Circuit Court for Prince George's County
Case No. CAL19-35904

UNREPORTED *

IN THE APPELLATE COURT

OF MARYLAND

No. 0053

September Term, 2023

THE COUNCIL OF UNIT OWNERS,
CHELSEA WOODS COURTS
CONDOMINIUMS

v.

GATES BF INVESTORS, LLC, ET AL.

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 1, 2024

* 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).

The Council of Unit Owners of Chelsea Woods Courts Condominium ("Chelsea Woods") appeals from an order of the Circuit Court for Prince George's County entered on remand from our prior decision, *Chelsea Woods Courts Condominium v. Gates BF Investor, LLC*, No. 847, slip op. at *1 (Md. App. July 6, 2022) ("*Chelsea Woods I*"), in which we directed, among other things, that Chelsea Woods act with "reasonable expeditiousness" to obtain an independent water and sewer connection serviced by the Washington Suburban Sanitary Commission ("WSSC") for its 175 condominium units. We had already determined that the appellees, twelve limited liability companies ("Gates" or "Appellees")[1] that own the neighboring 592-unit apartment complex ("Gates Property"), had the right to terminate their prior agreement to distribute water and sewer utilities to Chelsea Woods from the WSSC connection and private infrastructure located on their property.

At the hearing on remand held in February 2023, the evidence revealed, among other things, that Chelsea Woods had not yet submitted a completed application for the necessary WSSC connection. The circuit court ordered that Chelsea Woods could have an additional six months to establish its independent water and sewer connection before Appellees were

[1] Appellees are comprised of the following twelve limited liability companies: the Maryland companies—Gates BF Investor LLC, Cipriano West LLC, Gates K. Brothers LLC, Crown Royalty Gates LLC, BTR Gates LLC, and WMS Gates LLC (collectively "Gates MD LLCs" or "Gates") that initiated the action—and six Delaware entities (collectively "Gates DE LLCs") that are the wholly owned subsidiary of each. During the course of the underlying litigation, each of the Gates MD LLCs transferred their interests as tenants in the Gates Property to a newly formed Gates DE LLC of which that Gates MD LLC was the sole member.

"entitled to disconnect their water and sewage lines from [Chelsea Woods's] water and sewage lines on August 1, 2023." Instead of filing a completed application with the WSSC,[2] Chelsea Woods appeals to this Court, seeking mainly to revisit the contract dispute and standing issues that were substantively resolved in *Chelsea Woods I*.

The issues on appeal, as framed by Chelsea Woods, are:

I. "Whether this entire case should be dismissed when Appellees are not registered to do business in Maryland, have no standing, and cannot maintain suit in Maryland courts, and an order permitting Appellees to shut off the Appellant's water cannot be enforced?"

II. "Whether the motions court committed error by ordering that Appellees could disconnect their water and sewage lines from Appellant's water and sewage before Appellant obtained an independent WSSC connection, when this court had previously and explicitly revised the lower court's order to prohibit it from doing exactly that?"

Appellees, in turn, ask us to hold that Chelsea Woods's brief and record extract are deficient and either disregard the appellant's brief or award Appellees "the costs incurred in correcting the Record Extract deficiencies."

For the reasons set out herein, we hold that Chelsea Woods's standing challenge is, among other things, barred by the doctrine of law of the case, and we discern no error or abuse of discretion in the trial court's February 2023 Order. We further hold that the disconnection date in the February 2023 Order shall take effect ninety days after issuance of this opinion, and therefore, pursuant to Maryland Rule 8-606(b)(1), we direct the clerk

[2] At oral argument, counsel for Chelsea Woods could not confirm that a signed application had yet been filed—one year and seven months after our decision in *Chelsea Woods I* was filed.

to issue the mandate ninety days after the filing of this opinion. Finally, given the repeated deficiencies contained in Chelsea Woods's briefing in this appeal and in *Chelsea Woods I*, we order Chelsea Woods to pay Appellees' attorneys' fees and costs for the preparation and filing of Appellees' Appendix I.

BACKGROUND

Although the case returns to us in a new posture, the facts are, regrettably unchanged. Therefore, we direct the reader to our opinion in *Chelsea Woods I* for a detailed description of the background regarding the dispute over utilities usage and billing that precipitated the underlying action. *Chelsea Woods I*, No. 847, slip op. at *3-14 (Md. App. July 6, 2022). In our introduction, we summarized:

> In 1974, a large parcel in Greenbelt, Maryland, was subdivided into two lots with shared water and sewer infrastructure. The owner of the tract of land with the public water and sewer connection serviced by the [WSSC] entered into an agreement with the contract purchaser of the contiguous tract of land to the south, which remained serviced by the same water and sewer connection ("the Agreement"). The parties agreed that the owners of the northern tract would pay the WSSC bills for water and sewer charges generated by both properties and then seek reimbursement from the owners of the southern tract for its share of the water and sewer costs, based upon data from a contemplated submeter that was to be installed between the parcels. The owners of the southern tract agreed to pay the bills promptly within 15 days of receipt and to obtain a $10,000 corporate surety bond, or, alternatively, hold $10,000 in an escrow account, to guarantee reimbursement to the owners of the northern tract. By its terms, the Agreement would terminate "at such time as individual sewer and water house connections have been provided for [the southern tract]." The Agreement was filed in the Land Records for Prince George's County, Liber 4520 at folio 665.

Id. at *1. Although the Agreement called for Chelsea Woods to install a submeter, it never did. *Id.* at *6. Instead, the prior owners of the two properties agreed to apportion the

WSSC charges for Chelsea Woods based upon the number of individual units.

A. Chelsea Woods I

Complaint and Counter-Complaint

Beginning in 2018, various billing disputes that could not be resolved between the parties led to Gates filing, on November 8, 2019, a complaint against Chelsea Woods. The complaint asserted three counts, and sought, among other things, Chelsea Woods's pro rata share for a pipe-relining project that was required in the wake of a fire and the discovery that the system supplied insufficient water pressure to the fire hydrants. *Id.* at *13. We summarized the allegations contained in the initial pleadings:

> Count I [of the complaint] sought a declaration that the Agreement was not binding on Gates BF Investor LLC and/or was subject to termination for material breach; that Chelsea Woods had materially breached the Agreement; that Gates BF Investor LLC had effectively terminated the Agreement; and, that Gates BF Investor LLC could disconnect the water and sewer lines. Count II asserted that Chelsea Woods breached the Agreement by: (1) not paying the WSSC invoices in a timely manner; (2) not obtaining a surety bond; (3) not installing a submeter; and (4) failing to pay its proportionate share of the MSCG invoice and the Relining Project costs. Gates BF Investor LLC sought damages in excess of $75,000. Count III pled, in the alternative, that Chelsea Woods was unjustly enriched by Gates BF Investor LLC's payment of the MSCG invoice and the costs of the Relining Project. The complaint incorporated six exhibits, including the Agreement and invoices for the MSCG investigation and the Relining Project contracts.
>
> Chelsea Woods answered and filed a counterclaim. The counterclaim asserted the same three causes of action: Declaratory Relief (Count I), Breach of Contract (Count II), and Unjust Enrichment (Count III). Chelsea Woods asked the circuit court to declare that: (1) the Agreement was a covenant that runs with the land and was binding on the Gates LLCs and Chelsea Woods; and (2) the Agreement was only terminable if and when Chelsea Woods obtained an independent water and sewer connection. It alleged that Gates BF Investor LLC breached the Agreement by causing Chelsea Woods to incur $7,500 in costs to install a temporary water line while it undertook the

> Relining Project. Alternatively, it asserted that Gates BF Investor LLC was unjustly enriched in that amount.
>
> Gates BF Investor LLC amended its complaint on September 28, 2020, changing the designation of Gates BF Investor LLC to name the six Maryland LLCs[]; changing the designation of Chelsea Woods to name the Council of Unit Owners as the defendant as opposed to the condominium; and adding WSSC as defendant. The amended complaint detailed Chelsea Woods's "chronic failure" to pay its bills on time, including the December 2018 invoice, which had been paid in September 2019, and the July 2019 invoice, which was paid two months late. It retained the original three counts and added four more counts against Chelsea Woods for Trespass (Count IV); Nuisance (Count V); Conversion (Count VI); and Injunctive Relief (Count VII).

Chelsea Woods I at *13-14.

Gates LLCs Transfer of Interest

> Meanwhile, as part of a refinancing transaction:
>
> On February 28, 2020, which was before the Gates LLCs filed their amended complaint in this action, the six Maryland LLCs that we refer to collectively as the Gates [MD] LLCs transferred their tenants in common interests in the Gates Property by a "No Consideration Deed" to six wholly owned subsidiary entities "[Gates DE LLCs".] . . . Each Maryland LLC became the sole member of a corresponding [Gates DE] LLC. The [Gates DE] LLCs were not joined in the litigation below or named in the pleadings.

Chelsea Woods I at *14.

We determined that although "the Delaware LLCs were necessary parties," the situation "f[ell] into an exception to necessary joinder[,]" because "by virtue of the Gates LLCs' controlling interest, the Delaware LLCs were aware of the litigation and, for whatever reason, were not joined in it, they had their day in court." *Id.* at *14, 15. We ordered that on remand, the circuit court should "enter an order joining the appropriate parties for purposes of the declaratory judgment." *Id.* at *26. Finally, we observed:

> Chelsea Woods does not argue that the Gates LLCs lacked standing to prosecute this action. We agree. **Even after the conveyance, the Gates LLCs had standing to maintain the action, both because they asserted other claims for breach of contract and unjust enrichment based upon events that preceded the transfer, and because as controlling members of each of the Delaware LLCs they remained real parties in interest. *See Anne Arundel Cnty. v. Bell*, 442 Md. 539 (2015) ("Where one party has standing, we do not inquire typically as to whether another party on the same side also has standing.")**.

Id. at *14 n. 15 (emphasis added).

Circuit Court Judgments

The circuit court heard Gates' motion for partial summary judgment on July 2, 2021.

We summarized:

> The court ruled that the facts were undisputed and that "the application of the law to those facts is what determining materiality is." It concluded that the termination clause in the Agreement was not exclusive and, consequently, **the Gates LLCs were "entitled to terminate the [A]greement upon a material breach by [Chelsea Woods]."** The Agreement required the Gates LLCs to make payments to WSSC for both tracts of land and for Chelsea Woods to make "immediate reimbursement" of those charges, and to further provide security against non-performance in the amount of $10,000. The court reasoned that it was undisputed that "[t]hey have not posted a bond. They have not placed money in escrow. And they have made repeated late payments[.]" The court defined late as "not within the grace period of 15 days[.]" **In the court's view, those were material breaches that permitted the Gates LLCs to terminate the Agreement and disconnect the water and sewer connections between the two properties**. The claims also were not time-barred because they were continuing obligations between the parties. On these grounds, the court granted the Gates LLCs' motion for partial summary judgment but determined to defer entry of the declaratory judgment for 30 days and set the matter in for a settlement conference between counsel, the parties, and a representative from WSSC to determine an alternative arrangement for Chelsea Woods to obtain a water and sewer connection.
>
> The parties appeared for a status hearing **on July 16, 2021. Counsel reported that the WSSC estimated that it would take between four and**

> **five months after Chelsea Woods made an application to the WSSC for it to install an independent water and sewer connection for the Chelsea Property**. Based on that information, the court determined to permit the Gates LLCs to disconnect the water and sewer lines six months later, on January 17, 2022.

Id. at *9 (emphasis added). The court decided "to permit the Gates LLCs to disconnect the water and sewer lines six months later, on January 17, 2022[,]" and docketed a declaratory judgment to that effect on July 20, 2021. *Id.* Chelsea Woods noted an immediate, interlocutory appeal from the declaratory judgment. *Chelsea Woods I* at *10. The court then held a bench trial in August 2021, to consider the parties' remaining claims, and found in favor of Gates, granting them a monetary award ("August 2021 ruling"). *Id.* at *10-13.

Chelsea Woods noted a timely appeal from the court's final ruling, which was ultimately consolidated by this Court with the interlocutory appeal. *Id.* at *10, n.13.

Preliminary Appellate Motions and Limited Remand

Pending our review of the court's July declaratory judgment and August 2021 ruling, Chelsea Woods filed in this court "numerous motions seeking to stay the declaratory judgment to prevent the disconnection of the water and sewer lines." *Id.* at *13. By order entered on January 13, 2022, we granted, in part, Chelsea Woods's motion—filed only five days before the disconnection date then governing—for a temporary restraining order or preliminary injunction to prevent the disconnection. *Id.* We remanded the case to the circuit court "without affirmance or reversal" to permit Chelsea Woods to seek a stay of the declaratory judgment or a bonded extension of time to comply with its terms. *Id.* At the court's hearing on February 3, 2022 ("February 2022 Limited Remand Hearing"),

Chelsea Woods President Kellee Baker "testified about the steps Chelsea Woods had taken since July 2021 to obtain an independent WSSC connection for its property." *Id.* at 14. As we recounted in *Chelsea Woods 1*:

> [Ms. Baker] explained that [Chelsea Woods] first retained an architect from an architectural and urban planning design firm. The architect vetted civil site engineers for Chelsea Woods and hired JAS Associates. In August 2021, JAS contacted the WSSC to arrange a meeting to determine what was necessary because it was a "rare situation, where a 50-year-old complex would need a new water connection." That meeting occurred at the end of August or early September 2021. In October 2021, JAS sent a proposal to Chelsea Woods and it executed it in mid- to late October. JAS then arranged for a boundary survey, which was "extremely hard" and complicated by the age of the condominium. That was completed in December 2021. Using the survey, JAS drew up a site plan and submitted it to the WSSC for approval at the end of December or early January 2022. The WSSC approved it about two to three weeks later.
>
> Ms. Baker testified that after Chelsea Woods hired a contractor to perform the work and work commenced, it would likely take four to six months to complete the work. Chelsea Woods was in the process of getting bids for the construction work. Given this timeline, **Ms. Baker estimated that they needed to extend the disconnection date by nine to 12 months**.
>
> The Gates LLCs called Adan Rivera, a permit specialist at the WSSC, as a witness. He testified that his earlier estimate that it would take four to five months after Chelsea Woods applied to the WSSC for a water connection to complete the process was a "best case scenario" and that he was not an "expert in the construction phase."

Id. (emphasis added). As a result, the remand court **ruled to extend the disconnection date through August 1, 2022**, and issued an order ("the Limited Remand Order") to amend the August 2021 ruling accordingly. *Id.* Gates filed a cross-appeal from the Limited Remand Order, and that appeal was consolidated in this Court with the pending appeal.[3]

[3] On appeal in the consolidated cases, Appellees filed a "Motion to Strike (Continued)

Id.

Chelsea Woods I: Ruling

We issued our opinion in *Chelsea Woods I*, on July 6, 2022. There we discussed the Agreement's termination clause and the alleged breaches by Chelsea Woods:

> Upon application of the familiar principles of contract interpretation, we conclude that the breaches of the prompt payment and bond provisions of the Agreement go to the root of the contract and, thus, are material. "The cardinal rule of contract interpretation is to effectuate the intentions of the parties." *Owens-Illinois, Inc. v. Cook*, 386 Md. 468, 497 (2005) (citing *Kasten Constr. Co., Inc. v. Rod Enters., Inc*., 268 Md. 318, 328 (1973)).
>
> ***
>
> By its plain language, the prompt payment and bond provisions are central to the Agreement. The Agreement sets out the parties' mutual performance obligations in six paragraphs, five of which include the obligations for Chelsea Woods to pay promptly and provide security to the Gates LLCs for non-payment. The prompt payment clause expressly requires Chelsea Woods to reimburse the Gates LLCs "immediately, but in no event later than fifteen (15) days after receipt" of a bill.[] (Emphasis added.) The bond requirement made the Agreement contingent upon security for the payment provisions. The prompt payment and bond clauses of the Agreement further one of the two main purposes of the Agreement, which is to ensure that the Gates LLCs are promptly made whole for their payment of the WSSC bills and are not forced to become interest-free lenders for Chelsea Woods.
>
> The law is clear that when a contract is expressly predicated on the prompt payment of money, the failure to make prompt payment is a material

Appellant's Late-Filed and Non-Compliant Record Extract and Revised Brief and Request for Attorney's Fees" on May 5, 2022. Appellees asserted that Chelsea Woods's appeal should be dismissed because its brief exceeded the permitted word count, and "the record extract – in addition to having no table of contents as required by Rule 8-501(h)" – failed to include materials required by Rule 8-501(c). In an order dated May 11, 2022, we denied Appellees' motion to dismiss the appeal and their request to strike the Appellant's record extract and revised brief. However, we awarded attorneys' fees to Appellees for preparing and filing those two motions, and an appendix supplying the deficiencies in Appellant's extract.

> breach absent a showing of excuse or justification. *Fromm Sales Co. v. Troy Sunshade Co*., 222 Md. 229, 233 (1960).

Chelsea Woods 1, at *16-17 (footnote omitted). After concluding that the circuit court did not err by determining that Chelsea Woods materially breached the Agreement as a matter of law, we turned to examine the meaning and effect of the Agreement's termination clause:

> Having already held that the breaches were material, we are concerned with whether the termination clause is exclusive.
>
> The clause provides: "This Agreement shall terminate and become null and void at such time as *individual sewer and water house connections have been provided for Tract 1*[,]" i.e., the Chelsea Property. (Emphasis added). As the Gates LLCs point out, it contains no exclusive language. It does not state that the Agreement "only" will terminate or shall not terminate "unless" the Chelsea Property is first provided with an independent WSSC connection. Rather, the termination clause sets out a condition that would render further performance under the Agreement unnecessary. Consequently, we agree with the circuit court's conclusion that the ordinary remedy of recission of the Agreement for a material breach was available to the Gates LLCs. Nevertheless, the termination clause, though not exclusive as to the grounds upon which the Gates LLCs may terminate the Agreement, does operate to restrain the manner of rescission. As the circuit court recognized, permitting the Gates LLCs to disconnect the water and sewer lines immediately upon giving notice of its intent to rescind would "leave" Chelsea Woods "in the lurch, without water and sewer connections." In the face of that reality and perceiving that the declaratory judgment count invoked the court's equitable authority, **the court held additional proceedings and ruled that the Gates LLCs could not disconnect the water and sewer lines for six months, which was estimated to be sufficient time for Chelsea Woods, acting expeditiously, to obtain an independent WSSC connection.** Though we take no issue with this outcome, we hold that the authority for the circuit court to act can be found not in equitable powers, which are "applicable to limited subjects in limited circumstances[,]" none of which apply here,[] but in the language of the Agreement itself. *Turner v. Md. Dep't of Health*, 245 Md. App. 248, 277 (2020) (quoting *Cent. Sav. Bank of Balt. v. Post*, 192 Md. 371, 381, (1949)).
>
> By its express language, the termination of the Agreement is

> predicated upon the provision of "individual sewer and water house connections" for the Chelsea Property. While in the face of a material breach of the Agreement the Gates LLCs may not be required to adhere to their performance obligations indefinitely, it would defy the plain language of the termination clause, and defeat the reasonable expectations of the parties, to construe the Agreement to allow the Gates LLCs to cut off water and sewer access to the Chelsea Property without an alternative water and sewer connection in place. *See Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 52 (2013) (a contract "must be construed in its entirety and, if reasonably possible, effect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed" (citation omitted)).
>
> ***
>
> **The circuit court properly implemented the termination clause and carried out the intent of the parties to the Agreement by ruling that the Gates LLCs were entitled to terminate the Agreement but restraining them from acting to disconnect the water and sewer lines until Chelsea Woods was provided a reasonable opportunity to obtain its independent connection.**

Id. at 17-18. (footnote omitted) (bold and underlining emphasis added).

We instructed the circuit court to "amend the second to last clause of the declaratory judgment as follows to implement the termination clause" (bracketed language deleted; italicized language inserted):

> **FOUND AND DECLARED** that Plaintiffs are entitled to disconnect their water and sewage lines from Defendant's water and sewage lines [on January 17, 2022] *when Defendant, **acting with reasonable expeditiousness**, has obtained an independent WSSC connection, as determined by the circuit court.*

Id. at *19 (bold emphasis added). Thus, although we acknowledged that "in the face of a material breach of the Agreement the Gates LLCs may not be required to adhere to their performance obligations *indefinitely*," (*id.* at *18) we concluded that Chelsea Woods

should have additional time—we emphasized, "*acting with reasonable expeditiousness*"—to obtain an independent WSSC connection. *Id.* at *19.

We further concluded that "our holding that the Agreement only was terminable by the Gates LLCs subject to a reasonable opportunity for Chelsea Woods to obtain an independent WSSC connection" resolved all the substantive and procedural challenges that Gates had raised in their cross-appeal of the February 3, 2022 Limited Remand Order,[4] and held that on remand, "the circuit court shall hold additional evidentiary proceedings to determine the status of that project and may, in accordance with the revised declaratory judgment, enter an order setting a disconnection date or scheduling future proceedings to determine when the disconnection may occur." *Chelsea Woods 1*, at *26.

We remanded the action to the circuit court, for three primary purposes. First, we directed the court to amend two provisions of its judgment to find and declare that "as of August 29, 2019, [Gates] presented grounds for termination of the Agreement due to [Chelsea Woods's] material breaches of the Agreement;" and that "[Gates] are entitled to disconnect their water and sewage lines from [Chelsea Woods's] water and sewage when [Chelsea Woods], acting with reasonable expeditiousness, have obtained an independent WSSC connection, as determined by the circuit court." *Id.* at *26. Second, we directed it "to enter an order joining the appropriate parties for purposes of the declaratory judgment[.]" *Id.* at *3, 26. Third, we instructed the circuit court "to hold additional

[4] The February 3, 2022 Limited Remand Order had already extended the disconnection date through August 2, 2022. The *Chelsea Woods I* decision, issued July 6, 2022, effectively stayed that order.

proceedings to determine the date when the Chelsea Property will be served by an independent WSSC connection[.]" *Id.* at *3, 26.

B. Proceedings on Remand

Progress in 2022

Almost two years ago, at the time of the February 2022 Limited Remand Hearing—and five months before we issued our opinion in *Chelsea Woods I*—Chelsea Woods already had engaged JAS engineers, who had subcontracted a boundary survey and designed a site plan, secured the site plan's approval by WSSC on January 18, 2022, and opened an application for a Site Utility Permit with WSSC.[5] In March or April 2022 Chelsea Woods finalized a labor contract with the WSSC-approved contractor EEC Excavation ("EEC") to build the project, whereupon they ordered the easily stored items from EEC's material list. We issued our opinion in *Chelsea Woods I* on July 6, 2022. In June or July, Chelsea Woods began the process of obtaining payment bonds to satisfy WSSC permit requirements. In September, Chelsea Woods secured the performance and payment bonds required by WSSC for the Site Utility Permit.

[5] To obtain a Service Connection Construction Permit, the applicant must first secure both a Site Utility Permit and a Service Connection Permit. The applicant initiates the application for a Site Utility Permit by submitting an electronic Site Utility Project Submittal Request, commencing Site Utility Design Plan review process. After the Site Utility Design Plan conforms to requirements, the applicant is released to apply for the Service Connection Permit. Once approved, the permit number is activated and the Building Certification Release is issued, satisfying Prince George's County Code, and the Service Connection Construction Permit can be completed. *See* WSSC DEVELOPMENT SERVICES CODE, ch. 7 (https://www.wsscwater.com/sites/default/files/2022-08/2022%20DS%20Code.pdf (last visited January 25, 2024), archived at https://perma.cc/45X6-GLLP.

Circuit Court Actions

In accordance with our order in *Chelsea Woods I*, the Circuit Court for Prince George's County scheduled a hearing in October 2022 to take evidence and fix a date for the disconnection of the Gates's and Chelsea Woods's utility systems. As the discovery period proceeded, Gates moved to compel production of "documents relating to this project and the work that was being done to accomplish this project by Chelsea Woods." The court entered an order on September 14, 2022, requiring Chelsea Woods to produce documents relating to its construction of independent connections to WSSC utilities, no later than September 28, 2022, namely:

1. "the final approved construction plans and permits;"
2. "the final materials list;"
3. "the construction contract(s) between Defendant and its selected contractor(s);"
4. "the construction schedule; any other documents Defendant's contractor(s) relied upon in creating the construction schedule; and"
5. "documents showing the status of the project, what work has been performed, and what work remains."

Chelsea Woods failed to comply with the September 14 order, and Gates moved for a finding of contempt.

October 2022 Hearing

At the scheduled hearing on October 3, 2022, the court ordered Chelsea Woods to immediately produce those documents and postponed the evidentiary hearing until December 8. At the court's direction, Gates sent a letter "setting forth with specificity" the "seven categories of documents we require in order to determine the status of the project and whether or not Chelsea was proceeding with reasonable expeditiousness[.]"

That same day, the court ordered that Cipriano West SPE, LLC, Gates K. Brothers SPE, LLC, Crown Royalty Gates SPE, LLC, BTR Gates SPE, LLC, Gates BF Investor SPE, LLC, and WMS Gates SPE, LLC (collectively, "Gates DE LLCs") be joined as Plaintiffs to the case.

February 2023 Evidentiary Hearing

On February 6, 2023, the circuit court held an evidentiary hearing, during which the court "heard argument from counsel, heard testimony from Kellee Baker, the President of [Chelsea Woods's] Condominium Board of Directors, heard testimony from Andy Weir, an expert witness called by [Gates], and received documentary evidence from the parties."

Acting With Reasonable Expeditiousness? [6]

Ms. Baker testified that, after recognizing that Chelsea Woods needed assistance,

[6] Although the trial court's discovery orders are not challenged in this appeal, at the hearing, the court also addressed Gates's "motion for order finding defendant in contempt of this Court's September 14th and October 3rd orders." Gates asked that the court impose a *per diem* fine against Chelsea Woods for its contempt of the production orders. Gates's counsel advised the court that:

> Numerous documents were not produced to advise what was done about the permits, no copies of permit application were produced, no communication whatsoever with WSSC or with the county were produced, no documents relating to material delivery dates –- which, if the Court may recall, was the subject at the last hearing where we heard from the other side that due to COVID, due to back log, they still don't have the materials. But nothing has been provided to tell us what the status of that is.
>
> And of course, Your Honor, no files from the consultant, Edward Johnson, no files whatsoever from the engineering company, JAS Engineering, and no updated records from the project manager. In the status report, again, filed late Friday afternoon, [Chelsea Woods] claims that [Gates] are engaged in a fishing expedition and that there are no files from

(Continued)

she asked their engineer to recommend a permit expediter and they retained Jim Jaeb in September or October. In December, Chelsea Woods satisfied an additional bond requirement imposed by Prince George's County as a precondition to WSSC's approval. Yet, Ms. Baker acknowledged that Chelsea Woods did not yet have an executed WSSC Service Connection Construction Permit authorizing construction of its independent water and sewer connection. Among the items Chelsea Woods acknowledged to be outstanding were two permits—a WSSC Service Connection Permit ("SCP Permit") allowing the project to tap into WSSC's main infrastructure, and a permit from Prince George's County Department of Permitting, Inspections and Enforcement ("DPIE permit"). On cross examination, Ms. Baker confirmed that Mr. Jaeb is responsible for communicating with the WSSC, and she also confirmed that the last time he communicated with the WSSC was "in the fall or early winter of 2022."

Ms. Baker explained that "the main outstanding item is the DPIE permit has to go into the package to be with the WSSC permit to move forward. So, that's sort of staying still until the county also approves everything that has been submitted." She testified on

> the consultant overseeing this project or the engineering company. Your Honor, respectfully, this is not believable and certainly not acceptable unless it is to be taken as an admission that simply, nothing is being done to move this project forward, and that is why there are simply no documents about the progress of this project.

At the conclusion of the hearing, Chelsea Woods's counsel asked the judge whether he was reserving on the motions for contempt, to which the judge responded: "I have already ordered it. I find you to be in contempt. The question is whether I am going to order attorney[s'] fees or not, and how much."

cross examination, however, that "the last time [Mr. Jaeb] spoke to us regarding a county requirement and that was to get the bond. So, that was in December of 2022[.]" After opposing counsel referred to an October 17, 2022 email[7] as the last communication from Mr. Jaeb produced by Chelsea Woods, the following colloquy ensued:

> [Gates's Counsel]: Okay. So, sitting here today, we don't have any documents showing what communications between—what communications have occurred between Mr. Jaeb and the county; is that fair to say?
>
> [Ms. Baker]: That's fair to say.
>
> [Gates's Counsel]: Have you seen emails between Mr. Jaeb and the county?
>
> [Ms. Baker]: No.
>
> [Gates's Counsel]: How does Mr. Jaeb communicate with the county?
>
> [Ms. Baker]: I don't know. . . .

Ms. Baker later testified that the latest information she received regarding the status of their DPIE Permit application was when Jim Jaeb told her in January 2023 that a DPIE spokesperson had told him that "there was a change in personnel and the person that reviews this line of work, so to be patient." After she confirmed that Mr. Jaeb was the one who submitted the DPIE application, Ms. Baker was asked why Mr. Jaeb was not present to testify at the hearing. Ms. Baker responded: "Because I'm providing the information that Jim Jaeb has given us. And if there's anything specific that you don't have, we can go

[7] The email dated October 17, 2022, was sent from Mr. Jaeb to Fu Guo, PE of AB Consultants, Inc., under the subject line "DPIE Permit for Chelsea Woods Courts Condos WSSC Waterline Install". In the email, Mr. Jaeb indicated that the consultant's "[s]igned proposal" as an "approved DPIE 3rd party geotechnical inspection firm to get the permit issued[,]" would be "returned shortly."

back to Jim Jaeb and get it." Counsel followed up:

> [Gates's Counsel]: So, the testimony that you were providing on direct about the permits and the status of the permits was based on Mr. Jaeb's communications to you and not on your personal knowledge?
>
> [Ms. Baker]: Correct.

Gates's counsel moved to strike Ms. Baker's testimony on hearsay grounds, and the court responded, "Okay, I will accept it for what it is."

Ms. Baker next recounted how Chelsea Woods had used its time since she last appeared at the February 2022 Limited Remand Hearing. Among other things, Ms. Baker explained that in February and March, 2022, Chelsea Woods tried to bid the project to "about 9 to 15 different companies" but found that "[a] lot of people just didn't want to do the project." She said it took Chelsea Woods three months, from January to April of 2022 to negotiate and finalize a labor-only contract with EEC Excavation ("EEC") because "it was an arduous process to find—to get people to even put in bids[,]" and that Chelsea Woods "set deadlines, people didn't meet them, we tried to extend it a little more to give people time so we could just get three bids."

Gates's counsel challenged Ms. Baker to explain why Chelsea Woods did not advance its WSSC permit application during the months January through April. She answered that "all of the permits require you to list the contractor that you're using[,]" as do the applications for the bonds that WSSC requires. Ms. Baker also explained that Chelsea Woods "couldn't get bonds without knowing who's the contractor."

Ms. Baker explained that Chelsea Woods waited until the fall of 2022 to submit the county permit:

> Because we had to get the WSSC –- we had to have all of those bonds -- like, it's not separate, it's in tandem. So, before we could submit to the county, we had to have certain WSSC documents done because they wanted copies of the WSSC bond. They wanted different things that WSSC required. Once that is done, then jump over to what DPIE needs. Now, WSSC's not going to move forward until they get the DPIE portion. So, it's like a back and forth, back and forth.

When asked if there was "anything else that you could have done to move this along more quickly?" she replied:

> Not to what I knew at the time. I mean, we enlisted professionals from the beginning, and we just took as many professional advice as we could. So, I don't –- I would just have to say no. We definitely did the best that we could do in the position that we're coming from of not being in the industry but taking advice of professionals."

Ms. Baker recounted that Chelsea Woods put in a payment-on-delivery order "in April" for small volume construction materials, although "only some of them came in—about 30,000 worth came in out of the 80, $90,000 worth of materials" because "the rest were on backorder." They decided to delay ordering the larger items on the material list such as pipes, because they didn't have anywhere to store them and believed "[i]t just doesn't make sense to have anything else sitting outside" where it would "just be a hazard; it would be ugly." Ms. Baker explained that off-site storage is "just an additional cost we don't need to bear." She admitted to not investigating to find out price of storage, however, she said they can procure the pipes during the 30-45 days estimated to build the custom concrete block water house connection. She said Chelsea Woods's plan is to order the remainder of materials once the permits are issued, but she admitted she doesn't know how

long it will take for materials to be delivered.

Gates submitted and the court received into evidence the documents that had been produced by Chelsea Woods pursuant to the Court's September 2022 order. Gates also submitted the outstanding conditions list ("OCL") prepared by WSSC and issued on January 18, 2022, as annotated by Ms. Baker to indicate which items were still outstanding as of September 30, 2022. That OCL showed the SCP as one of the documents not yet submitted. They also submitted the generic checklist of documents that WSSC requires to issue a connection permit, which their expert, Andrew Weir, printed off the WSSC website on the day of the hearing.

Andrew Weir was admitted as an expert in the area of construction, specifically construction of WSSC water and sewer service connections. Mr. Weir acknowledged his extensive expertise managing mechanical and utility construction projects as an owner of a large business in projects of construction "being built from the ground up[.]" He explained all of the steps involved in constructing a new WSSC connection. He clarified that WSSC—not DPIE—handles all of the inspections associated with such a project.

Turning to the case at issue, Mr. Weir related that he reviewed the plans and any documents that were provided by Chelsea Woods. He further testified that, in preparation for the hearing, he contacted the WSSC the week before "to get a status update based on the site utility contract [number.]" Although he could not recall the name of the persons he spoke with, he "asked them what was needed to complete the permit and to get that released[.]" He explained:

> Basically what they said was that the only things needed to complete the project - - a lot has been done, they got the plans, they got all the things ready, but there is not - - has not been an application for a service construct - - service connection construction permit. That has not been filed yet.
>
> And, as I mentioned before, that's the next step after getting the plans. That service connection permit application, SCP, should have been applied for by the engineer. And it's not a terribly complicated process, it's really more about acknowledging who is involved and all the steps involved in the process.

Mr. Weir described Chelsea Woods's situation, "where the plot already exists that never had a water connection, and now we are going to put a water connection in that connects to WSSC" to 50-year-old pipes as "very rare." However, he asserted that the circumstances did not present significant complications and that it was overall a "fairly straightforward" project. Mr. Weir speculated that if Chelsea Woods "were acting with reasonable expeditiousness," they would have started construction "certainly, within eight months" of January 18, 2022, when the Site Utility Plans were approved by WSSC.

At the conclusion of Mr. Weir's testimony on re-direct, the trial court interjected:

> [Court]: Mr. Weir, I have a question. You said this is a relatively straight forward project.
>
> [Mr. Weir]: I look at the plans, I see some -- a relatively straight forward job.
>
> [Court]: And you say that your understanding is all that is needed for the engineer to go ahead and apply for the permit.
>
> [Mr. Weir]: That's what my understanding is.
>
> [Court]: And if that were done, how long would you anticipate before the project would be completed?
>
> [Mr. Weir]: Completed?

[Court]: Uh- hum. Moving with reasonable expedition.

[Mr. Weir]: Three months.

On re-cross, Chelsea Woods presented various scenarios of things that could delay the project—scenarios that Mr. Weir stated were unlikely—nevertheless, he agreed with opposing counsel that "I could think of world situations that would make it take five months."

At the conclusion of the hearing the trial judge delivered his ruling, to be followed, he said, by a written order:

> This case . . . was filed over three years ago. I granted partial summary judgment 19 months ago. . . . I find, based on the evidence, that even the most lenient reading, with reasonable expeditiousness, this project should be completed by the middle of July [2023], which would be five months from now. And, accordingly, I am going to issue an order that [Gates], they disconnect on August 1st, 2023.

February 2023 Order

The circuit court issued a written order on February 13, 2023, ("February 2023 Order") declaring that "the date by which [Chelsea Woods], acting with reasonable expeditiousness, shall obtain an independent WSSC connection is no later than the outside date of July 31, 2023;" and "[Gates] are entitled to disconnect their water and sewage lines from [Chelsea Woods's] water and sewage lines on August 1, 2023." (Emphasis in the original). Chelsea Woods noted a timely appeal from that order to this court on March 8, 2023.

Chelsea Woods filed an emergency motion to stay the February 2023 Order, on June

21, 2023, in which it revealed that at the time of that writing, it "still does not have an independent water and sewer connection[.]" On July 31, the court granted that motion, stayed the disconnection pending the final disposition of this appeal, and ordered Chelsea Woods to pay a bond each month in the interim. [8]

DISCUSSION

I.

GATES'S STANDING TO MAINTAIN SUIT

A. *Parties' Contentions*

Chelsea Woods argues that "despite being allowed to join the correct parties to the lawsuit on remand, the Appellees[9] still have not fulfilled the procedural requirements to maintain this lawsuit in the courts of Maryland, and thus this case must be dismissed because they do not have standing." Surprisingly, Chelsea Woods maintains that the entire case should be dismissed for lack of jurisdiction, despite acknowledging that the original six domestic Gates MD LLCs remain parties, and one of the Gates DE LLCs (Cipriano West SPE LLC), "is currently active and in good standing" in Maryland. Chelsea Woods avers, however, that five of the Gates DE LLCs are either inactive or not in good standing in Maryland[.]" Chelsea Woods cites the restrictive portion of section 4A-1007(a) of the

[8] On August 10, Chelsea Woods noted a Partial Appeal to this court from the provision of the July 31 order requiring Chelsea Woods "post a $5,000 bond each month on the first day of the month for the upcoming month, payable to the Court's registry for purposes of compensating Plaintiffs for the use of their pipes in the event Defendant does not prevail in its appeal."

[9] As previously noted, Gates MD LLCs and Gates DE LLCs are all joint appellees.

Maryland Code (1992, 2014 Repl. Vol.), Corporations and Associations Article("CA"), without reference to the remedial savings clauses that complete the statute. Chelsea Woods then theorizes that under this statute, "[t]he majority of the Appellees cannot do business in Maryland, they cannot maintain this lawsuit, and any judgment and order entered on their behalf is without effect and must be vacated."

Appellees counter that "Appellant's argument is directly contrary to the law of this case and Maryland law." They point to our decision in *Chelsea Woods I* in which we observed that "[e]ven after the conveyance," of the Gates Property to the Gates DE LLCs, "the Gates [MD] LLCs had standing to maintain the action." Quoting *Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (1992), Appellees urge that "[o]nce an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings."

Appellees also contend that because the MD LLCs, and one of the Gates DE LLCs—the Delaware Cipriano West SPE LLC—have "always had standing to maintain this action" under CA § 4A-1007(a), we should "decline to inquire into the standing of the other Gates of Delaware entities[,]" because it is a "settled principle of Maryland law" that if "there exists a party having standing to bring an action" then "we shall not ordinarily inquire as to whether another party on the same side also has standing." (Quoting *Heard v. Cnty. Council of Prince George's Cnty.,* 256 Md. App. 586, 618 (2022)). Finally, Appellees note that the remaining five Gates DE LLCs have standing under the statute because they have "promptly re-registered those entities in Maryland and have paid the

statutorily imposed penalty[,]" thereby satisfying the savings clause of CA § 4A-1007(a).

B. *Legal Framework*

The doctrine of standing is designed to ensure that a plaintiff "has a sufficiently cognizable stake in the outcome." *Matter of Jacobson*, 256 Md. App. 369, 394 (2022) (quoting *Kendall v. Howard Cnty.*, 431 Md. 590, 603 (2013)). It is a settled principle of Maryland law that "where there exists a party having standing to bring an action . . . we shall not ordinarily inquire as to whether another party on the same side also has standing." *People's Counsel v. Crown Develop. Corp.,* 328 Md. 303, 317 (1992) (quoting *Bd. of License Comm'rs for Montgomery Cnty. v. Haberlin*, 320 Md. 399, 404 (1990)).

Maryland prohibits a foreign limited liability company doing business in the State from "maintain[ing] suit in any court of this State" without first complying with the requirement of subtitle 4A of the Corporations and Associations Article. CA § 4A-1007(a). However, "a foreign limited liability company may cure the infirmity of failure to register [to do business in Maryland] from the time of filing suit" and become entitled to maintain that suit thereafter. *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colo., LLC*, 447 Md. 425, 440 (2016). Indeed, section 4A-1007(a) provides that a foreign limited liability company can maintain a suit once it shows that it has paid the statutory penalty specified in section 4A-1007(d) and has come into compliance with the title or has ceased to do business in the State.

Most significantly, we recently explained the long-standing principle that resolves the standing issue before us now: "Once this Court has ruled upon a question properly

presented on an appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the 'law of the case' and is binding on the litigants and courts alike[.]" *Heard,* 256 Md. App. at 637 (quoting *Loveday v. State*, 296 Md. 226, 229 (1983)).

C. *Analysis*

Chelsea Woods's standing challenge is barred by law of the case. In *Chelsea Woods I*, we acknowledged that the Gates MD LLCs retained standing by virtue of their controlling interests in the Gates DE LLCs. *Chelsea Woods I* at *15. We explained that "the Gates [MD] LLCs had standing to maintain the action, both because they asserted other claims for breach of contract and unjust enrichment based upon events that preceded the transfer, and because as controlling members of each of the Delaware LLCs they remained real parties in interest." *Id.* at *14 n.15.

Moreover, we noted that "[w]here one party has standing, we do not inquire typically as to whether another party on the same side also has standing." *Id.* (citing *Anne Arundel Cnty. v. Bell*, 442 Md. 539 (2015)). Chelsea Woods acknowledges that the original six domestic Gates MD LLCs remain parties, and one of the Gates DE LLCs, Cipriano West SPE LLC, "is currently active and in good standing" in Maryland. Accordingly, Chelsea Woods's standing challenge is completely without merit. And this point is only underscored by the remaining DE LLCs' curative actions to come into compliance with CA § 4A-1007(a) in order to remove all impediments arising under the law to their

independent standing to maintain an action in Maryland courts. *See, e.g.*, *A Guy Named Moe, LLC*, 447 Md. at 440.

II.

FEBRUARY 2023 ORDER

A. *Parties' Contentions*

Chelsea Woods selectively quotes from our opinion in *Chelsea Woods I*, that it would "defy the plain language of the termination clause, and defeat the reasonable expectations of the parties, to construe the Agreement to allow the Gates LLCs to cut off water and sewer access to the Chelsea Property without an alternative water and sewer connection in place[,]" and that "one of the central purposes of the Agreement . . . is to ensure the Chelsea Property's continued and uninterrupted access to a water and sewer connection." It asserts that "[i]t could not be more clear that this Court did not intend for the lower court to leave the Appellant without access to water and sewer connections."

Chelsea Woods asserts that it presented evidence at the hearing on remand that it was "diligently working toward obtaining the independent connections" but did not yet have them, and "that it was simply not feasible for it to obtain independent connections through any means other than the means that it was pursuing, and that its ability to move forward on the project was subject to decisions and approvals from agencies that it did not control[.]" Chelsea Woods claims that it is impossible to "determine any date certain as to when the connections would be in place." Chelsea Woods posits that "[i]t was error for the lower court to apply the facts as presented by Appellant, and the conjecture presented

by Appellees' 'expert' to interpret the contract and the ruling of this Court to determine a specific date certain that the Appellees could disconnect the water and sewer lines[.]"

Appellees contend that Chelsea Woods misstates the relevant factual record and misinterprets our order in *Chelsea Woods I* in its brief. They assert that they continue to "suffer tangible damages by prolonging the Agreement's relationship for over four years after Appellees presented grounds for terminating the Agreement." They further argue that as they bear the burdens of ownership, so too do they hold the "right to exclusively use, possess[], and enjoy the pipes." They point to the fact that their informal modification to the Agreement allowing Chelsea Woods to pay a pro rata share of the WSSC invoices rather than metering its use, becomes overly burdensome when Chelsea Woods pipes break and Chelsea Woods consumes water out of proportion to its size.

Appellees next challenge the legal assertion they find implicit in Chelsea Woods's arguments, namely that "until its independent WSSC connection is in place -- regardless of whether it takes years, decades, or a lifetime -- Appellees cannot disconnect its pipes pursuant and the lower court could not set a disconnection date." Appellees press that the *Chelsea Woods I* opinion "only requires Appellees to provide a 'reasonable opportunity' for Appellant to obtain an independent connection." In support of this, Appellees point to our statement that "in the face of a material breach of the Agreement the Gates LLCs may not be required to adhere to their performance obligations *indefinitely*." (Quoting *Chelsea Woods I* at *18). Appellees argue that our amended declaration in that case expressly allowed and instructed the lower court to "enter an order setting a disconnection date,"

following "additional evidentiary proceedings to determine the status of that project[,]" (quoting *id.* at 26), and the remand court "duly followed this Court's directive upon the limited remand." Appellees charge that Chelsea Woods "gives no regard, and thereby effectively eliminates, its contractual obligation to proceed with 'reasonable expeditiousness' to obtain an independent connection to WSSC's main lines." (Quoting *id.* at 1, 19).

Finally, Appellees argue that the remand court "acted within its discretion in setting a disconnection date of August 1, 2023, based on the evidence presented at the February 2023 Evidentiary Hearing[.]" They point to the "significant deference" we owe to the remand court's factual findings and ask us to limit our review to "whether competent evidence supports the court's findings." (Quoting *Yacko v. Mitchell*, 249 Md. App. 640, 679 (2021)).

B. *Legal Framework*

When a case is tried without a jury, "the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Maryland Rule 8-131(c). If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous. Moreover, "[u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Webb v. Nowak*, 433 Md. 666, 680 (2013) (internal citations and

quotations omitted). *See also, Yacko*, 249 Md. App. at 677-78 (2021) (holding that appeal from an evidentiary hearing is subject to an abuse of discretion standard). Our task is not to weigh conflicting evidence, but is, rather, "limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record. And, to that end, we view all the evidence in a light most favorable to the prevailing party." *Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 455-56 (2004) (internal citations and quotations omitted).

It is well-established in Maryland that "[w]hen weighing the credibility of witnesses and resolving conflicts in the evidence, 'the fact-finder has the discretion to decide which evidence to credit and which to reject.'" *Yacko*, 249 Md. App. at 679 (quoting *Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020)). The fact-finder "may believe or disbelieve, accredit or disregard, any evidence introduced." *Great Coastal Exp., Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977). It is the reviewing court's duty "to verify that an expert witness had a sufficient factual basis to formulate an opinion[,]" whereas "[i]t is the responsibility of the fact finder to determine whether an expert witness's assertion should be believed." *Santiago v. State*, 458 Md. 140, 156 (2018) (quoting *Sessoms v. State*, 357 Md. 274, 293 (2000)).

A finding that a witness has testified truthfully is "not erroneous—clearly or otherwise—merely because the Circuit Court *could* have drawn different 'permissible inferences which might have been drawn from the evidence by another trier of the facts.'" *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (quoting *Hous. Opportunities Comm'n of*

Montgomery Cnty. v. Lacey, 322 Md. 56, 61 (1991)). *See also Yacko*, 249 Md. App. at 679 (holding that the fact that "contrary evidence was presented at the evidentiary hearing" was "in opposition to some of the court's findings . . . is not dispositive" where the court found "that [the witness's] testimony was credible and that the evidence generally supported her version of events[.]" We apply "a *de novo* standard of review to determine whether the court's conclusions are legally correct." *EBC Props., LLC v. Urge Food Corp.*, 257 Md. App. 151, 165–66 (2023) (quoting *Carroll Indep. Fuel Co. v. Washington Real Est. Inv. Tr.*, 202 Md. App. 206, 224 (2011)).

C. *Analysis*

No Error of Law

Chelsea Woods urges that the circuit court erred as a matter of law by issuing the February 2023 Order granting Chelsea Woods almost six months, from the date of the order, to obtain an independent WSSC connection before Gates was entitled to disconnect their water and sewage lines from Chelsea Woods's lines on August 31, 2023. Chelsea Woods maintains the court erred "by ordering that Appellees could disconnect their water and sewer lines from Appellant's water and sewage before Appellant obtained an independent WSSC connection[.]"

In *Chelsea Woods I*, we held that on remand, "the circuit court shall hold additional evidentiary proceedings to determine the status of that project and may, in accordance with the revised declaratory judgment, **enter an order setting a disconnection date** or scheduling future proceedings to determine when the disconnection may occur." *Id.* at *3,

26 (emphasis added). We clarified that "in the face of a material breach of the Agreement the Gates LLCs may not be required to adhere to their performance obligations *indefinitely*." *Id.* at *18. Chelsea Woods ignores critical portions of our prior opinion instructing, for example, that Chelsea Woods "act[] with reasonable expeditiousness" to obtain an independent WSSC Connection. *Id.* at 26. Chelsea Woods's briefing suggests that on remand the circuit court misinterpreted the termination provisions of the Agreement; however, we clearly decided in *Chelsea Woods I* that Appellees had presented grounds for termination to due to Chelsea Woods's material breaches, *id.* at 18-19, 26, and we instructed that on remand, the court retained jurisdiction over the judgment for the "limited purpose of determining when [Chelsea Woods's] independent connection reasonably may be accomplished." *Id.* at 26.

We hold that Chelsea Woods's contention that the circuit court erred as a matter of law by imposing a disconnection date before Chelsea Woods obtains an independent WSSC connection is contrary to the express rulings in *Chelsea Woods I.* The purpose of the remand hearing was to allow the trial court to determine how long the disconnection date may be extended by giving Chelsea Woods the opportunity to present evidence establishing the time it would take, acting expeditiously, to obtain an independent WSSC connection. We explained that an indefinite extension of the termination date would defy the Agreement's termination clause. *Id.* at *18. On remand, the trial court followed our express instructions and held "additional evidentiary proceedings to determine the status of [the] project[,]" and, based on the evidence presented, "enter[ed] an order setting a

disconnection date[.]" *Id.* at 26.

No Abuse of Discretion in Finding Reasonable Date of Disconnection

Chelsea Woods carried the burden at the February 2023 evidentiary hearing on remand to present evidence establishing the time that it would take, acting expeditiously, to obtain an independent WSSC connection. Chelsea Woods could have called an expert witnesses, or other witnesses, such as their permit expeditor, Jim Jaeb, or their engineer from JAS Associates. Instead, Chelsea Woods chose to call as their only witness, Kellee Baker, President of the Board of Directors of the Council of Unit Owners, who acknowledged that she had no personal knowledge of the communications with DPIE and WSSC concerning the status of the project. Ms. Baker's testimony at the hearing *did* establish that, as of that date, Chelsea Woods had not secured the WSSC permit required to begin construction of its independent utility connection and Ms. Baker did not offer any estimate as to when the project could be completed. After Appellees' expert testified that, after contacting the WSSC, he discovered that the main hold-up was that Chelsea Woods had not yet completed a service connection permit application, Chelsea Woods's counsel challenged the expert's assertion, but then failed to introduce any evidence that Chelsea Woods had, in fact, completed the SCP application. The record extract contains only an incomplete, unsigned application.[10]

[10] Indeed, at oral argument in this case—now **over four years** since Chelsea Woods breached the Agreement, **two years** after the original disconnection deadline, and **11 months** since the underlying evidentiary hearing—Chelsea Woods's counsel could not confirm that a signed application had yet been filed.

By contrast, Andrew Weir, offering expert testimony for the Appellees, spoke with authority to the duration of time a comparable project would take were it to concern entirely new construction, and the remand court appeared to find him credible. He explained why the circumstances in this case did not present significant complications and that it was a "fairly straightforward" project. Mr. Weir opined that, given the progress that had been made to date, if Chelsea Woods were moving with reasonable expedition, the project should be completed within three months. Still, factoring in unlikely, but nevertheless possible delays, he opined that the project should be completed within five months. After hearing the testimony and reviewing all of the documents entered into the record, the court determined that even under "the most lenient reading, with reasonable expeditiousness, this project should be completed by the middle of July [2023], which would be five months from now." In its final order, the court gave Chelsea Woods almost six months additional time by setting the disconnect date for August 1st, 2023. We find no abuse of the court's discretion.

To summarize, we find no error or abuse of discretion in the trial court's February 2023 Order. At the hearing on remand, Chelsea Woods failed to demonstrate that it has moved expeditiously to obtain an independent water and sewer connection. Now one year and seven months after our decision in *Chelsea Woods I* was filed, Chelsea Woods cannot say it has completed the necessary SCP application. *Only because*, as we observed in *Chelsea Woods I*, "[h]anging in the balance are the people who live in the 175 condominium units whose access to water and sewer is in jeopardy," we hold that the

disconnection date in the February 2023 Order shall take effect ninety days after issuance of this opinion, and therefore, pursuant to Maryland Rule 8-606(b)(1), we direct the clerk to issue the mandate ninety days after the filing of this opinion

III.

COSTS OF APPEAL

Appellees argue that Chelsea Woods violated Maryland Rule 8-501, as it failed to follow the procedure for designating and resolving disputes about the contents of the record extract under Md. Rule 8-501(d), and as a result, the record extract does not contain "all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal" as required by Md. Rule 8-501(c). They point out that this Court had already sanctioned Chelsea Woods in the previous appeal for failing to follow Rule 8-501; therefore, Chelsea Woods is "unquestionably and painfully aware of this Rule and its requirements."

Appellees allege that Chelsea Woods "never attempted to confer with Appellees regarding the contents of the record extract." Among the many deficiencies presented by Chelsea Woods's record extract, Appellees note that it does not contain a table of contents, and point out that it "only includes circuit court docket entries until March 3, 2022—nearly a year prior to the order from which it is appealing from." They also note that Chelsea Woods included only a portion of the order from which it appeals, omitting, significantly, "Appellant's obligation was to proceed with '*reasonable expeditiousness*,' towards obtaining an independent WSSC connection[.]" (Italic emphasis in the order quoted).

Additionally, Appellees state that, "[c]ompounding the glaring deficiencies in Appellant's Record Extract is its Brief's vague and unclear record citations that renders it entirely unclear how the factual record supports Appellant's legal arguments." They aver that the brief largely fails to include citations, and where citations are included, they are ineffective. For example, Appellees point to pages 8 through 15 of Chelsea Woods's brief, which comprise "seven entire pages of 'facts' with only four citations to the Record Extract, and two of those references are to more than fifty pages of transcript testimony." Accordingly, Appellees ask us to find that the brief and record extract are deficient and either disregard Chelsea Woods's brief in its entirety or award Appellees "the costs incurred in correcting the Record Extract deficiencies."

Chelsea Woods replies, without citation to any supporting documents or affidavit, that it was unable to confer with opposing counsel "due to the hostility, misrepresentation, and outright untruths that emanate from opposing counsel," and that the counsel for Chelsea Woods "simply does not feel safe attempting to work with opposing counsel." It also asserts that Appellees' appendix is overinclusive, includes additional court filings that occurred after the order appealed from, and posits that "all parties are aware that the Court has access to the entirety of the record in this matter and it is therefore not necessary to expend funds submitting page after page that are already a part of the record and are not needed to resolve this case."

Given the repeated deficiencies contained in Chelsea Woods's briefing in this appeal and in *Chelsea Woods I*, we start by reviewing some of the relevant briefing

requirements contained in the Maryland Rules.

It is the duty of the appellant to "prepare and file a record extract" in every civil case before this court, which shall be filed with its brief. Md. Rule 8-501(a). The record extract "shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal." Md. Rule 8-501(c).

> **(c) Contents.** The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. **It shall include the circuit court docket entries, the judgment appealed from, and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall refrain from unnecessary designation. The record extract shall not include** those parts of the record that support facts set forth in an agreed statement of facts or stipulation made pursuant to section (g) of this Rule **nor any part of a memorandum of law in the trial court, unless it has independent relevance.** The fact that a part of the record is not included in the record extract or an appendix to a brief shall not preclude an appellate court from considering it.

Md. Rule 8-501 (emphasis added).

The parties are to collaborate on the designation of materials to be included in the record extract, and in doing so, are to "refrain from unnecessary designation." Md. Rule 8-501(c). If the parties fail to reach an accord, and "the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief[.]" Md. Rule 8-501(f).

Our rules also require that each record extract include a table of contents:

> **Table of Contents.** If the record extract is produced as an appendix to a brief, the table of contents required under section (a) of Rule 8-504 shall include the contents of the appendix. If the record extract is produced as a separate volume, it shall be prefaced by its own table of contents. The table of contents shall (1) reference the first page of the initial examination, cross-

> examination, and redirect examination of each witness and of each pleading, exhibit, or other paper reproduced and (2) identify each document by a descriptive phrase including any exhibit number.

Md. Rule 8-501. An appellant may be sanctioned for noncompliance with the rules, although "[o]rdinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule." Md. Rule 8-501(m). We may also, among other remedies, award Appellees the cost of producing the appendix. Md. Rules 8-607(a) and 8-501(e).

These rules were applied by this Court in *Joseph v. Bozzuto Management Co.*, in which the appellant failed to provide a transcript of the hearing on the judgments from which they appealed, and "did not, moreover, confer with or obtain any agreement from the appellees as to what would be filed" as required by Rule 8–411(a). *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 347-48 (2007). We observed that a dismissal of the appeal would be justified under the Maryland Rules. *Id.* at 348. *See also Miller v. Bosley*, 113 Md. App. 381, 391 (1997) (observing that an appellate court is "never required to 'ferret out' from the record evidence omitted from the extract.").

In *Joseph*, we explained that we were "fully sympathetic with the complaints of the appellees in this case. By their own diligence, however, they have supplied much of the material that makes it possible for us to reach a decision on the merits of the case, which, when possible, is always a preferred alternative." *Id.* at 348. We quoted *Kemp–Pontiac–Cadillac, Inc. v. S & M Construction Co.*:

> In the decisions of the Court of Appeals and of this Court, above cited, it is well settled that *the decision to grant or deny a motion to dismiss is discretionary with the appellate court*. Furthermore, *if the appellee elects to supply in his record extract the material omitted by the appellant*, instead of

> exercising the option of filing a motion to dismiss and requesting that the time for filing his brief be extended, *the appellate court would not ordinarily dismiss the appeal, in the absence of prejudice to appellee* or a deliberate violation of the rule. *It would instead impose the cost of printing the omitted material on the appellant*, regardless of the outcome of the case.

Id. at 348 (quoting *Kemp–Pontiac–Cadillac, Inc. v. S & M Construction Co.,* 33 Md. App. 516, 524 (1976) (emphasis supplied in quotation)). Accordingly, we denied the motion to dismiss the appeal, but awarded the appellee the additional costs for printing the appendices to its briefs. *Id.* at 348.

Here, the facts are that Chelsea Woods submitted a 207-page record extract, which was admittedly assembled without consultation with Appellees. The record extract does not have a table of contents and it is not indexed. The docket contained within is cut short on March 4, 2022, the date on which it shows itself to have been printed. It contains only three pages of the Amended Complaint and only one page of the two-page February 2023 Order from which Chelsea Woods directly appeals. The record extract only includes portions of pleadings and transcripts without the first page or other identifying information. In some cases, the very few citations included in Chelsea Woods's brief are to pages of transcript for which there is no identification of who is testifying. The statement of facts in Chelsea Woods's brief, set out over nine pages, contains less than ten citations, and as Appellees point out, the citation on page 10 is to "E. 89-148."

In response, Appellees submitted two appendices compliant with the Maryland

Rules, comprising 384 pages. Appendix I[11] (pp. 1- 299), contains materials that were not gratuitous but were in large part the complete copies of documents from which Chelsea Woods had extracted or deleted pages. Appendix I supplies the documents from the underlying proceedings that are critical to our review of the issues presented. Appellees' Appendix II contains several documents following the underlying order, such as Chelsea Woods's June 12, 2023, emergency motion (and memorandum) to stay the February 2023 Order and request for a waiver of the bond requirement; Appellees' opposition to that motion, and the circuit court's July 30, 2023 Order[12] granting the motion to stay and ordering Chelsea Woods to pay a monthly bond in the interim.

Again, *only because*, as we stated in our prior opinion in *Chelsea Woods I*, "[h]anging in the balance are the people who live in the 175 condominium units whose access to water and sewer is in jeopardy," we deny Appellees' request to "disregard" Chelsea Woods's brief and record extract. Unfortunately, however, although the defects in Chelsea Woods's record extract and briefing in this appeal vary in detail from those that

[11] Appendix I includes the Case Search history, which carries through the February 2023 Disconnection order and through to September 8, 2023; the entire Complaint and Amended Complaint; both pages of the February 2023 Disconnection Order; the entire transcript of the underlying evidentiary hearing; a "select portion of Plaintiffs exhibits" from that hearing; Chelsea Woods's Service Connection Construction Permit application; our unreported opinion in *Chelsea Woods I*; the order to compel Chelsea Woods to produce discovery documents preceding the February 2023 Evidentiary Hearing, and; the May 11, 2022, order from this Court in the course of *Chelsea Woods I* in which we awarded attorneys' fees and costs to Appellees for preparing and filing an appendix supplying the deficiencies in Chelsea Woods's record extract in that appeal.

[12] As noted previously, Chelsea Woods has separately appealed from this July 30, 2023 Order.

we sanctioned in *Chelsea Woods I,* they are of the same kind and merit a similar response. Chelsea Woods's failure to table the contents of its record extract and to include all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal is similar to the *Joseph* appellant's deficiencies. *Joseph*, 173 Md. App. at 348. There, as here, the appellant also failed to "confer with or obtain any agreement from the appellees as to what would be filed" in accordance with the Maryland Rules. *Id.*

Therefore, as we did in *Chelsea Woods I*, and *Joseph*, we will not strike Chelsea Woods's brief, but we will order Chelsea Woods to pay Appellees' attorneys' fees and costs for the preparation and filing of Appellees' Appendix I.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; MANDATE TO ISSUE 90 DAYS AFTER FILING OF THIS OPINION; COSTS TO BE PAID BY APPELLANT, INCLUDING THE ATTORNEYS' FEES AND COSTS FOR PREPARATION AND FILING OF APPENDIX I TO THE APPELLEES' BRIEF.