Circuit Court for Anne Arundel County
Case No: C-02-CV-22-000188

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1761

September Term, 2023

ANN SWATT, ET AL.

v.

SUNRISE PREMIER POOL BUILDERS, LLC

Wells, C.J.,
Albright,
Eyler, Deborah, S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: March 17, 2025

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

This appeal arises out of a dispute between Ann Swatt and Thomas Koontz, appellants, and Sunrise Premier Pool Builders, LLC ("Sunrise"), appellee, involving a contract for the demolition and removal of an existing vinyl liner swimming pool, and the construction of a new concrete pool on appellants' property. The parties do not dispute that their contract required them to submit their claims to arbitration. Sunrise submitted a claim for arbitration seeking damages arising from appellants' alleged breach of contract, attorneys' fees, interest, and the cost of arbitration. Appellants filed an opposition and a counterclaim seeking, among other things, breach of contract damages, compensatory and punitive damages under Maryland's Consumer Protection Act ("MCPA")[1], attorneys' fees, and arbitration costs.

After a hearing on the merits, the arbitrator, Tarrant H. Lomax, issued a written arbitration award dated December 31, 2021. The arbitrator awarded Sunrise $13,768 in damages plus pre-judgment interest in the amount of $2,516.20, and attorneys' fees in the amount of $30,702.50. On their breach of contract counterclaim, appellants were awarded $3,391.92. Their claims under the MCPA, including their claim for punitive damages and attorneys' fees, were denied. Appellants filed an application to modify or correct the arbitrator's award, which was denied.

Thereafter, appellants filed in the Circuit Court for Anne Arundel County a "Petition to Vacate Arbitration Award and Order Rehearing and/or to Modify or Correct Award"

[1] Maryland's Consumer Protection Act is codified at § 13-101 *et seq*. of the Commercial Law ("CL") Article.

(hereinafter "petition to vacate the arbitration award"). Sunrise opposed that petition and requested that the court confirm the arbitration award.[2] Subsequently, appellants filed a motion for summary judgment, which Sunrise opposed. A hearing took place on October 3, 2022. The circuit court denied appellants' motion for summary judgment and held the remaining issues *sub curia*. Subsequently, in a written memorandum opinion and order, the court denied appellants' petition to vacate the arbitration award and confirmed the arbitration award. Appellants filed a motion to alter or amend the court's decision which was denied on October 11, 2023. This timely appeal followed.

Appellants present one question for our review, which we rephrase slightly:[3]

> Did the circuit court err in denying appellants' petition to vacate the arbitration award?

For the reasons set forth below, we answer in the negative and affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 15, 2020, appellants entered into a written contract with Sunrise for the demolition and removal of an existing vinyl liner swimming pool and the construction of a new concrete pool on their property.[4] The parties disputed which plans and specifications

[2] The two petitions were initially docketed as separate cases but were eventually consolidated.

[3] Appellants' verbatim question presented was: "Did the Circuit Court err in denying Homeowners' Petition to Vacate Arbitration Award and Order Rehearing and/or to Modify or Correct Award?"

[4] Neither party has provided a transcript of the proceedings before the arbitrator, so the facts set forth are taken from the pleadings and the arbitrator's decision.

were included in the contract, but they did not dispute that it included a four-page written agreement which we shall refer to as the "Agreement." The total cost for the project was $57,200. Prior to entering the contract, appellants hired Channing Blackwell, P.E., to prepare designs and specifications for the pool. We shall refer to those designs and specifications as the "Blackwell Plan." Appellants applied for and obtained a permit from Anne Arundel County. Their permit application included a copy of the Blackwell Plan.

On October 8 and 9, 2020, Sunrise's subcontractor, Chesapeake Excavating, Inc., arrived at appellants' home and conducted excavation work. Appellants notified Sunrise that the excavation work was not in accord with the contract. Appellants stopped payment on the first installment of $22,800 that was due at excavation. On October 14, 2020, appellants sent an email advising Sunrise that the excavation "was deficient and needs correction and it is not up to code or the engineer specifications." The email did not identify the alleged deficiencies or violations or allege that appellants' house had been struck several times or with great force during the excavation work. Sunrise responded that same day requesting appellants to call its office to schedule an appointment for the owner to visit the site. Sunrise claimed it did not receive a call back from appellants. On October 20, 2020, appellants sent an email to Sunrise stating, "YOU ARE NOT AUTHORIZED TO ENTER OR BE ON OUR PROPERTY AT 3152 STONEHENGE DR. RIVA MD 21140." Sunrise inquired as to whether appellants wished for Sunrise to continue with the pool construction. In a letter dated November 13, 2020, appellants advised Sunrise that its "'bad faith' actions have terminated the Pool Agreement[.]" Appellants consulted engineers to

evaluate and assess the excavation work and, ultimately, hired another contractor to correct the alleged damages and complete the pool project.

A. Arbitration

Pursuant to the terms of the Agreement, Sunrise submitted a claim for arbitration alleging breach of contract.[5] Appellants denied Sunrise's allegations and filed a counter-complaint alleging, among other things, breach of contract and violations of the MCPA by Sunrise. A hearing was held before the arbitrator over the course of three days. As we already noted, the parties have not provided us with a transcript of the arbitration hearing.[6]

On December 31, 2021, the arbitrator issued a written "Final Award of Arbitration" in which he explained that, during the course of the hearing, he heard "the sworn testimony" of numerous witnesses and

> had an opportunity to review the exhibits and testimony, to assess the credibility of the witnesses during their testimony, to give the testimony and

[5] Paragraph 16 of the parties' Agreement provided for arbitration as follows:

> Any controversy, action, claim, dispute, breach or question of interpretation relating to or arising out of this contract shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgement [sic] upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The costs of arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrators determine.

[6] Section 3-220 of the Courts and Judicial Proceedings Article provides:

> (a) The arbitrators may, and on application of a party shall, order that part or all of the proceedings be transcribed.
> (b) The record made from the transcript shall be available to either side for purpose of appeal or otherwise.

> the documentary evidence the weight that each are due, and to hear and consider the arguments on behalf of the parties.

The arbitrator additionally clarified the nature of the parties' dispute, stating:

> At the heart of the dispute is the plan and/or specifications that were or were not included as part of the Agreement. [Sunrise] submits that the plan and specifications were those "Standard Pool Structure & Details" prepared by Al Erdi and said to be on file with Anne Arundel County. [Swatt and Koontz] submit[] that the applicable plan was that one-page plan prepared by Channing Blackwell, P.E. under date of 5/4/20 (the Blackwell Plan) and submitted as part of Permit No. B-02389759 issued by Anne Arundel County for the Project, together with a three-page list of undated specifications.

As for the "Standard Pool Structure & Details" said to be on file with Anne Arundel County, the arbitrator noted that Sunrise did not file plans with the County until November 6, 2020, when it did so for another client and that a second plan was placed on file on December 10, 2020.

In reviewing the Agreement, the arbitrator found that appellants believed they were entering into a "three phase contingent agreement." He stated there was "doubt" "as to the true sense and meaning of the words" of the Agreement "or difficulty as to their application under the surrounding circumstances," and "questions arise as to the 'general intention of the parties concerning which the instrument is not decisive.'"[7]

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[7] Specifically, the arbitrator noted problems "not necessarily limited to" the following provisions:

> * 3 Standard Engineered Plans and Pool Permits Included
> * Contractor shall apply for a building permit within seven working days from the date of the contract
> * Add poly to guninte [sic] mix per engineers [sic] specs and any specs to client
> * 20 tons of rock under pool structure[7]

(continued)

The arbitrator found Sunrise's salesperson had knowledge of the Blackwell Plan as of June 3, 2020, and on June 16, 2020, the salesperson confirmed to appellants that "[w]e build our pools to all your engineer's specs except adding fiberglass into the concrete. Pat will have a price for that Monday and I will rebid it including the fiberglass. Thanks, Mike Oliver." In addition, the arbitrator found the application for a building permit was submitted by appellants, which was contrary to the terms of the Agreement providing that Sunrise was to apply for the building permit. The arbitrator specifically found that Sunrise did not review a copy of the permit prior to starting construction, and if it had, it would have immediately "discovered that the Blackwell Plan and General Notes thereon were not [Sunrise's] 'Standard Pool Structure & Details' but rather a more extensive (and expensive) plan prepared by Mr. Blackwell . . . which was the basis for the issuance of the permit."

The arbitrator determined "the contract between the parties is a fixed price, non-phased, non-contingent agreement consisting of" pages 1 through 4 of the Agreement; the Blackwell Plan; and Exhibit B (or Joint Exhibit 1, page 11 only). **(**The arbitrator concluded that Joint Exhibit 1, pages 6 through 8 "were not signed or initialed by the parties, were not incorporated by reference on [p]age 1 of the Agreement and were not part of the approved building permit issued by Anne Arundel County." Only two specifications were added on

* See attached schedules for added project costs totalling [sic] $74,200
* THE UNDERSIGNED JOINTLY AND SEVERALLY AGREE THAT THE TERMS AND CONDITIONS ON THE REVERSE SIDE ARE PART OF THE AGREEMENT AND THAT THIS WRITING CONTAINS THE ENTIRE AGREEMENT BETWEEN THE BUYER AND THE CONTRACTOR ….

page 1 of the Agreement, and they were "the addition of 'poly' to the gunite, and the addition of 20 tons of rock under the pool structure."

The arbitrator found that even if the initial excavation was insufficiently wide or deep, or if it was "over-excavated" as alleged by appellants, Sunrise offered to meet with appellants to discuss their concerns and whether they wished to continue with the pool construction. In rejecting Sunrise's offer to meet, appellants denied the company an opportunity to cure any alleged defect while time remained under the contract for completion. The arbitrator concluded appellants were not entitled to recover the costs they incurred in completing the construction of the pool and associated engineering and drainage work, explaining:

> Although the time for completion under the Contract Documents had not expired, [appellants] i) did not call for a County inspection to ascertain whether the excavation met County and permit requirements, ii) immediately stopped payment to [Sunrise], iii) did not provide [Sunrise] with the details of the alleged deficiencies until several weeks after excavation was complete, iv) did not afford [Sunrise] the opportunity to cure, and v) instead engaged a string of contractors to complete the construction of their pool and related drainage work (which was not part of the Contract Documents[8] and was specifically excluded in Paragraph 3 of the "Terms and Conditions of Contract").

[8] In a footnote, the arbitrator noted:

> The testimony reflected extensive drainage issues existing on the property prior to the execution of the Contract Documents; nonetheless, neither the Swimming Pool Agreement nor the Blackwell Plan provide for any drainage work on the property other than standard pool drains and [Sunrise] was not obligated to perform such site drainage work. See, also, Paragraph 3 of the "Terms and Conditions of Contract" in the "Swimming Pool Agreement."

The arbitrator denied Sunrise's claim for the full contract price. He noted the work performed by Sunrise "was limited to the two-day excavation and the purchase of various materials," and awarding the full contract price would not be reasonable. The arbitrator awarded damages to Sunrise in the amount of $13,768. Sunrise's claim for lost profit in the amount of $14,404 was denied. The arbitrator explained that if Sunrise had corrected the deficiencies and constructed the pool in accordance with the Blackwell Plan, it "would not have realized any profit on the contract."

With respect to attorneys' fees, the arbitrator found they were permitted under paragraph 9 of the Agreement, and they were "necessitated by the substantial counterclaim that [appellants] asserted." The arbitrator found Sunrise's claim for attorneys' fees and expenses in the amount of $30,702.50 were "fair and reasonable under the circumstances."

Appellants sought damages caused by a large backhoe allegedly striking their house. The arbitrator determined the evidence only showed damage to a support post for a sun porch and a downspout. The arbitrator found "the damage to the areas abutting the old pool and apron reasonably could have sustained minor cosmetic cracking, but the evidence was insufficient to support a [claim for] damage to the chimney (detected one year later) or to the bay window and other more remote portions of the house." The arbitrator concluded that appellants met their burden of proof as to damages in the amount of $3,391.92.

Appellants alleged that, in negotiating the contract, Sunrise falsely stated, in writing, it had no complaints at the Better Business Bureau or the Maryland Home Improvement Commission. The arbitrator found appellants established that Sunrise's statements were false and had the capacity, tendency, or effect of deceiving appellants. He also found,

however, that appellants failed to establish they sustained an injury or loss as a result of those statements.

Appellants sought attorneys' fees under the MCPA and Rule 47 of the Commercial Arbitration Rules, but the arbitrator declined to make such an award. The arbitrator also rejected appellants' claim that the 18% annual rate of interest set forth in the Agreement was usurious. He awarded Sunrise pre-judgment interest from October 9, 2020, through January 7, 2022, in the amount of $2,516.20. Lastly, the arbitrator awarded fees as follows:

> The administrative fees of the American Arbitration Association totaling $8,400.00 shall be borne as incurred, and the compensation and expenses of the Arbitrator totaling $8,415.00 shall be born one-third by [Sunrise] and two-thirds by [appellants]. Therefore, [appellants] shall reimburse [Sunrise], the additional sum of $1,401.94, representing that portion of said compensation and expenses previously incurred by [Sunrise].

B. Proceedings in the Circuit Court for Anne Arundel County

On January 31, 2022, appellants filed, in the circuit court, a petition to vacate the arbitration award. Sunrise filed a petition to confirm the award. In their petition, appellants sought both a modification or correction of the arbitration award and vacatur. They argued such relief was warranted because the arbitrator exceeded his powers, failed to consider damages under the MCPA, failed to consider material evidence, and manifestly disregarded both fact and law. They also asserted the arbitration award violated public policy, and the arbitrator was not impartial. Appellants maintained the arbitrator manifestly disregarded evidence that entitled them to the costs incurred in completing the pool construction project, improperly awarded damages to Sunrise in the amount of $13,768, disregarded

damage to their home, and exceeded his powers in awarding Sunrise $30,702.50 in attorneys' fees.

Appellants filed a motion for summary judgment, which Sunrise opposed**.** On October 3, 2022, the circuit court held a hearing on the merits of the petition to vacate the arbitration award, the petition to confirm the arbitration award, and appellants' motion for summary judgment. At the conclusion of the hearing, the court denied appellants' motion for summary judgment. It found "there really are no genuine disputes as to material facts[,]" but there was "a huge dispute as to whether or not the moving party is entitled to judgment as a matter of law." The court held the remaining issues *sub curia*.

In a written memorandum opinion dated July 20, 2023, the circuit court found the arbitrator did not make a palpable mistake of law or fact on the face of the award with regard to the documents that made up the parties' contract. The court stated that appellants presented five arguments in support of their request to vacate the arbitration award: "1) the Arbitrator exceeding its powers, 2) the Arbitrator's refusal to consider material evidence, 3) a violation of public policy, 4) partiality of the Arbitrator, and 5) a manifest disregard of both law and fact." We shall review, briefly, the court's extensive findings as to each of those five arguments.

C. Circuit Court for Anne Arundel County Findings

1. The Arbitrator did not Exceed his Powers.

The circuit court rejected appellants' claim that the arbitrator exceeded his power in awarding damages to Sunrise in the amount of $13,768 because that amount exceeded the excavation cost set forth in the contract, involved a company that was not a party to the

contract, and involved correction of deficient work. The court found none of appellants' arguments showed how the arbitrator exceeded his powers or went beyond the scope of the issue submitted to arbitration. Moreover, the contract gave the arbitrator authority to make an award. The court also rejected appellants' argument that the arbitrator exceeded his authority in awarding Sunrise attorneys' fees in the amount of $30,702.50 on the grounds that the contract gave the arbitrator the authority to do so. Lastly, the court rejected appellants' argument that the arbitrator exceeded his power in finding Sunrise defrauded them under MCPA but then failed to address either attorneys' fees or punitive damages. The court recognized the MCPA does not provide for punitive damages in private causes of action, the arbitrator found appellants failed to establish injury or loss sustained as the result of a practice prohibited by the MCPA, and appellants were not entitled to compensatory damages or attorneys' fees under the MCPA.

2. The Arbitrator did not Refuse to Consider Material Evidence.

As for the arbitrator's refusal to consider material evidence, the circuit court recognized Maryland's Uniform Arbitration Act ("MUAA"), Md. Cts. & Jud. Proc. ("CJP") Code Ann. § 3-204(b)(4), authorizes courts to vacate an arbitration award when an arbitrator refuses to hear evidence material to the controversy so as to prejudice substantially the rights of the party. *See* CJP § 3-224(b)(4) ("The court shall vacate an award if: . . . [t]he arbitrators . . . refused to hear evidence material to the controversy, or otherwise so conducted the hearing . . . as to prejudice substantially the rights of a party[.]"). Appellants argued the arbitrator ignored material evidence in finding they refused to allow Sunrise to correct its failures because Sunrise refused to acknowledge any

failures. In rejecting that argument, the court found the arbitrator referenced communications between the parties regarding the alleged failures or deficiencies.

The court also rejected appellants' argument that the arbitrator ignored material evidence in finding appellants could not recover correction costs. The court noted the arbitrator specifically stated he had the opportunity to review the exhibits and testimony, assess the credibility of witnesses, weigh the testimony and documentary evidence, and hear and consider the parties' arguments.

Similarly, the court rejected appellants' claim that the arbitrator ignored material evidence in awarding them only $3,391.92 in damages. In support of that decision, the court took note of the arbitrator's statement that he viewed photographic evidence and various invoices related to the claim for damages and the fact that the arbitrator did not ignore expert testimony or documents. Appellants argued vacatur was required under CJP § 3-224(b)(4) because the arbitrator ignored material evidence in finding the contract was a non-phased, non-contingent agreement. The court found the arbitrator specifically stated he considered the contractual obligations of the parties and consistently referred back to the terms of the contract throughout the analysis. For that reason, the court rejected appellants' argument.

Lastly, appellants argued the arbitrator made a palpable mistake of fact and law in finding the Blackwell Plan had no specifications and vacatur was required under CJP § 3-224(b)(4). Again, the court rejected that argument on the ground that the arbitrator acknowledged the Blackwell Plan had specifications.

3. The Arbitrator's Award did not Violate Public Policy.

Appellants made three arguments as to why the arbitration award should be vacated for violating public policy: 1) the arbitrator found the contract permitted Sunrise to construct the pool that patently violated the permit and building code, 2) the arbitrator found the contract allowed Sunrise to perform its work without regard to application of the Critical Areas Act or the Anne Arundel County Department of Inspections and Permits review, and 3) the arbitrator found the contract allowed Sunrise to perform its work in violation of the applicable ANSI/OSHA standards. The court rejected those arguments and concluded the arbitrator did not violate public policy in its award. The court noted the arbitrator did not make any finding that Sunrise was permitted to construct the pool in violation of the applicable permit, building code, or the Blackwell Plan. The arbitrator found that if Sunrise had corrected the deficiencies and constructed the pool in accordance with the Blackwell Plan, Sunrise would not have realized any profit on the contract. The arbitrator did not find the contract permitted Sunrise to act without regard to appropriate policies.

4. The Arbitrator was not Partial to Sunrise.

Appellants argued the arbitrator showed partiality towards Sunrise in awarding it attorneys' fees but denying them the same relief as well as their claim for punitive damages. The circuit court rejected that argument, noting the arbitrator had authority under the terms of the contract to award attorneys' fees to Sunrise, appellants failed to prove their entitlement to compensatory damages under the MCPA, and punitive damages were not available to appellants under the MCPA.

5. The Arbitrator did not Manifestly Disregard Both Law and Fact.

The circuit court found the arbitrator did not make errors by disregarding law or fact, contrary to appellants' numerous claims.[9] After setting forth the above-summarized findings in its thorough, 35-page written Memorandum Opinion, the circuit court denied appellants' petition to vacate the arbitration award, denied their request to modify the award, and granted Sunrise's petition to confirm the award.

STANDARD OF REVIEW

The MUAA recognizes the validity and enforceability of arbitration agreements and "embodies a legislative policy favoring arbitration as an alternative method of dispute resolution." *Mandl v. Bailey*, 159 Md. App. 64, 85 (2004) (citation omitted). "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." *WSC/2005 LLC v. Trio Ventures Assoc.*, 460 Md. 244, 253 (2018) (citing *Prince George's Cnty. Police Civilian Emps. Ass'n*

[9] Specifically, the court found the arbitrator did not commit palpable mistake of fact or law when it made three findings to determine damages. First, the arbitrator correctly found that appellants were not entitled to the costs they incurred to cure Sunrise's deficiencies and complete the new pool's construction since appellants did not afford Sunrise the opportunity to cure the alleged deficiencies. Second, the arbitrator correctly found Sunrise was entitled to $13,768 for the completed excavation work and $30,702.50 in attorneys' fees. Third, the arbitrator correctly found that there was only support for $3,391.92 of the appellants' damages claims after reviewing the facts. The court also found the arbitrator did not commit palpable mistake of fact or law in: (1) determining that the contract was a fixed-price, non-phased agreement and, even if the contract was not fixed-price and non-phased, such error would be harmless; (2) finding Sunrise was allowed to construct in a manner that did not comply with the Blackwell Plan because it fails as justification to vacate the award; (3) determining the Blackwell Plan had no specifications because arbitrator never made such a finding; (4) finding the Sunrise specifications on page 2 of the Contract were part of the Contract; and (5) failing to award compensatory, punitive, and attorneys' fees awards under the Maryland Consumer Protection Act.

v. Prince George's Cnty, ex rel. Prince George's Cnty. Police Dep't, 447 Md. 180, 192 (2016)). Judicial review of an arbitration award is "'very narrowly limited.'" *Amalgamated Transit Union, Local 1300 v. Md. Transit Admin.*, 244 Md. App. 1, 12 (2019) (quoting *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 192). In fact, this type of review is "among the narrowest known to the law." *Id.* (internal citation and quotation omitted).

When, as here, a trial court affirms an arbitration award, our review is focused on the arbitrator's decision itself, and that review is very deferential. In *Amalgamated Transit Union, Local 1300*, we explained the rationale for this general rule of deference is "twofold": first, arbitration is a "favored method of dispute resolution" that should not be "constantly subjected to judicial second-guessing," and second, "the parties have bargained for an arbitrator's—and not a court's—resolution of the dispute submitted to arbitration" 244 Md. App. at 12-13 (internal citations and quotation omitted). "Courts generally defer to an arbitrator's findings of fact and applications of law. Mere errors of law and fact do not ordinarily furnish grounds for a court to vacate . . . an arbitration award." *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 192. Likewise, the fact that an arbitrator "may fail to follow strict legal rules of procedure and evidence is not a ground for vacating their award." *Chillum-Adelphi Volunteer Fire Dep't, Inc. v. Button & Goode, Inc.*, 242 Md. 509, 518 (1966).

In the case of an arbitrator's contract interpretation, Maryland's high court has quoted the United States Supreme Court in saying "the courts have no business overruling [the arbitration award] because their interpretation of the contract is different from [the

arbitrator's]." *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 193 (alteration in original) (quoting *United Steelworkers of Am. v. Enterprise Wheel & Car Corp*., 363 U.S. 593, 599 (1960)). In short, a party seeking to set aside an arbitrator's decision "has a heavy burden" as "the standard of review of arbitral awards is among the narrowest known to the law." *Letke Sec. Contractors, Inc. v. U.S. Sur. Co.*, 191 Md. App. 462, 472 (2010) (internal quotation and citations omitted).

This case is governed by the MUAA and Maryland common law. *WSC/2005 LLC*, 460 Md. at 271 (holding the MUAA did not abrogate the common law remedies for vacatur of arbitral awards, rather the two remedies exist in harmony). The MUAA provides that a court may not vacate an award or refuse to confirm an award "on the ground that a court of law or equity could not or would not grant the same relief." CJP § 3-224(c). Rather, the MUAA recognizes five limited grounds for vacation[10] of an arbitration award:

> (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

[10] The MUAA also provides that a circuit court may "modify or correct" arbitration awards under the limited circumstances outlined in CJP § 3-223(b) when:

> (1) There was an evident miscalculation of figures or an evidence 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.

> 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).

In addition to these five avenues for vacating an arbitration award, Maryland common law permits a court to overturn an arbitration decision if it is a manifest disregard of the law. *WSC/2005 LLC*, 460 Md. at 260 (explaining that the common law manifest disregard of the law doctrine "has existed in Maryland for centuries," and the Legislature did not overrule it with the MUAA). We have defined manifest disregard of the law as "something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law." *MCR of Am., Inc. v. Greene*, 148 Md. App. 91, 120 (2002) (internal citation and quotation omitted). In *WSC/2005 LLC*, Maryland's Supreme Court explained the meaning of "beyond mere error" as follows:

> Although this Court has applied the manifest disregard standard when reviewing an award, we have yet to explain how manifest disregard of the law differs from "mere error." "Manifest" means "[c]lear; obvious; [or] unquestionable." *Black's Law Dictionary* 1106 (10th ed. 2014). In *Prince George's Cty. 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." 309 Md. at 105, 522 A.2d 931. "Palpable" means "[c]apable of being handled, touched, or felt; tangible[,]" or "[e]asily perceived; obvious." *The American Heritage Dictionary of the English Language* 1267 (4th ed. 2006). 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 …." 4 Thomas H. Oehmke & Joan M. Brovins, *Oehmke Commercial Arbitration* § 149:2, at 149-4 (3d ed. 2017).

460 Md. at 262-63.

Maryland common law has also recognized that a court may overturn an arbitration decision if it is "completely irrational." Although Maryland's Supreme Court has not adopted the completely irrational standard, in *Downey v. Sharp*, the Court explained "the very limited extension of the reviewing court's scope of review to include authority to vacate an award that is completely irrational." 428 Md. 249, 258-59 (2012) (internal citation and quotation omitted). The *Downey* Court defined a completely irrational arbitration award as "inferentially opprobrious . . . causing it to be suspect in its conception." *Id.* at 259 (internal citation and quotation omitted).

DISCUSSION

Appellant contends the circuit court erred by failing to find error with seven of the arbitrator's findings. We disagree. We address each of Appellant's arguments and explain why we affirm the circuit court's findings that the arbitrator did not err.

A. Documents Comprising the Parties' Contract

Appellants contend the circuit court erred in finding the arbitrator did not demonstrate a manifest disregard for the law and did not exceed his authority "in rewriting the parties' contract as a fixed, and not contingent agreement subject to permitting and inspection requirements in violation of the Critical Area law and the requirements of Maryland Building Code laws." Appellants maintain the issued permit required Sunrise to perform certain specifications provided in the Blackwell Plan, and the arbitrator "removed" from the parties' contract an addendum, approved permit specifications, a surveyor's

drawing, a critical area worksheet for limitation of disturbance, a grading plan, and the homeowners' schedules, thereby rewriting the contract. According to appellants, "[t]he [a]rbitrator's conclusions that the parties had a fixed, and not contingent, contract, which excluded the fundamental documents required for Sunrise to perform and for the contract to even exist, constitute[d] a manifest disregard of the law[.]" In addition, appellants claim the arbitrator exceeded his powers because there was no contractual or statutory basis upon which the arbitrator could rewrite the parties' contract. We are not persuaded.

There is absolutely nothing in the record before us to suggest the arbitrator "rewrote" the parties' contract. The arbitration award clearly shows on its face the arbitrator considered the parties' conflicting arguments about what constituted the terms of their contract. The arbitrator found the parties' contract to be "a fixed price, non-phased, non-contingent agreement" consisting of the four-page Agreement, the Blackwell Plan, and a document identified as Exhibit B.

In making that determination, the arbitrator considered and applied applicable legal principles of contract interpretation under Maryland law. He also found the parties agreed the Agreement was part of their contract, Sunrise acknowledged the specifications from the Blackwell Plan were part of the contract, and the Agreement specifically referenced and incorporated Exhibit B for any "Added Project Costs Totaling $74,000." The arbitrator rejected Sunrise's assertion that its "Standard Pool Structure & Detail," allegedly on file with Anne Arundel County, was part of the contract. He also rejected appellants' argument that certain other documents, including pages 6 through 8 of Exhibit B, were part of the enforceable contract because they were not signed or initialed by the parties, incorporated

by reference on page 1 of the Agreement, or part of the approved building permit issued by Anne Arundel County. The arbitration award makes clear that the arbitrator did not make "a palpable mistake of law or fact" in determining which documents made up the parties' contract. The arbitrator applied sound legal principles to competing factual assertions and drew a reasoned conclusion based on the evidence. Even if there was an error of law or a failure on the part of the arbitrator to understand or apply the law, judicial intervention would not be justified. *S. Md. Hosp. Ctr. v. Edward M. Crogh, Inc.*, 48 Md. App. 401, 407 (1981). "'Mere errors of law and fact do not ordinarily furnish grounds for a court to vacate or refuse enforcement of an arbitration award.'" *Downey*, 428 Md. at 266 (cleaned up) (quoting *Bd. of Educ. Of Prince George's Cnty. v. Prince George's Cnty. Educators' Ass'n, Inc.*, 309 Md. 85, 98-99 (1987)).

B. Award of Damages to Sunrise

Appellants contend the circuit court erred when it failed to conclude the arbitrator demonstrated a manifest disregard for the law in awarding damages in favor of Sunrise. They argue Sunrise terminated the contract by failing to perform pursuant to the Blackwell Plan, causing additional damage in attempting to repair the "overdig" on October 9, 2020, and re-designing the pool. According to appellants, a contract is breached when a contractor causes more damage in the course of making a repair, and the repair is not completed. They also assert they did not have a duty to allow Sunrise to cure "as they had already afforded Sunrise the opportunity, and endured additional harm as a result, including two massive holes on the property beyond the permitted dimensions." We disagree.

The arbitrator specifically found that, although Sunrise's initial excavation might not have been sufficiently wide or deep or might have been over-excavated, Sunrise promptly expressed a preference for meeting with appellants to discuss their concerns and whether they wished to continue with the construction of the pool. The arbitrator found appellants rejected Sunrise's offer and denied it "an opportunity to cure any alleged defect while time still remained under the contract for completion."

After making those findings, the arbitrator considered Maryland law on the right to cure. Although the arbitrator relied in part on a passage from an unreported opinion from this Court, the legal authority cited in that passage supported his conclusion that the right to cure is a fundamental contract right. The arbitrator clearly did not demonstrate a manifest disregard for the law. Nor did he demonstrate a manifest disregard for the facts. The arbitrator specifically found that although the time for completion under the parties' contract had not expired, appellants:

> i) did not call for a County inspection to ascertain whether the excavation met County and permit requirements, ii) immediately stopped payment to [Sunrise], iii) did not provide [Sunrise] with the details of the alleged deficiencies until several weeks after excavation was complete, iv) did not afford [Sunrise] the opportunity to cure, and v) instead engaged a string of contractors to complete the construction of their pool and related drainage work (which was not part of the Contract Documents and was specifically excluded in Paragraph 3 of the "Terms and Conditions of Contract").

(Footnote omitted).

The arbitrator considered both parties' claims for damages. After examining the provisions of the contract, and again citing from an unreported opinion that set forth a correct statement of the law, the arbitrator determined Sunrise was not entitled to the full

contract price together with attorneys' fees and pre-judgment interest. Instead, because its work was limited to the two days of excavation and the purchase of various materials, the arbitrator concluded the "reasonable damages incurred by" Sunrise due to appellants' breach of contract was "the cost incurred by [Sunrise] in the amount of $13,768.00." The arbitration award, on its face, shows the arbitrator did not demonstrate a manifest disregard for the law or facts in awarding damages to Sunrise.

C. Excavation and Legal Fees

Appellants contend the circuit court erred in failing to vacate the arbitrator's award on the ground that the arbitrator exceeded his powers by awarding to Sunrise "fees for a second day of excavation." Appellants' claim the award of fees was beyond the scope of the contract. They claim the contract provided only for a single day of excavation, which occurred on October 8, 2020, for an agreed-upon cost of $5,500. Appellants also argue the arbitrator exceeded his powers in awarding legal and arbitration fees. They maintain the contract provided for attorneys' fees only in the event of a default. They assert they did not default under the contract, but Sunrise breached the contract by failing to conduct the excavation correctly. Moreover, Sunrise's attempt to cure the excavation caused more damage to their property. Appellants also argue the arbitrator's award of attorneys' fees was based on "Sunrise incurring fees which 'were necessitated by the substantial counterclaim that [Homeowners] asserted.'" For that reason, they assert the award of attorneys' fees to Sunrise exceeded the arbitrator's authority.

Again, it is not our task to retry this case. The arbitrator found that appellants failed to give Sunrise an opportunity to cure. The arbitrator explained that, although the initial

excavation might not have been sufficiently wide or deep or might have been over-excavated, Sunrise promptly expressed a preference for meeting with appellants to discuss their concerns. But appellants rejected Sunrise's offer and denied it "an opportunity to cure any alleged defect while time still remained under the contract for completion." In reaching that conclusion, the arbitrator explicitly considered *U.K. Construction & Management., LLC v. Gore*, in which we recognized the general principle that when a contractor performs defective work, the owner must provide notice of the incomplete or defective work and an opportunity to cure. 199 Md. App. 81, 93-95 (2011). The arbitrator also relied upon an unreported opinion from this Court, which relied upon *Gore* and other proper authorities, recognizing that the right to cure is a common, fundamental, and critical right in construction contracts. There was no palpable mistake of fact or law in that decision.

Sunrise sought the balance due on the contract plus interest and attorneys' fees or, alternatively, its out-of-pocket costs plus interest and attorneys' fees. The contract required appellants to pay $22,800 at excavation, but they stopped payment on the check and made no payment at all. Paragraph 9 of the parties' contract provided, in part:

> 9. DEFAULT. In the event of default by the buyer, either by cancellation or preventing Contractor's performance hereunder or failure to make payments or otherwise comply with the terms and conditions of this contract, Contractor at its option may declare the entire balance of this contract immediately due and payable, together with reasonable attorney's fee, and any other remedies by law to Contractor. Buyer agrees to pay interest at the rate of 1½ % per month to Contractor on any payments not made when due.

The arbitrator rejected Sunrise's claim for the full contract price, noting the work it completed "was limited to the two-day excavation and the purchase of various materials." After considering applicable Maryland law on damages for breach of contract, the

arbitrator determined an award of the full contract price would not be reasonable under the circumstances of the case. Instead, he awarded Sunrise $13,768 for costs it incurred. This award, which we note did not exceed the amount due at excavation, was supported by the law and the terms of the contract and cannot be said to be a palpable mistake of law or fact on the face of the award.

In Maryland, an arbitration award may not include an award of attorneys' fees unless the arbitration agreement provides otherwise. CJP § 3-221(b). Here, the arbitrator considered an award of attorneys' fees under the terms of the contract including the above-quoted section addressing "DEFAULT." The contract also provided, in Paragraph 16:

> [a]ny controversy, action, claim, dispute, breach or question of interpretation relating to or arising out of this contract shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The costs of arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrators determine.

Reading the contract as a whole, including paragraphs 9 and 16, it is clear the arbitrator had the authority to award attorneys' fees in the proportion he determined. The arbitrator granted Sunrise's claim for attorneys' fees and expenses in the amount of $30,702.50. The arbitrator explained the costs incurred by Sunrise prior to appellants' termination of the contract were "small relative to the attorney's fees incurred," but concluded the attorneys' fees were "necessitated by the substantial counterclaim" brought by appellants. Although the method used by the arbitrator to calculate the amount awarded for attorneys' fees is not set out explicitly in the arbitration award, the arbitrator determined the amount was "fair and reasonable under the circumstances." On the record before us,

we cannot determine the arbitrator exceeded his powers or committed a palpable error in its award of attorneys' fees.

D. Damages in Light of Finding of Fraud

Appellants contend the circuit court erred in failing to find manifest disregard of the law with respect to the arbitrator's decision to award damages to Sunrise after finding Sunrise perpetuated a fraud. They also claim the arbitrator's decision was completely irrational. We note again that manifest disregard of the law is something beyond and different from a mere error in the law or failure on the part of the arbitrator to understand or apply the law. *MCR of America*, 148 Md. App. at 120. A completely irrational decision is "inferentially opprobrious … causing it to be suspect in its conception." *Downey*, 428 Md. at 259. Our review of the arbitration award reveals neither a manifest disregard of the law nor a completely irrational decision with respect to the award of damages.

Appellants claim the arbitrator found the contract was induced by fraud. In addition, they claim "Sunrise committed fraud when it asserted that it had completed all work, but instead had buried the existing liner pool, as reflected in the affidavit of Mr. Ganney from Old World Pool, his invoices, and the County's approval of his work for the entire re-excavation of the property on December 16, 2020." They maintain the contract was void and, therefore, there cannot be an award of damages to Sunrise, the party that perpetuated the fraud. In a footnote citing *Security Construction Company v. Maietta*, 25 Md. App. 303 (1975), appellants recognize that fraud in the inducement of a contract is not a separate basis for vacating an arbitrator's award under the MUAA unless the arbitration clause itself was obtained via fraud. They state they are not making that argument here but rather argue

the arbitrator's award on a void contract constitutes a manifest disregard for the law and is contrary to public policy. We disagree and explain.

There was no manifest disregard of the law in the arbitrator's decision to award damages to Sunrise. The arbitrator did not make any finding of fraud. The arbitration award makes clear the arbitrator considered § 13-301 of the Commercial Law Article, which provides:

> Unfair, abusive, or deceptive trade practices include any:
>
> (1) False, falsely disparaging, or misleading oral or written statement, visual description, or other misrepresentation of any kind which has the capacity, tendency or effect of deceiving or misleading consumers[.]

In written statements, Sunrise falsely stated it had "ZERO COMPLAINTS AT THE BETTER BUSINESS BUREAU" and "ZERO COMPLAINTS AT THE MARYLAND HOME IMPROVEMENT COMMISSION." The arbitrator found those statements to be false and to have "the capacity, tendency[,] or effect of deceiving" appellants. The arbitrator noted the complaints filed against Sunrise "were *de minimus* in number and several years old but nonetheless existed at the time of the proposal."

Relying on *Hallowell v. Citaramanis*, which cited § 13-408(a) of the Commercial Law Article, the arbitrator recognized that to establish a private action under the MCPA, a plaintiff was required to demonstrate injury or loss. 88 Md. App. 160, 166 (1991) ("To establish a private action, a consumer must demonstrate '*injury* or *loss* sustained . . . as the result of a practice prohibited by this title.'" (emphasis in original) (citing CL § 13-408(a)). The arbitrator concluded that notwithstanding the false statements by Sunrise, appellants "failed to establish that they sustained an injury or loss as a result of such practice." For

that reason, the arbitrator denied appellants' counterclaim and denied their request for attorneys' fees under the MCPA. We also note the arbitrator specifically stated that, over the course of the hearing, he heard sworn testimony from various witnesses, including "Jason Graney (expert/pool builder)." The arbitrator wrote he "had an opportunity to review the exhibits and testimony, to assess the credibility of the witnesses during their testimony, to give the testimony and the documentary evidence the weight that each are due, and to hear and consider the arguments on behalf of the parties."

It is clear from the face of the arbitration award that the arbitrator did not find the parties' contract to be void as a result of the false statements made by Sunrise. In light of the arbitrator's finding that the complaints against Sunrise were *de minimis* in number and several years old, and that appellants failed to demonstrate injury or loss as a result of the false statements, the arbitrator clearly gave little weight to the false statements. That decision did not constitute a manifest disregard of the law and was not completely irrational.

E. Public Policy

Appellants contend the arbitrator's award was contrary to public policy because the arbitrator "disregarded the Critical Area laws and requisite permitting requirements, granted an award of damages to Sunrise despite their fraud, and punished the Homeowners who were granted no remedy for the two massive overdig holes and resulting environmental hazard." We have already addressed and rejected appellants' arguments pertaining to alleged "fraud" by Sunrise and the award of damages. As to appellants' argument that the arbitrator disregarded the "Critical Area" laws and permitting

requirements, and somehow that rendered the arbitrator's award contrary to public policy, we find the arbitration award, on its face, does not show any such thing. The arbitrator considered the Blackwell Plan and found it was among the documents that made up the parties' contract. He also found Sunrise did not apply for the permit, but if it had, "it would have discovered that the Blackwell Plan and General Notes thereon were not its 'Standard Pool Structure & Details' but rather a more extensive (and expensive) plan prepared by Mr. Blackwell, and which was the basis for the issuance of the permit." The arbitrator also considered the building permit issued by Anne Arundel County. He found "Joint Exhibit 1, Pages 6-8 were not signed or initialed by the parties" and "were not part of the approved building permit issued by Anne Arundel County." The arbitrator also rejected appellants' argument that the removal of the pool liner and the excavation should have been accomplished by hand, noting that "nothing in the approved Blackwell Plan, the permit, or other Contract Documents include[s] that requirement." The arbitrator did not find Sunrise violated any "Critical Area" laws or permit requirements. However, at the hearing in the circuit court, counsel for appellants argued that once the pool was excavated, "there was no fix." When asked whether anyone from Anne Arundel County testified at the arbitration hearing that there was no way to fix the problem, counsel responded, "[n]o, Your Honor. The County was not concerned." For that reason, the circuit court did not err in failing to determine the arbitration award was contrary to public policy.

F. Manifest Error of Facts

Appellants contend the circuit court erred in failing to determine the arbitration award was "contrary to the manifest error of facts, not just law, and therefore must be

vacated." They argue the arbitrator reformed the parties' contract and created "a fixed contract that plainly was not possible due to the Critical Area special permit for replacement in kind permit which had to meet the exact specifications for the Critical Area and was contingent based on inspections until final." Again, it is not our task to retry the case. As we have already found, there is absolutely nothing in the record before us to suggest the arbitrator "rewrote" the parties' contract. Nor is there anything on the face of the arbitration award to suggest a manifest error of fact. As previously stated, the arbitration award clearly shows on its face the arbitrator considered the parties' conflicting arguments about what constituted the terms of their contract. The arbitrator applied sound legal principles to competing factual assertions and drew a reasoned conclusion based on the evidence. Even if there was an error, "'mere errors of law and fact [do] not ordinarily furnish grounds for a court to vacate or refuse enforcement of an arbitration award.'" *Downey*, 428 Md. at 266 (quoting *Board of Education v. Prince George's Co. Educators' Ass'n*, 309 Md. 85, 98-99 (1987)).

G. Unresolved Contradictions

Appellants finally contend the circuit court erred in failing to vacate the arbitration award because it contained contradictions. In support of this argument, they again assert the arbitrator found fraud but awarded damages under a void contract. In addition, they argue the arbitrator declined to award damages in their favor and denied their counterclaim despite finding fraud and determining there was an "overdig" by Sunrise. We have already considered and rejected those arguments. Moreover, in determining whether an arbitrator exceeded his powers, we do not review the arbitrator's interpretation of a contract for legal

correctness but to determine whether the arbitrator acted within the scope of his authority. *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 208 (holding Maryland case law establishes a distinction between review of an arbitration award for correctness and review of whether the arbitrator exceeded his authority). An arbitrator does not exceed his powers by issuing an award that contains mere factual or legal errors. *Downey*, 428 Md. at 263. We conclude the arbitrator's conclusions were drawn from his duty to hear and determine the dispute.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANTS TO PAY THE COSTS.