of the Purchase Agreement and directed them to submit a verified statement of attorneys' fees.

On September 20, 2021, Seller filed a motion to alter or amend the final order and judgment, arguing first that the court erred in reviewing Ms. Carrier's award letter "based on an overly deferential standard of review ('manifest disregard of controlling law')"

[10] The court also entered judgment in favor of Purchasers for $92.82 per diem in prejudgment interest that accrued from November 1, 2020, to the entry of the accompanying order on September 9, 2021.

instead for "manifest error" as stated in Exhibit F of the Purchase agreement. Seller contended that, had the court analyzed the Carrier letter for "manifest error," it would have been able to vacate the award for the obvious and plain factual errors committed therein. Second, Seller asserted that even if the Carrier letter was not "manifestly erroneous," any overpayment on the Note was not properly before the court because it was "not an arbitrable issue" under the Purchase Agreement, and, therefore, could not "form the basis of a judgment to confirm" the arbitral award. Third, Seller contended that if the court had jurisdiction to decide the overpayment issue, the overpayment calculation must be adjusted by reducing the amount requested by $98,203.69.[11] Finally, Seller reiterated its request for "reasonable attorneys' fees and costs pursuant to Paragraph 18(b) of the Purchase Agreement" and CJP § 3-228(b).

On October 5, 2021, Purchasers submitted an application for attorneys' fees in the amount of $332,945.95 for expenses incurred with respect to "(a) pre-litigation efforts to engage in arbitration, (b) the initial civil lawsuit filed by [Seller], where [Purchasers] successfully compelled arbitration, (c) the arbitration itself, and (d) the petition to vacate[.]" The Purchasers provided, with 85 pages of supporting documentation, a breakdown of the total 437.6 hours spent as follows:

- 34.6 hours billed ($30,348) for "Pre-Suit Arbitration Discussions";

[11] Seller contended that Purchasers owed Seller the following amounts: (1) $43,750 for "Trustees' Fee," (2) $50,531.25 for "Additional Default Interest" and (3) $3,922.44 for "Foreclosure Expenses[.]" These amounts pertained to provisions in the Note and the Deferred Purchase Money Deed of Trust that provided for a Trustee's commission in the event of a cancelled foreclosure and a 10% default interest on the remaining balance due on the Note.

- 176.2 hours billed ($140,632) for "Civil Case";
- 48.4 hours billed ($44,382.50) for "Arbitration"; and
- 178.4 hours billed ($117,583.45) for "Petition to Vacate/Counter-Petition to Confirm[.]"

Purchasers "d[id] not seek attorneys' fees in connection with the foreclosure matter filed by [Seller] or the currently pending appeal of the order compelling arbitration, both of which remain pending at the present time."

Seller opposed Purchasers' application for attorneys' fees, contending that the fees charged by Purchasers' counsel, Arent Fox, were unreasonable under Maryland law and that certain tasks for which Purchasers sought reimbursement should be excluded. Additionally, Seller maintained that Purchasers were not the prevailing party in this litigation because they "only partially prevailed on their motion to dismiss or Compel Arbitration in the Civil Case" but not "on the emergency motion to stay in the foreclosure action."

On November 4, 2021, the court denied Seller's motion to alter or amend, granted the attorneys' fees requested by Purchasers in the amount of $332,945.95, and entered a corresponding judgment in favor thereof.

On November 29, 2021, Seller noted another appeal.

DISCUSSION

I.

Standard of Review of Arbitral Awards

A. Parties' Contentions

As reflected in Seller's first question presented on appeal, Seller contends that "the circuit court applied an overly deferential standard of review ('manifest disregard of controlling law') rather than the contractually agreed-upon standard of review ('manifest error')," which Seller maintains is the equivalent to what Maryland courts recognize as "clear error." Seller refers us to *Bank One, Texas, N.A., v. Fed. Deposit Ins. Corp.*, 16 F. Supp.2d 698 (N.D. Tex. 1988),[12] and *Magee v. Magee*, 661 So.2d 1117 (Miss. 1995),[13] to define "manifest error" as "an obvious mistake or departure from the truth," *Bank One*, 16

[12] *Bank One* involved a sale-and-leaseback agreement whereby creditors of an insolvent bank sought to recover collateral pledged by the bank before it was placed into a receivership of the Federal Deposit Insurance Corporation. *Bank One*, 16 F. Supp.2d at 701-02. The contract provided that after a certain date, the calculation "will not be subject to further adjustment . . . unless to correct manifest error, omission or otherwise mutually agreed upon by the parties." *Id.* at 712.

[13] *Magee* involved a domestic appeal over the chancellor's denial of alimony to the wife. *Magee*, 661 So.2d at 1122. As the reviewing court explained, "'on appeal we are required to respect the findings of fact made by the chancellor supported by credible evidence and not manifestly wrong.'" *Id.* (quotations omitted). The *Magee* court concluded that, although "[t]he chancellor was not manifestly wrong in his findings of fact which were supported by substantial and credible evidence[] . . . [and] a correct legal standard was applied[,] . . . on the other hand, the chancellor was manifestly in error when he effectively limited [the wife's] earnings to only $12,000 per year" because "[t]here is no way, under the particular facts of this case, to anticipate at the present hour [the wife's] needs when and if she finds a job that pays more than $12,000 annually and no way to determine [the husband's] earnings at that time." *Id.* at 1125-26.

F. Supp. 2d at 713, or an error that is "unmistakable, clear, plain, or indisputable," *Magee*, 661 So.2d at 1122. Seller contends that contracting parties may provide for the scope of judicial review of arbitral awards, in addition to the standards listed under the MUAA or the common law. Citing to *Cable Connection, Inc. v. DIRECTV Inc.*, 190 P.3d 586 (Ca. 2008), and *Tretina Painting, Inc. v. Fitzpatrick & Associates, Inc.*, 640 A.2d 788 (N.J. 1994), Seller urges this Court, like the Supreme Courts of California and New Jersey, to permit parties to arbitration agreements to contractually define the standard of judicial review of the award, which, according to Seller, is "manifest error." Seller maintains that, had the court reviewed the award for "manifest error" or "clear error, it would have permitted the court to vacate or amend the award based upon "clear errors of fact committed" by the Third Firm.

Next, as reflected in Seller's second question presented on appeal, Seller alleges that "the conclusions of the Carrier Letter were manifestly erroneous." Seller argues that the presumption codified in RP § 2-114 should apply in this case because Ms. Carrier's award letter "contains no evidence of any writings in which the transferor expressly reserved all of the rights, title, and interest in and to the Willard Avenue[.]" According to Seller, Ms. Carrier erred by misconstruing a 1994 deed of conveyance from one GEICO property to another GEICO property as a deed of dedication. Additionally, Seller disputes Ms. Carrier's factual conclusion that the land records do not indicate how the original Willard Avenue ROW (30-ft.) came to be owned by Montgomery County, and that "because deeds for the 4607 Willard Avenue property describe the right-of-way line as a boundary[,] no

dedication came from the owners" of the Property. Seller posits that this determination "constitutes a plain error of fact" that directly contravenes Ms. Carrier's "factual conclusion that the right-of-way was dedicated to the County, not purchased, and conflicts with the common law presumption" now codified in RP § 2-114. Finally, Seller contends that the circuit court erred in declining to vacate the arbitration award "when the arbitrators exceeded their powers" under CJP § 3-224(b)(3). Thus, according to Seller, Ms. Carrier "exceeded her powers" when she committed clear errors of fact in rendering her award.

Purchasers respond that the circuit court not only applied the correct common law standard of review—"manifest disregard of controlling law"—when confirming the award, but that there is no difference between "manifest disregard of controlling law" and "manifest error." Citing to *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244 (2018), Purchasers contend that the "[Supreme Court of Maryland's] precedent informs us that the concepts 'manifest disregard of controlling law' and 'manifest error' mean the same thing: an obvious, palpable error of law or fact on face of the arbitration award." Therefore, "for a court to vacate an arbitration award on the ground that it manifestly disregards the law, the arbitration must have made a mistake so egregious and obvious that it could be *felt* just by looking at the face of the award." (Emphasis supplied by Purchasers). Purchasers argue that because the two terms are synonymous, "the parties' contract does not modify the scope of judicial review, regardless of whether the parties *could* contractually modify the scope of judicial review." (Emphasis supplied by Purchasers). Moreover, Seller points out that in Seller's own petition to vacate the arbitration award, Seller requested that the

court hold "that the Carrier letter represents manifest error by the Third Firm, *in manifest disregard of applicable law*." (Emphasis supplied by Purchasers).

Next, Purchasers aver that Ms. Carrier's award was not manifestly erroneous nor was there a "palpable mistake of law or fact on the face of the award." Purchasers argue that "[i]f a reviewing court were permitted to second guess every conclusion Carrier made, arbitration would be pointless." Finally, Purchasers reject Seller's argument that Ms. Carrier "exceeded her powers" under CJP § 3-224(b)(3). Citing *Downey v. Sharp*, 428 Md. 249 (2012), Purchasers argue that the question of whether an arbitrator's award is "irrational or manifestly erroneous" under common law is separate from the question of "whether an arbitration award must be vacated under [CJP] § 3-224(b)([3])."[14]

In reply, Seller repeats the alleged factual errors committed by Ms. Carrier and notes that Purchasers do not dispute that Ms. Carrier erred by misconstruing the 1994 deed. Seller argues that "[a]t the very least, the [c]ircuit [c]ourt should have reviewed these factual errors and determined whether . . . Ms. Carrier's conclusion was manifestly erroneous."

[14] We note that rather than citing to CJP § 3-224(b)(3), which pertains to vacating an award when arbitrators "exceeded their powers[,]" Purchasers instead cite to CJP § 3-224(b)(4) in their brief, which pertains to vacating an award when "[t]he arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party" Because neither party argues that section 3-224(b)(4) is applicable to this case, we presume Appellees meant to refer to section 3-224(b)(3).

B. Standard of Review

The circuit court's review of arbitral awards is "very narrowly limited." *Amalgamated Transit Union v. Md. Transit Admin*., 244 Md. App. 1, 12 (2019) (citing *Prince George's Cnty. Police Civilian Emp. Ass'n v. Prince George's Cnty.*, 447 Md. 180, 192 (2016)). "Indeed, the standard of review in this context is 'amongst the narrowest known to the law.'" *Id.* at 12 (quoting *Letke Sec. Contractors, Inc. v. U.S. Sur. Co.*, 191 Md. App. 462, 472 (2010)). The Supreme Court of Maryland, on several occasions, has pointed out that under Maryland law, reviewing "courts generally defer to the arbitrator's findings of fact and applications of law." *Downey v. Sharp*, 428 Md. 249, 266 (2012). "Moreover, when it comes to the merits of the parties' claims, 'mere errors of law or fact would not ordinarily furnish grounds for a court to vacate or refuse enforcement of an arbitration award.'" *Balt. Cnty. Fraternal Order Police Lodge No. 4 v. Balt. Cnty.*, 429 Md. 533, 560 (2012) (quoting *Bd. Educ. Prince George's Cnty. v. Prince George's Cnty. Educators' Ass'n, Inc.*, 309 Md. 85, 99 (1987)). An arbitrator's findings on the merits are subject to deferential standard of review by the circuit court; thus, a circuit "court award[ing] great deference to the arbitrator's findings . . . [is] a proper standard of review." *Balt. Cnty. Fraternal Order Police Lodge No. 4*, 429 Md. at 561 (cleaned up). However, where "the issue is whether the arbitrator exceeded the arbitrator's powers . . . none of [the Court's] precedent indicates that a court must give any deference to an arbitration award." *Prince George's Cnty. Police Civilian Emp. Ass'n*, 447 Md. at 195.

In turn, we review a circuit court's decision to confirm or vacate an arbitration award *de novo*. *Amalgamated*, 244 Md. App. at 11 (citations omitted). "An appellate court reviews without deference a trial court's ruling on a petition to vacate an arbitration award." *Prince George's Cnty. Civilian Emp. Ass'n*, 447 Md. at 192; *see also WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 253 (2018) ("A circuit court's decision to grant or deny a petition to vacate or confirm an arbitration award is a conclusion of law, which we review without deference."). Still, when reviewing a court's disposition for legal error, "we accept any relevant factual findings by the circuit court that are not 'clearly erroneous.'" *See State v. Philip Morris, Inc.*, 225 Md. App. 214, 242 (2015) (holding that we review a court's disposition of a petition to confirm or vacate an arbitral award for legal error) (quoting *Montgomery Cnty., Md. v. Fraternal Order of Police, Montgomery Cnty. Lodge 35, Inc.*, 427 Md. 561, 572 (2012)).

C. Maryland Uniform Arbitration Act ("MUAA")

As the circuit court recognized, this case is governed by the MUAA, *see* CJP §§ 3-201 *et seq.*, and Maryland common law. *See WSC/2005 LLC v. Trio Ventures Assocs. LLC*, 460 Md. at 271 (holding that the MUAA did not abrogate the common law remedies for *vacatur* of arbitral awards; instead, the two remedies exist in harmony). The MUAA is an expression of Maryland's "'strong legislative policy favoring enforcement of arbitration agreements.'" *Louis Fireison & Assocs. v. Alkire*, 195 Md. App. 461, 471-72 (2010) (quoting *All State Home Mortg., Inc. v. Daniel*, 187 Md. App. 166, 178 (2008)). An arbitration award is given such deference because

> [a]rbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation.

Balt. Cnty. v. Mayor & Cty. Council of Balt., 329 Md. 692, 701 (1993) (quoting *Burchell v. Marsh*, 58 U.S. 344, 349-50 (1854)). "To encourage arbitration as a method of alternative dispute resolution, both the legislature and appellate courts of this State have narrowly circumscribed the scope of judicial review available upon the merits of an arbitrator's award." *Synder v. Berliner Const. Co., Inc.*, 79 Md. App. 29, 34 (1989) (citing *Bd. of Ed. of Prince George's Cnty. v. Prince George's Cnty. Educator's Assoc., Inc.*, 309 Md. 85, 98 (1987)).

The MUAA provides that circuit courts may "modify or correct" arbitration awards under the limited circumstances outlined in section 3-223(b), when:

> (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
> (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
> (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

Section 3-224(b), in turn, provides that the "court shall vacate an award if:"

> (1) An award was procured by corruption, fraud, or other undue means;
> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;

(3) **The arbitrators exceeded their powers**;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement as described in § 3-206 of this subtitle, the issue was not adversely determined in proceedings under § 3-208 of this subtitle, and the party did not participate in the arbitration hearing without raising the objection.

CJP § 3-224(b) (emphasis added). Notably, section 3-224(c) of the MUAA mandates that "[t]he court shall not vacate the award or refuse to confirm the award on the ground that a court of law or equity could not or would not grant the same relief." CJP § 3-224(c).

i. When Arbitrators Exceed Their Powers

Seller argues that Ms. Carrier "exceeded her powers" under CJP § 3-224(b)(3) when she committed manifest errors of fact in rendering her arbitral award. In *Downey v. Sharp*, the Supreme Court of Maryland clarified that the question of whether an arbitrator exceeds his or her powers under CJP § 3-224(b)(3) is separate and distinct from the question of whether an arbitral award "manifestly disregards the law" or is "completely irrational" under the common law. 428 Md. 249, 262-63 (2012). In *Downey*, landowners filed a petition to confirm an arbitration award with respect to the neighboring landowner's claim of an easement. *Id.* at 252. The arbitration award rejected Sharp's claim of an express easement over the adjacent property owned by the Downeys. *Id.* The award also rejected Sharp's claim that in the absence of an express easement, he was entitled to an implied easement by necessity over the Downey's property because, without such easement, his property would be landlocked and inaccessible. *Id.* Sharp appealed the circuit court's

confirmation of the arbitral award to this Court, arguing that the arbitrator "exceeded his powers" and the award was "irrational" because, without an easement over the Downeys' land, Sharp's land would be landlocked. *Id.* at 257-58. We concluded that "our decisions have understood the 'manifest disregard' standard as inherent in the statutory grounds of 'undue means' and exceeding arbitral authority" under CJP 3-224(b)(1) and (3). *Id.* at 258-59. We reversed the circuit court's confirmation of the award, holding that "the arbitrator erred in rejecting an easement by necessity, and that his error rises to the level of manifest disregard of the law." *Downey*, 428 Md. at 259-60. On appeal, our Supreme Court, however, explained that our reliance on CJP § 3-224(b)(3) was "misplaced." *Id.* at 263. The Court held that

> an issue or matter resolved by an award may be rational and legally correct but the arbitrator, under the arbitration agreement, may have had no power or authority to resolve the particular issue. On the other hand, an issue may have clearly been within the arbitrator's powers, but the arbitrator's resolution of the issue may have been irrational or manifestly erroneous as a matter of law. . . . Vacating an award because it is "completely irrational" or "manifestly disregards the law" is clearly different from vacating an award for one of the reasons delineated in § 3-224(b).

Id. (citing *Messersmith, Inc. v. Barclay Townhouse*, 313 Md. 652, 659-61 (1988)).

In *Synder v. Berliner Const. Co., Inc.*, we explained that "arbitrators exceed their powers not only when the substance of their award lacks a scintilla of rationality, but also where the award is founded upon a mistaken assertion of jurisdiction." 79 Md. App. 29, 37 (1989) (citing to *Stephan L. Messersmith, Inc. v Barclay Townhouse Assoc.*, 313 Md. 652 (1988)). We then summarized the jurisdictional grounds upon which arbitrators exceed their powers:

> Our courts have recognized a number of jurisdictional grounds on which an arbitration award may be set aside, including: (1) **untimely demand for arbitration**, *Frederick Contractors, Inc. v. Bel Pre Medical Center, Inc.*, 274 Md. 307, 314, 334 A.2d 526 (1975); (2) **illegality of the parties' underlying contract**, *Bd. of Ed. of Charles Co. v. Ed. Ass'n*, 286 Md. 358, 366, 408 A.2d 89 (1979); (3) **nonexistence of an agreement to arbitrate disputes**, *Stephen L. Messersmith, Inc., supra;* (4) **nonexistence of an agreement to arbitrate particular issues**, *Baltimore v. Baltimore City Fire Fighters*, 49 Md. App. 60, 65–66, 430 A.2d 99 (1981). In a case apposite to the one at hand, we held that arbitrators exceed their jurisdiction by **refusing to consider all claims that are properly before them**. *McKinney Drilling Co. v. Mach I Ltd. Partnership*, 32 Md. App. 205, 211, 359 A.2d 100 (1976).

Synder, 79 Md. App. at 37-38 (emphasis added).

D. Common Law Grounds for *Vacatur*

In addition to the statutory grounds for vacating an arbitration award, Maryland also recognizes common law grounds for *vacatur* when neither MUAA nor the Federal Arbitration Act, codified at 9 U.S.C. §§ 1-16, applies.[15] *See WSC/2005 LLC v. Trio Ventures Assocs. LLC*, 460 Md. at 271. Under Maryland common law, the circuit court reviews and *may* vacate an arbitration award for: (1) fraud, (2) arbitrator misconduct or corruption, (3) procedural unfairness, (4) an award on issues outside the scope of matters the parties submitted to arbitration, (5) **any palpable mistake of law or fact that is apparent on the face of the award** (*i.e.*, "manifest disregard of controlling law"), or (6) any mistake that results in manifest injustice. *See Amalgamated*, 244 Md. App. at 14-15; *see also O-S Corp. v. Knoll*, 29 Md. App. 406, 409 (1975), *cert. denied*, 277 Md. 740

[15] The Federal Arbitration Act does not govern this dispute because Paragraph 18(i) of the parties' Purchase Agreement provides that their "Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland."

(1976) ("We recognize the very limited extension of the reviewing court's scope of review to include authority to vacate an award that is 'completely irrational.'")). As we explained in *Amalgamated*:

> [t]he common-law bases for vacating an arbitral award fall into three categories. In the first class of challenges, parties may succeed in vacating an arbitral award by showing the award is not the result of a legitimate construction of the contract. This can occur in one of two ways. First the award may be the product of the arbitrator's bias, prejudice, corruption, bad faith, fraud or other misconduct. Second, in reaching her decision, the arbitrator might exceed the scope of the issues actually submitted to arbitration. In either scenario, the arbitrator has, in some way, strayed from her charge, and so the arbitral award cannot be enforced.

Amalgamated, 244 Md. App. at 14-15 (cleaned up). The first category of challenges under the common law (*i.e.* fraud, arbitrator misconduct, corruption, and procedural unfairness) focuses on "the way in which the arbitrator's decision was reached" whereas

> [i]n the second category of common-law challenges, parties attack the merits of the arbitrator's award . . . In Maryland, a substantive attack will be successful only in cases in which the award "**demonstrates a manifest disregard of the law . . . beyond and different from a mere error in the law or failure on the part of the arbitrator to understand or apply the law**."

Amalgamated, 244 Md. App. at 15 (quoting *Balt. Cnty. Fraternal Order*, 429 Md. at 564) (emphasis added).

An arbitrator's award will only be vacated under "manifest disregard of controlling law" when it rises above the level of "mere error." The Supreme Court of Maryland explained in *WSC/2005 LLC*, how manifest disregard of the law differs from "mere error:"

> "Manifest" means "clear; obvious; or unquestionable." *Black's Law Dictionary* 1106 (10th ed. 2014). In *Prince George's Cnty. Educators' Ass'n*, we also explained that, encompassed within the manifest disregard standard, a reviewing court will vacate an award for a "palpable mistake of law or

> fact." "Palpable" means "capable of being handled, touched, or felt; tangible," or "easily perceived; obvious." Discussing the standard as applied in federal courts, Thomas Oehmke, in his treatise on arbitration, states that, to succeed in a claim that the arbitrator acted in manifest disregard of the law, the party challenging the award must show that the award is "based on reasoning so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling ...." Accordingly, we shall decide whether the Arbitrator made a palpable mistake of law or fact appearing on the face of the award. **We look for an error that is readily perceived or obvious; an error that is clear or unquestionable**. This can be the only logical interpretation of the standard that was applied, but not fully explained, in *Prince George's County Educator's Ass'n*.

460 Md. 244, 262-63 (2018) (cleaned up) (emphasis added).

E. Analysis

i. The Court Applied the Correct Standard of Review

In the case before us, Seller argues that the circuit court applied "an overly deferential standard of review" when it reviewed Ms. Carrier's arbitration award for "manifest disregard of controlling law" instead of for "manifest error." We find no merit in this argument and conclude that the Purchase Agreement did not explicitly expand the scope of judicial review beyond what is permitted by the MUAA and Maryland common law.

In *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 522 U.S. 576, 586 (2008), the United States Supreme Court ruled that if parties want to make use of the expedited review of arbitral awards contemplated by the Federal Arbitration Act ("FAA"), *see* 9 U.S.C. §§ 1-

16,[16] they cannot modify the grounds for judicial review by agreement. The Supreme Court, however, left open the possibility that State Supreme Courts may permit contracting parties to expand the scope of judicial review in cases where arbitral award is not governed by the FAA. *Id.* at 590.

Seller cites to *Cable Connection, Inc. v. DIRECTV, Inc.*, in which the California Supreme Court held that parties to a contract could provide for an expanded scope of judicial review of arbitration agreements "on the merits by express agreement." 190 P.3d 586, 589 (Cal. 2008) (citations omitted). California's Supreme Court based its ruling on the express language of the parties' agreement, finding that it could be enforced through the California Arbitration Act's provision that permits review of arbitration decisions where "[t]he arbitrators exceeded their powers[.]" *Id.* at 589 (citing CAL. CODE CIV. PROC., § 1286.2(a)(4)). The arbitral agreement in question specifically provided that "**[t]he arbitrators shall not have the power to commit errors of law or legal reasoning, and**

[16] Section 10 of the FAA provides substantially similar grounds for vacating an arbitral award as the MUAA. Under the FAA, the District Court may vacate an award:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10.

the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error." *Id.* (emphasis added). The Court clarified, however, that "to take themselves out of the general rule that the merits of the award are not subject to judicial review, **the parties must clearly agree that legal errors are an excess of arbitral authority that is reviewable by the courts.**" *Id*. at 604 (emphasis added).

Although we did not find a Maryland case that addresses whether or not parties may contractually expand the scope of judicial review of an arbitral award in Maryland, we do not read the Purchase Agreement to expressly provide that the circuit court may vacate or modify the award under anything other than the standards set forth under the MUAA and Maryland common law. Unlike the contract language in *Cable Connection*, the underlying Purchase Agreement provided only that the square footage calculation "will be final and binding . . . absent manifest error by the Third Firm." The parties did not define "manifest error" or elaborate that "manifest error" differed in any way from "manifest disregard of controlling law." Indeed, the Purchase Agreement expressly provided that "[t]his Agreement shall be governed and interpreted in accordance with the laws of Maryland." As such, we conclude that we are bound by the standard of review set forth under the MUAA and Maryland common law. Therefore, we hold that the circuit court applied the appropriate common law standard of "manifest disregard of controlling law" as outlined in *WSC/2005 LLC v. Trio Ventures Assocs. LLC*, 460 Md. 244 (2018) after deciding—correctly in our view—that no grounds for *vacatur* under CJP 3-224(b), or modification of the award under CJP § 3-223(b), applied to this case. We discern no distinction between

"manifest error" and "clear error," or between "manifest error" and "manifest disregard of controlling law" because "manifest disregard of controlling law" includes within its definition "**palpable mistakes of law or fact . . . apparent on the face of the award.**" *WSC/2005 LLC*, 460 Md. at 260-62 (quoting *Downey*, 428 Md. at 264) (emphasis added).

ii. Ms. Carrier Did Not Err or Manifestly Disregard Controlling Law

Seller contends that Ms. Carrier's award was "manifestly erroneous" in determining that Seller was entitled to include 10,730 square feet in calculating the final purchase price of the Property. We do not agree. As discussed above, Maryland law has never allowed a court to overturn an arbitration award when the alleged error was not "readily perceived," "obvious," "clear or unquestionable," or "apparent" on the face of the award. *Amalgamated*, 244 Md. App. at 15-16; *WSC/2005, LLC*, 460 Md. at 263. We emphasized that "[t]hese errors of law or fact should be so gross as to work manifest injustice, 'readily perceived,' 'obvious,' 'clear or unquestionable.'" *Amalgamated*, 244 Md. App. at 15 (cleaned up) (quoting *WSC/2005 LLC*, 460 Md. at 263)).

Ms. Carrier clearly understood the presumption outlined in RP § 2-114. After conducting a thorough and independent review, she concluded that the presumption did not apply and meticulously explained how she arrived at that determination. The parties elected to voluntarily submit the issue of calculating the square footage to a Third Firm. On appeal, Seller challenges certain factual statements in Ms. Carrier's letter. But Seller fails to challenge Ms. Carrier's analysis, arrived at after researching further back in the chain of title, that none of the original Willard Avenue right-of-way ever belonged to the

same tract of land that is the Property today. Accordingly, Ms. Carrier's determination that the presumption contained in RP § 2-114 does not apply is well supported in the award letter.

It is evident that the parties presented a complex analysis of the plats and deeds underlying the property at issue. We note that three different attorneys—experts in land-use and property law—all arrived at different calculations of the square footage. We conclude that any alleged errors committed by Ms. Carrier were not "obvious," "clear" or "apparent" on the face of the award such that the award must be vacated for "manifest disregard of controlling law."

iii. Ms. Carrier Did Not Exceed Her Powers Under CJP § 3-224(b)(3)

Finally, we are unpersuaded by Seller's argument that Ms. Carrier "exceeded her powers" under CJP § 3-224(b)(3) when she issued her award. As we explained above, an arbitrator does not exceed her powers by issuing an award that contains mere factual or legal errors. *Downey*, 428 Md. at 263. Rather, an arbitrator exceeds her powers when she lacks the authority under contract to resolve a particular dispute; when there is obvious partiality on the part of the arbitrator; when the arbitrator resolves an issue that one or both parties did not agree to arbitrate; and when the arbitrator fails to consider all claims properly before her. *Synder*, 79 Md. App. at 37-38. Here, Seller admits that Ms. Carrier had the authority under Exhibit F of the Purchase Agreement to resolve the issue of calculating the square footage. In addition, prior to retaining Ms. Carrier as the Third Firm, the parties already resolved what documents and information was to be submitted to her

for consideration. Therefore, we hold that Ms. Carrier did not exceed her powers under CJP § 3-224(b)(3).

II.

Overpayment of $338,855.09

A. Parties' Contentions

Seller argues that "even assuming the Carrier Letter was not manifestly erroneous, the issue of any purported 'overpayment' was not properly before the circuit court." Citing to 2 M.L.E. Alternative Dispute Resolution, § 67, which provides that "[r]eview of an arbitration agreement is limited to the issues and arguments that were raised in the arbitration," Seller contends the circuit court's jurisdiction was limited to reviewing *only* the arbitral award and the three issues contained therein–namely, "the Square Footage, the FAR, and the Purchase Price." In other words, according to Seller, the issue of overpayment was not an arbitrable "issue the Parties agreed to submit–or that was submitted–to the Third Firm and was not controlled by the terms of Exhibit F".

Purchasers counter that when Seller filed its petition to vacate the arbitration award, it initiated a civil action, invoking Maryland Rule 2-301(a), which provides that "[t]here shall be one form of action known as the 'civil action.'" According to Purchasers, because there are no special provisions in the Maryland Rules governing the procedure a circuit court is to follow when adjudicating petitions filed under the MUAA, the general rules of civil procedure in Title 2 of the Maryland Rules apply to this action. They cite to CJP § 3-205(a), which provides that "a petition under this subtitle shall be heard in the manner and

upon the notice provided by law or rule of court for the procedures when a petition is filed in an action." Then, citing to Maryland Rule 2-331(a), Purchasers aver that they were entitled to file their counter-petition and assert "any claim" they had "against any opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim" and to "claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party." Purchasers urge that it would be a waste of judicial resources to require that they "file yet another lawsuit and incur further expense and delay before obtaining a judgment in an amount that [Seller] does not substantively challenge."

In reply, Seller avers that the underlying proceeding that confirmed the arbitral award was not a "ordinary 'civil action'" because "Case No. 484108-V was indisputably one where the parties (styled as "Petitioner" and "Respondents") sought to vacate or confirm a purported arbitration award." Seller emphasizes that both parties cited to CJP § 3-202[17] as the basis for the court's subject matter jurisdiction.

B. Standard of Review

Sellers did not challenge the circuit court's jurisdiction to consider and enter judgment in favor of Purchasers for their overpayment on the final purchase price during the proceedings below until they filed their motion to alter or amend the final judgment. We review a circuit court's decision to deny a motion to alter or amend for abuse of

[17] Section 3-202 states that "[a]n agreement providing for arbitration under the law of the State confers jurisdiction on a court to enforce the agreement and enter judgment on an arbitration award." CJP § 3-202.

discretion. *Wilson-X v. Dep't of Hum. Res.*, 403 Md. 667, 674-75 (2008). An abuse of discretion occurs when "no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997). However, a "court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case." *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (quoting *Arrington v. State*, 411 Md. 524, 552 (2009)).

C. Analysis

The circuit court's authority to enter a judgment in favor of Purchasers for overpaying on the purchase price is tied to the first issue—whether the circuit court erred in declining to vacate the arbitration award for "manifest disregard of controlling law." Section 3-228(a) governs judgments entered in conformance with an order, and states that: "(1) If an order confirming, modifying, or correcting an award is granted, a judgment shall be entered in conformity with that order[]" and "(2) [t]he judgment may be enforced as any other judgment." CJP § 3-228(a). In *Chillum-Adelphi Volunteer Fire Dep't, Inc. v. Button & Goode, Inc.*, the Supreme Court of Maryland held that

> where parties have voluntarily and unconditionally agreed to submit issues to arbitration and to be bound by an arbitration award, **the court will enter a money judgment on that award and enforce their contract to be so bound unless**, notwithstanding that the arbitrator's decision may have been erroneous, the facts show that he acted fraudulently, or beyond the scope of the issue submitted to him for decision, or that the proceedings lacked procedural fairness. A court does not act in an appellate capacity in reviewing the arbitration award, **but enters judgment on what may be considered a contract**

> **of the parties, after it has made an independent determination that the contract should be enforced.**

242 Md. 509, 517 (1966) (emphasis added). Indeed, "at common law, an arbitration award became a cause of action in favor of the prevailing party. The award could be sued on as a contract, and the function of a court in entering judgment upon it was to determine whether the award, which was not self-enforcing, was entitled to be enforced as a judgment of court." *Id.* at 516 (citing 5 AM. JUR. 2D *Arbitration & Awards* 184, 655)).

Here, the final purchase price was calculated using the average of the two lowest estimates (Purchasers' Determination of 13,002 square feet plus the Third Firm Determination of 10,730 square feet, divided by two) which resulted in 11,866 square feet and a final purchase price of $2,847,840. The Purchasers overpaid by $177,760 on the estimated purchase price of $3.5 million, including pre-judgment interest of $161,095.09, for a total amount of $338,855.09. Because we determined that the circuit court did not err in confirming the arbitral award, we conclude that the court did not err in entering a judgment in favor of Purchasers reflecting the amount they were owed under the terms of the Purchase Agreement.

III.

Award of Attorneys' Fees

A. Parties' Contentions

During oral arguments, the parties conceded that they were not seeking attorneys' fees under CJP § 3-228(b), leaving Paragraph 18(b) of the Purchase Agreement as the only

basis for an award of attorneys' fees. Therefore, we shall only address the court's reliance on Paragraph 18(b) of the Purchase Agreement.

First, Seller argues that, like the overpayment issue, the award of attorneys' fees was outside of the court's jurisdiction to resolve. Seller avers that the court abused its discretion in awarding attorneys' fees to Purchasers as the prevailing party pursuant to Paragraph 18(b) of the Purchase Agreement because the court could only consider the issues raised in the arbitration award and nothing more. Second, Seller claims that, even if the court had jurisdiction to award attorneys' fees, certain tasks and the number of hours spent on certain tasks should have been excluded. More specifically, Seller takes issue with the following:

- **89.3 hours** incurred for "researching, preparing, and filing a motion for summary judgment and reply brief."
- **5.7 hours** incurred to prepare and review objections and responses to Seller's discovery requests in the Contract Case (Civil Action No. 481170V).
- **17.5 hours** incurred for collecting documentation to submit to Ms. Carrier, review/analyze the submission materials, review and respond to communications from Ms. Carrier and to review the arbitration award letter itself. Seller argues that "[t]hese tasks were not related to the litigation" because "the submissions to Ms. Carrier, the Exhibit F Process and the Carrier Letter were contractual requirements regardless of the pending litigation."
- **28.2 hours** spent in billing entries associated with Seller's Foreclosure Action. Seller contends that even Purchasers do not dispute that these hours should have been excluded as part of the award.
- **100.8 hours** in billing entries associated with the parties' first appeal (Civil Action No. 481170V). Seller again argues that Purchasers do not dispute that these hours should not have been included as part of the award.

Third, Seller argues that, even if the court did not abuse its discretion in awarding attorneys' fees, the amount of fees awarded to Purchasers were unreasonable under

Maryland law because, among other reasons, the hourly rates charged by Purchasers' counsel, Arent Fox, were excessive even for Montgomery County.

Purchasers respond that the court appropriately exercised its discretion awarding attorneys' fees to Purchasers as the prevailing parties because they prevailed in both the circuit court and on appeal. With respect to the circuit court's jurisdiction to award attorneys' fees, Purchasers refer to the fact that, "in its own petition in this case . . ., Seller's *ad damnum* demands a judgment 'awarding [Seller] its reasonable attorneys' fees and costs pursuant to Paragraph 18(b) of the Purchase Agreement[.]"

Purchasers contend the court's decision to grant them the full amount they requested ($332,945.95) was soundly within the court's discretion. Purchasers assert that they properly presented their fee petition, which was supported by documentation that specified the efforts and hours incurred for the time spent in the litigation and addressed all of the factors that the court was required to consider under Maryland Rules 2-705(f)(1) and 2-703(f)(3)). Finally, Purchasers assert that (1) "[t]here was nothing unreasonable about filing a motion for summary judgment" (89.3 hours) especially since the court ultimately granted Purchasers' motion; (2) that it was not unreasonable "to work on objections and responses to already-served discovery requests" (5.7 hours) even if the parties later agreed to defer discovery; and (3) that Seller cites "no reason" why the 17.5 hours relating to the arbitration process were not compensable. Purchasers do not respond the Seller's arguments concerning the remaining hours in dispute.

B. Relevant Background

Because the attorneys' fees awarded to Purchasers included some of the fees requested by both parties in the breach of contract action currently pending on remand before the circuit court, we first summarize the relevant facts pertaining to that action.

On or about June 6, 2022, the parties jointly filed a consent motion to stay proceedings in Case No. 481170V, stating that "[t]he only issues for this [c]ourt to address on remand are: (a) who prevailed in this [c]ourt on which issues and on appeal; (b) whether the prevailing party is entitled to reasonable attorneys' fees; and (c) how much (if anything) to award the prevailing party." The parties further stated that:

> On November 24, 2020, [Seller] filed in this [c]ourt a petition to vacate the arbitration award [issued by Ms. Carrier in her letter dated October 29, 2020]. That matter was assigned case number 484108V and involved the same [Purchasers] as this case. [Purchasers] answered the petition and filed a counter-petition seeking to confirm the arbitration award on January 8, 2021. Both sides sought prevailing party attorneys' fees under the parties' contract.
>
> On September 9, 2021, [the circuit court] ruled in [Purchasers'] favor in case 484108V and entered judgment confirming the arbitration award. The [c]ourt further ordered that [Purchasers] would be awarded their reasonable attorneys' fees and directed [Purchasers] to submit a fee petition.
>
> [Purchasers] submitted an application for attorneys' fees in 484108V on October 5, 2021. The fee petition requested compensation for 176.2 billable hours spent litigating at the trial court level in *this* case, 481170V, in addition to the billable hours spent litigating the petition to vacate and the counter-petition to affirm in 484108V. . . .
>
> On November 4, 2021, [the circuit court] entered a judgment in case 484108V awarding [Purchasers] all the attorneys' fees they requested, including the fees for litigating this case, 481170V, at the trial court level. Inherent in Judge Smith's award of attorneys' fees in 484108V are her findings that: (a) the [Purchasers] prevailed in the litigation in this [c]ourt in

> this case, 481170V; (b) [Purchasers] were contractually entitled to recover the attorneys' fees they incurred in defending against [Seller's] dismissed claims in this case, 481170V; and (c) the fees sought by [Purchasers] and awarded by the [c]ourt were reasonable. . . .

(Emphasis in original). After noting that Seller filed another appeal in Case No. 484108V, the parties requested that the circuit court stay Civil Action No. 481170V, explaining that this Court's "decision and any subsequent litigation in that case might obviate the need for further litigation in this case" because "[i]t is impossible for this [c]ourt to grant full relief, with any degree of certainty, until after the related matter is finally adjudicated."

Both parties emphasized that they "do not waive" their respective rights to argue that they are the prevailing party entitled to seek attorneys' fees. Notably, Seller "reserve[d] the right to argue that it was the prevailing party in this action as to some of the claims presented and that, to the extent [the circuit court's] orders included fees for work performed on matters that are the subject of the [Appellate Court of Maryland's] remand in this case, 481170V, that portion of the fee award should be vacated." Purchasers, for their part, also argued that they "do not waive (and expressly reserve) their right to seek attorneys' fees relating to the appeal proceedings, which affirmed this [c]ourt's order compelling arbitration in this matter, under Rule 2-706 if this litigation proceeds further. Those appellate fees were neither sought nor awarded in case 484108V."

C. Standard of Review

We review a circuit court's decision to award attorneys' fees to the prevailing party under a fee-shifting provision in a contract for abuse of discretion. *See Monmouth Meadows Homeowners Ass'n, Inc. v. Hamilton*, 416 Md. 325, 332-33 (2010) (citing *Myers*

v. Kayhoe, 391 Md. 188, 207 (2006)). A circuit court "abuse[s] its discretion when awarding attorneys' fees if it adopts a position that no reasonable person would accept," and the "court's determination of the reasonableness of the attorney's fees is a factual determination within the sound discretion of the court, and will not be overturned unless clearly erroneous." *Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 42 (2020) (cleaned up).

D. Attorneys' Fees Pursuant to Contract

Generally, Maryland adheres to the common law rule which provides that each party to a case is responsible for its own attorneys' fees, regardless of the outcome. *Friolo v. Frankel*, 403 Md. 443, 456 (2008) (*Friolo III*). There are two exceptions to this rule that arise when (1) a statute requires payment of fees to the prevailing party; or (2) when the parties provide for recovery of attorneys' fees by contract. *Hess Constr. Co. v. Bd. Educ. of Prince George's Cnty.*, 341 Md. 155, 160 (1996).

In the first appeal, we remanded Civil Action No. 481170V (breach of contract) for the sole issue of determining the award of attorneys' fees to the prevailing party. *See Cobbler*, No. 1173, slip op. at 24-25. We explained that:

> [a]lthough we would ordinarily remand for the parties to litigate Count I in its entirety, we cannot overlook Seller's concession that its claim for "damages" is limited to the claim for attorneys' fees and costs to which it claims an entitlement as the prevailing party, by virtue of its success in obtaining (1) a partial payment on the Note and (2) Purchasers' agreement to go forward with the paragraph (C) process in the manner Seller argued was required. Such a claim is governed by Rule 2-705. Unlike where attorneys' fees are available as damages for breach of contract, *see generally* Md. Rule 2-704, a claim for attorneys' fees pursuant to a contractual prevailing party

> provision is not treated as an element of damages to be adjudicated in the case-in-chief, but is to be determined by the court only after "a finding by the court in favor of a party entitled to attorneys' fees as a 'prevailing party,'" Md. Rule 2-705(e). Any award of attorneys' fees must then "be included in the judgment on the underlying cause of action but shall be stated separately." Md. Rule 2-705(g). We will therefore reverse the award of judgment in favor of Purchasers as to Count I of the complaint but **remand only for the limited purpose of deciding Seller's claim for attorneys' fees and costs as the prevailing party. In doing so, we express no opinion concerning whether Seller is the prevailing party.**"

Id. at 24 (emphasis added). As noted, Rule 2-705 governs an award of attorneys' fees to the prevailing party pursuant to contract. *See* Md. Rule 2-705(a). After determining which is the prevailing party entitled to an award of attorneys' fees, "the court shall determine the amount of an award in accordance with section (f) of this Rule." Md. Rule 2-705(e). Section (f) of the Rule explains that "the court shall consider the factors set forth in Rule 2-703(f)(3) and the principal amount in dispute in the litigation, and may consider the agreement between the party seeking the award and that party's attorneys and any other factor reasonably related to the fairness of the award." Md. Rule 2-705(f)(1).

E. Reasonableness of Attorneys' Fees Requested

The "lodestar" approach (multiplying the number of hours incurred by the attorney by an hourly rate) is one appropriate method to determine the reasonableness of the fees requested under fee-shifting statutes. *Friolo v. Frankel*, 373 Md. 501, 529 (2003) (*Friolo I*). The Maryland Supreme Court, however, has observed that the trial court must also determine whether an adjustment to the fee request is warranted. *Id.* at 505. A downward adjustment is warranted, for example, when there is inadequate documentation of hours,

and work that is duplicative, excessive, unnecessary, or unsuccessful. *Id.* at 523-24, 528-29.

The party seeking attorneys' fees bears the burden of presenting to the trial court sufficient evidence as to their reasonableness. *See Maxima Corp. v. 6933 Arlington Dev'l Ltd. P'ship*, 100 Md. App. 441, 453-54 (1994). As noted above, in evaluating the reasonableness of the fees, the court considers the following factors delineated under Maryland Rule 2-703(f)(3): (A) the time and labor required; (B) the novelty and difficulty of the questions; (C) the skill required to perform the legal service properly; (D) whether acceptance of the case precluded employment by the attorney; (E) the customary fee for similar legal services; (F) whether the fee is fixed or contingent; (G) any time limitations imposed by the client or the circumstances; (H) the amount involved and the results obtained; (I) the experience, reputation, and ability of the attorneys; (J) the undesirability of the case; (K) the nature and length of the professional relationship with the client; and (L) awards in similar cases. Md. Rule 2-703(f)(3). A Committee Note further states that: "[t]he factors listed in subsection (f)(3) of this Rule have been approved by the Court of Appeals in statutory fee-shifting cases, where the 'lodestar method' is applied in determining an award."

F. Analysis

Seller claims that the overpayment issue and the request for attorneys' fees were not properly before the court because the court could only consider the issues raised in the arbitration award letter; namely—the Exhibit F process. Yet, Seller invoked the very same

provision of the agreement—Paragraph 18(b)—in its petition to vacate the arbitration award when *Seller asked for an award of attorneys' fees*. Although Paragraph 18(b) of the Purchase Agreement is a separate provision from Exhibit F, Paragraph 18(b) specifies that it applies to "any litigation arising out of the agreement" and it is undisputed that the parties contemplated other issues may arise apart from the narrow issue of determining the purchase price.

Moreover, Maryland law clearly establishes that attorneys' fees may be recovered pursuant to an express contractual provision. *See Hess Const. Co.*, 341 Md. at 160 (citing *Empire Realty Co. v. Fleisher*, 269 Md. 278, 286 (1973)). Here, Paragraph 18(b) of the parties' Purchase Agreement unambiguously provides: "In connection with **any litigation** arising out of this Agreement, **the prevailing party shall be entitled to recover reasonable attorneys' fees and costs at both the trial and appellate levels.**" (Emphasis added). Seller's petition to vacate or, in the alternative, modify/correct the arbitration award and Purchasers' counter-petition to confirm the award is litigation "arising out of th[e Purchase] Agreement." As such, Rule 2-705(e) proscribes that "[u]pon a jury verdict or, in an action tried by the court, a finding by the court in favor of a party entitled to attorneys' fees as a 'prevailing party,' the court **shall** determine the amount of an award in accordance with section (f) of this Rule." Md. Rule 2-705(e) (emphasis added). Therefore, we hold that the circuit court had subject matter jurisdiction to award attorneys' fees pursuant to the parties' express contractual agreement.

The fees requested by Purchasers were not unreasonable or excessive under Maryland law. Attached to Purchasers' application for attorneys' fees were approximately 85 pages of documentation that provided for the hours, the attorneys, and the rates spent litigating all aspects of this complicated property case. Unlike Seller's counsel, who did not provide an affidavit, Purchasers' counsel provided an affidavit to support his fee rate. All parties acknowledged that this is a complex matter, which necessitated reaching out to a Third Firm to assist in calculating the square footage. The court appropriately delineated the factors set forth under Rule 2-703(f)(3). Therefore, apart from the question of whether the fees were appropriately awarded in Case No. 484108V (arbitral award) rather than Civil Action No. 481170V (contract action), we discern no abuse of discretion in the court's determination that the fees requested under the lodestar approach were reasonable.

With respect to the disputed tasks and hours listed above, however, we note that Purchasers acknowledged during oral arguments that the fees requested—and that were awarded—in the underlying case (Case No. 484108V), *overlapped*, in part, with the attorneys' fees for work in the related cases, including the foreclosure action and the breach of contract actions. Accordingly, we must vacate the judgment awarding attorneys' fees and remand the case to address the overlap of fees requested between the underlying arbitration in this case and the breach of contract action that was stayed by the consent of the parties. On remand, the court should identify and separate the fees requested between the cases. We cannot direct the court to do so; however, the parties may consider requesting the circuit court to consolidate Case No. 484108V (arbitral award) and Civil Action No.

481170V (contract action) to reconcile the attorneys' fees, which is the only issue that remains in both cases. As we did in the first appeal, we express no opinion on who is entitled to prevailing party status in Civil Action No. 481170V (contract action).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART. JUDGMENT CONFIRMING ARBITRAL AWARD AFFIRMED; JUDGMENT AWARDING ATTORNEYS' FEES VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE SPLIT EQUALLY BETWEEN THE PARTIES.