Circuit Court for Prince George's County
Case No. CAL 1935904

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 847

September Term, 2021

CHELSEA WOODS COURT
CONDOMINIUM

v.

GATES BF INVESTOR, LLC, ET AL.

Wells, C.J.,
Berger,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: July 6, 2022

In the final analysis, this case is about whether, and when, to cut the shared access to water and sewer between two properties owned by the dueling entities before us. Hanging in the balance are the people who live in the 175 condominium units whose access to water and sewer is in jeopardy.

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 Washington Suburban Sanitary Commission ("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.

The parties to this appeal are successors in interest to the parties to that Agreement. The Council of Unit Owners of Chelsea Woods Courts Condominium ("Chelsea Woods"),

appellant/cross-appellee, is the governing body for a 175-unit condominium developed on the southern tract ("Chelsea Property"). The appellees/cross-appellants are six Maryland limited liability 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 LLCs") – who in 2016 purchased The Gates at Cipriano Apartments ("Gates at Cipriano"), a 592-unit apartment complex occupying the northern tract ("Gates Property").[1] After disputes arose between Chelsea Woods and Gates concerning the enforceability of the Agreement and its scope, Gates notified Chelsea Woods that they were terminating the Agreement and would disconnect the water and sewer connections between the properties. Chelsea Woods disputed their right to do so, precipitating this lawsuit.

In the Circuit Court for Prince George's County, the Gates LLCs filed suit seeking declaratory relief and damages for breach of contract and unjust enrichment.[2] Chelsea Woods counterclaimed, asserting the same three causes of action. The circuit court granted the Gates LLCs' motion for partial summary judgment on their declaratory judgment count, declaring that the Gates LLCs could terminate the Agreement upon a material breach by Chelsea Woods; that Chelsea Woods materially breached the Agreement; that the Gates LLCs had effectively terminated the Agreement; and that the Gates LLCs could disconnect

[1] As we shall explain, *infra*, during the pendency of the underlying litigation in the circuit court, the Maryland LLCs we refer to as Gates transferred their interests to six Delaware LLCs. At least as to the declaratory judgment count of the amended complaint, those entities should have been joined and are the proper appellees.

[2] Gates withdrew additional claims asserted in its amended complaint prior to judgment.

the connection between the water and sewer lines on the Gates LLCs Property and the Chelsea Property six months later, on January 17, 2022.

The parties' remaining claims for breach of contract and unjust enrichment were tried to the court. The court found that Chelsea Woods was unjustly enriched by its receipt of a WSSC overbilling credit and awarded the Gates LLCs $6,758.03—an amount that reflects Chelsea Woods's pro-rata share of the cost incurred by the Gates LLCs to achieve that credit, *plus* prejudgment interest. It further found that Chelsea Woods was liable to the Gates LLCs for $166,523.29—the pro-rata share of the costs for improvements to the water pipes on the Gates Property—but did not award prejudgment interest.[3] The court found for the Gates LLCs on Chelsea Woods's counterclaim. Chelsea Woods appealed and moved for a new trial. After its post-trial motion was denied, this appeal proceeded.

During the appellate proceedings, we ordered a limited remand to the circuit court for it to conduct an evidentiary hearing relative to a motion to stay the provision of the declaratory judgment permitting the Gates LLCs to disconnect Chelsea Woods's water and sewer lines. After a hearing, the circuit court amended the declaratory judgment to delay the date upon which the Gates LLCs could disconnect the water and sewer lines until August 1, 2022. The Gates LLCs noted a cross-appeal from the amended order, arguing that the circuit court erred and exceeded its authority by so ruling.

[3] As we will explain it is not entirely clear from the record whether this ruling was premised upon a breach of contract or unjust enrichment.

In its appeal, Chelsea Woods presents nine questions, which we have combined and reframed as six:

> I. Did the Gates LLCs' conveyance of the Gates Property to their wholly owned subsidiaries during the litigation and before judgment render the judgment declaring the rights of the parties under the Agreement null and void?
>
> II. Did the circuit court err by granting the Gates LLCs' motion for partial summary judgment because a) the Gates LLCs failed to establish damages, b) other remedies short of termination of the Agreement were appropriate, and c) the breaches were not material and/or that materiality was a disputed issue of fact?
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> III. Did the trial court err by finding Chelsea Woods liable for a share of the cost to reline pipes on the Gates Property because the Agreement did not expressly or implicitly require the sharing of maintenance expenses and because the elements of unjust enrichment were not met?
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> IV. Did the trial court abuse its discretion by denying Chelsea Woods's motion for a new trial premised upon new evidence bearing upon whether it received a benefit from the pipe relining project?
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> V. Did the trial court err by finding in the Gates LLCs' favor on Chelsea Woods's counterclaims?
>
> VI. Did the trial court err in allowing and/or failing to quash writs of garnishment?

In their cross-appeal, the Gates LLCs present one question, which we have rephrased non-substantively as:

> I. Was the circuit court's limited remand order improper or, in the alternative, should this court terminate the order upon resolution of this appeal?

We hold, first, that though the transferees of the Gates LLCs' interest in their property should have been joined, this may be accomplished on remand. Second, we affirm the grant of partial summary judgment in favor of the Gates LLCs, though we direct the

circuit court to enter an amended declaratory judgment on remand. Next, we reverse the court's decision to grant the Gates LLCs reimbursement request for the costs to reline their pipes because they did not satisfy their burden to prove a breach of contract or unjust enrichment, thereby rendering moot the fourth issue regarding the propriety of the circuit court's denial of Chelsea Woods's motion for a new trial. Fifth, we affirm the denial of Chelsea Woods's counterclaim. Finally, we perceive no error in the circuit court's handling of the writs of garnishment, although under our holding above, the court's ruling in favor of Gates LLCs for $166,523.29 on their reimbursement claim for the pipe relining is reversed.

On the Gates LLCs' cross-appeal, we hold that the circuit court did not err or exceed its authority on limited remand.

On remand, we shall direct the circuit court to enter an order joining the appropriate parties for purposes of the declaratory judgment, to amend the declaratory judgment consistent with our construction of the Agreement, and to hold additional proceedings to determine the date when the Chelsea Property will be served by an independent WSSC connection.

BACKGROUND

The Agreement

The Gates Property and the Chelsea Property previously shared a common owner. In the 1960s, while under common ownership, a water and sewage system was constructed for the entire lot, with the connection to the public water and sewer system located on Greenbelt Road at the northern border of what is now the Gates Property. In the early

1970s, the property was subdivided for development of a condominium on the southern portion. Prior to the sale of the Chelsea Property, the Agreement was executed.

We set out in more detail here the terms of the Agreement summarized above. The recitals explain that the Chelsea Property and the Gates Property[4] were "serviced by one common sewer house connection and one common water house connection" and that water and sewer charges for both properties were "billed to and payable by" the owners of the Gates Property. Consequently, the Gates Property "must look to [the owners of the Chelsea Property] for reimbursement for the charges attributable to [their use]." The parties agreed to the following provisions "relating to [the] WSSC common charges":

> 1. That the owners of the Gates Property "shall continue to make timely payments of all common sewer and water charges billed by WSSC" for both properties.
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> 2. That the owners of the Gates Property "shall arrange for the submeter measuring water and sewer charges to [the Chelsea Property] to be read every sixty (60) days, and shall remit to the [owners of the Chelsea Property] said submeter data, plus a bill for (i) the water and sewer charges shown thereon, and (ii) the meter reading charge shown thereon."
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> 3. That the owners of the Chelsea Property "shall pay such bill, in accordance with the instructions thereon, immediately, but in no event later than fifteen (15) days after receipt."
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> 4. That the owners of the Chelsea Property "shall obtain a corporate surety payment bond in the penal sum of $10,000, guaranteeing . . . [their] obligation . . . for WSSC charges reimbursement under this Agreement," but may cancel that bond if they substitute for it a payment bond obtained by Chelsea Woods or its council of unit owners or establish an escrow account with $10,000 in reserve funds.

[4] Though we refer to the properties based upon their ownership at the time of this litigation, Gates had no ownership interest in the property until 2016 and Chelsea Woods had not yet been developed.

A termination clause provided that the Agreement would "terminate and become null and void at such time as individual sewer and water house connections have been provided for [the Chelsea Property]." The Agreement stated that it would be "binding upon, and inure to the benefit of, the parties hereto, and their respective heirs, executors, administrators, personal and legal representatives, successors, and assigns."

There is no dispute that a submeter never was installed to measure the precise sewer and water usage of the Chelsea Property. Instead, the prior owners of the Gates Property and Chelsea Woods, respectively, determined to apportion the WSSC charges based upon the number of individual units, resulting in Chelsea Woods paying 22.816167 percent ("22.8 percent") of each WSSC bill (175 Chelsea Woods units divided by 767 total units).

The Fire Hydrant Issue

In May 2016, the Gates LLCs contracted to purchase the Gates Property. Before they settled on the property, however, there was a fire at the Gates at Cipriano. When the Prince George's County Fire Department ("PGCFD") responded to the scene, it determined that the fire hydrant water pressure was insufficient and, instead, called in pump trucks to extinguish the fire. As a consequence of this incident, the Fire Department advised the Gates LLCs that they needed to correct their fire hydrant water pressure to comply with the County fire code.

Initially, the Gates LLCs believed the problem was on the WSSC side of the system. WSSC was in the process of replacing the water meter vault and the Gates LLCs waited until that project was complete to retest the hydrants. In October 2017, the Gates LLCs

hired Fire Systems Consulting Plus ("FSCP") to conduct testing at the Gates Property and on the WSSC side of the connection. Testing of the hydrants revealed that the pressure remained too low and there was no blockage on the WSSC side. FSCP contracted with Mr. Mark Dempsey[5] to advise on additional testing and to analyze the results. In consultation with FSCP, the Gates LLCs hired Master Locators to map the pipes under the Gates Property and McDevitt & Sons Plumbing, Inc. to drill, sample, and inspect the pipes with a camera. By June 2018, the Gates LLCs had learned that the water pipes were occluded with mineral build up and that this was the source of the low water pressure in the hydrants.

On September 26, 2018, which was over two years after the Gates LLCs first learned of the water pressure issue in its fire hydrants, the PGCFD issued the Gates LLCs a Correction Order directing them to begin repair work within 30 days to bring the pressure in the fire hydrants up to the minimum set forth in the fire code.

Around the same time, Mordy Katz, the chief financial officer for the Gates at Cipriano, began trying to contact Chelsea Woods by telephone and possibly by email. Apparently unable to reach anyone, on October 5, 2018, the Gates LLCs' attorney wrote to an attorney who had represented Chelsea Woods in prior litigation ("former counsel") to advise that the Gates at Cipriano would undertake "in a very short time frame, major work and renovations to its water piping infrastructure" "severely impact[ing]" the water supply to Chelsea Woods. The letter stated that Chelsea Woods must reach out to Avi

[5] At trial, Mr. Dempsey was qualified as an expert in the field of fire protection engineering and testified on behalf of the Gates LLCs.

Bernstein, president of the Gates at Cipriano, "immediately" to arrange for a temporary water supply and for payment for that service. Former counsel forwarded the letter to Chelsea Woods's property manager and its four-member board.

On October 10, 2018, Mainlining America provided the Gates LLCs with a proposal to blast out the pipes and epoxy coat them for a lump sum of $700,000 ("The Relining Project"). Also on that date, Mainlining America provided Chelsea Woods with a proposal to provide a temporary water supply while it performed the work at the Gates Property, for a lump sum of $7,500. Mr. Bernstein executed the proposal on behalf of the Gates LLCs on October 17, 2018 and Kellee Baker, president of Chelsea Woods's board, did so on behalf of Chelsea Woods on October 18, 2018.

The work began on October 23, 2018. The total cost to the Gates LLCs for the Relining Project was $729,847.96.

The WSSC Bills

The Gates LLCs began billing Chelsea Woods for its prorated share of the WSSC bills beginning in May 2016. Between then and the end of 2018, Chelsea Woods remitted payment within 15 days of its receipt of an invoice 18 times and beyond the 15-day period specified in the Agreement ten times. The longest delay in payment was 31 days.

In December 2018, the Gates LLCs received a WSSC bill covering the period from November 15, 2018 through December 12, 2018 that "appeared to be high." They billed Chelsea Woods for its proportionate share of the WSSC invoice in the amount of

$18,847.33. Chelsea Woods disputed the bill and asked for documentation because it was double the ordinary monthly bill and because it arrived just after the Relining Project.

Without advising Chelsea Woods, the Gates LLCs began investigating the apparent overbilling. They attempted to work directly with WSSC but were unsuccessful. They then hired Maryland Strategic Consulting Group ("MSCG") to investigate, agreeing to pay a $5,000 fee up front and then an additional 15 percent of any credit obtained from WSSC. By May 2019, MSCG obtained a $164,130.16 credit from WSCC, and invoiced the Gates LLCs for $24,619.52 (15 percent of the total).

The Billing Dispute

In early June 2019, counsel for Chelsea Woods contacted Mr. Katz by email to identify which invoices the Gates LLCs claimed were outstanding and to determine if the December 2018 bill had been disputed with WSSC or if there had been a leak or some other explanation for the high usage.[6] Receiving no response, counsel again reached out at the end of June 2019.

On August 15, 2019, Mr. Katz forwarded the most recent WSSC invoice to counsel for Chelsea Woods and demanded payment of the outstanding December 2018 invoice. Counsel responded by questioning whether Mr. Katz had made "any headway over the problems with the bills?" Mr. Katz responded that it was "just regular usage" according to an engineer they had hired, noting that the Gates LLCs would be asking Chelsea Woods to

[6] It is apparent from this email that Chelsea Woods's attorney, and by implication, Chelsea Woods, did not know the nature of the work performed on Gates' pipes, but only understood that it required that the water supply be shut off.

split the engineer's fee. As already explained, however, the actual finding was that WSSC had been overbilling Chelsea Woods.

The next day, Mr. Katz forwarded to counsel a bill for $6,758.03, representing 22.8 percent of the cost "for the engineer that we had come out to investigate our WSSC billing issues." Though the bill itself did not reference the WSSC credit, Mr. Katz attached to his email a copy of the MSCG proposal and the MSCG invoice to Chelsea Woods, which specified that the overbilling credit to the Gates LLCs was achieved.

On August 23, 2019, counsel for Chelsea Woods responded that its position was that only two bills from the Gates LLCs totaling $35,797.63 were outstanding, and that those two bills comprised the disputed December 2018 invoice for $18,847.33 and a recent July 2019 invoice for $16,950.30. Although counsel took the position that Chelsea Woods was not contractually obligated to share in the MSCG fees, he noted that the overbilling credit that the Gates LLCs received amounted to $164,130.16, and that Chelsea Woods was entitled to 22.8 percent of the overbilling credit in the amount of $37,448.21. He questioned whether the Gates LLCs had applied the overbilling credit to Chelsea Woods's account, noting that if the credit were applied, it would cover all the outstanding invoices. Counsel asked Mr. Katz to send documentation about the WSSC credit and how it had been applied.

Six days later, on August 29, 2019, a law firm representing the Gates LLCs sent a demand letter. The letter advised that the law firm represented the Gates LLCs "in connection with the material breach of the purported Agreement" and that the Gates LLCs

were demanding immediate payment of the $35,797.63 in outstanding WSSC reimbursement payments and the $6,758.03 for its share of the MSCG fees, for a total of $42,555.66. The Gates LLCs maintained that Chelsea Woods's failure to pay the December 2018 invoice was a material breach that justified termination of the Agreement, as was its failure to pay the July 2019 invoice and to post a $10,000 surety bond. The Gates LLCs advised that it was terminating the Agreement and would be disconnecting the water and sewer connections between the properties on September 30, 2019.

Counsel for Chelsea Woods responded with an eight-page letter on September 6, 2019. He emphasized that the December 2018 invoice remained in dispute and took the position that the Gates LLCs were without authority to disconnect the water and sewer lines between the properties. The response letter set out the background of the dispute over the December 2018 invoice, including the MSCG investigation, the lack of notice to Chelsea Woods about that investigation, and the lack of any documentation that a pro rata share of that credit was ever applied to Chelsea Woods's account. Chelsea Woods reiterated that it was not contractually obligated to share the expense of the MSCG investigation and, to the extent that the parties were sharing expenses, argued that the Gates LLCs should reimburse it for a portion of the cost of installing a temporary water line while the Relining Project was undertaken. Counsel suggested that it would be beneficial for the parties to enter into an amended agreement to address the absence of a submeter and the lack of a surety bond.

The Lawsuit

On November 8, 2019, Gates BF Investor LLC filed suit against Chelsea Woods. In addition to reasserting the allegations made in the demand letter, they alleged for the first time that Chelsea Woods was required to reimburse the Gates BF Investor LLC for its pro rata share of the costs of the Relining Project. The complaint asserted three counts. Count I 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[7]; 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). The amended complaint incorporated eight exhibits, including the demand letter and the response to it, the December 2018 invoice to Chelsea Woods, and the email exchanges between Mr. Katz, the law firm representing the Gates LLCs, and counsel for Chelsea Woods leading up to the litigation.

Chelsea Woods answered the amended complaint. As relevant, it admitted that the Gates LLCs had "applied a proportionate share of the WSSC Credit to Chelsea Woods's reimbursement account[.]"

[7] As we will explain, however, by then the Maryland LLCs had transferred their interest in the property to the Delaware LLCs.

The Gates LLCs' Motion for Partial Summary Judgment

The Gates LLCs moved for partial summary judgment on Count I of the amended complaint seeking a declaratory judgment on April 14, 2021. They argued that Chelsea Woods had materially breached the Agreement by not making timely reimbursement payments to the Gates LLCs, as required by Paragraph 2, and by not posting a $10,000 surety bond or escrowing funds in that amount, as required by Paragraphs 3 and 4. In addition to the same exhibits incorporated into the amended complaint, the Gates LLCs supported their motion with an affidavit made by Mr. Katz ("Katz Affidavit") and an attached "Chelsea Water Bill Spreadsheet" ("the Spreadsheet") that listed invoices sent to Chelsea Woods by the Gates LLCs seeking reimbursement for its share of WSSC invoices billed to the Gates LLCs and the MSCG Invoice. The Spreadsheet excluded "invoices that [the Gates LLCs] sent to [Chelsea Woods] but which [the Gates LLCs] subsequently cancelled, including invoices cancelled due to receipt of WSSC credit." The motion also relied upon the deposition testimony of Chelsea Woods's corporate designee, Beau Perrizo, the former president of its board.

The Gates LLCs argued, in reliance on the Spreadsheet, that Chelsea Woods had paid 20 of the 51 reimbursement invoices sent to it since June 2016 more than 15 days after receipt, in direct violation of Paragraph 2 of the Agreement.[8] The Spreadsheet reflects that through the end of 2018, Chelsea Woods was late ten times, with five payments made less

[8] Notably, the December 2018 invoice and the July 2019 invoice, featured prominently in the demand letter, the complaint, and the amended complaint, do not appear on the Spreadsheet. We can find no explanation for this in the record and counsel for Gates was unable to elucidate on this at oral argument in this Court.

than 10 days late, three payments made less than 15 days late, one payment made 23 days late, and one payment made 31 days late.

Beginning from the time the demand letter was sent, however, Chelsea Woods paid all the invoices it received from the Gates LLCs late. The latest payment reflected on the Spreadsheet was 107 days late.[9] Also on March 12, 2020, Chelsea Woods made a $20,113.75 payment on an invoice issued to them on December 12, 2019, which was 77 days late. The remaining late payments ranged between three and 34 days late.

Mr. Perrizo acknowledged at his deposition that Chelsea Woods did not maintain a $10,000 surety bond and, to his knowledge, had not had a bond in place for at least the past ten years. He explained that the issue never came up during the seven or eight- year period that he served on Chelsea Woods's board and he only became aware of it when the litigation commenced. According to Mr. Perrizo, Chelsea Woods ran "at a deficit" much of the time, due to delinquent payments from its unit owners.

In their motion, the Gates LLCs maintained that they terminated the Agreement on August 29, 2019 by the demand letter. Despite putting Chelsea Woods on notice of termination and the Gates LLCs' intent to disconnect the water and sewer connections between the properties, Chelsea Woods had taken no action to apply for an independent attachment to WSSC's water and sewer mains. The Gates LLCs argued that they were entitled to terminate the Agreement for a material breach absent an "exclusive termination

[9] That payment, for $979.54, was a small fraction of an invoice for $20,979.54 issued on November 12, 2019. Chelsea Woods made a $20,000 payment on that invoice on December 31, 2019, 34 days late, and made the remaining $979.54 payment on March 13, 2020, 107 days late.

clause." Though Paragraph 7 of the Agreement provides that it terminates and becomes null and void "at such time as individual sewer and water connections have been provided" for the Chelsea Property, the Gates LLCs argued that this clause did not expressly or implicitly make that method of termination exclusive.

They contended that the late payments and the lack of a surety bond or escrow account were material breaches because they "affect[ed] the purpose of the contract in an important way." (Quoting Maryland Civil Pattern Jury Instruction 9:25). That purpose, in the Gates LLCs' view, was to ensure that the owner of the Gates Property was "promptly made whole for its payment of WSSC Charges attributable to the Chelsea Property." Given the uncontroverted evidence of the consistent late payments and the lack of a surety bond, the Gates LLCs maintained that they were entitled to terminate the Agreement and had, in fact, done so on August 29, 2019. Consequently, the Gates LLCs requested a declaration permitting them to disconnect the water and sewer connections between the Gates Property and the Chelsea Property, relying upon cases holding that a property owner has "the exclusive right to lawfully use, possess, and enjoy its land as it sees fit." (Citing *Air Lift, Ltd. v. Bd. of Cnty. Comm'rs of Worcester Cnty*., 262 Md. 368, 393 (1971)).

Chelsea Woods opposed the motion for summary judgment. It maintained that the Agreement was binding on the parties; that Chelsea Woods had not materially breached the Agreement; that it had paid all invoices it received; that the Gates LLCs had waived or were time-barred from pursuing relief for "certain immaterial breaches"; and, that the exclusive mechanism for terminating the Agreement was the establishment of separate

water and sewer connections for the Chelsea Property. Though it largely did not contradict the facts as alleged in the Gates LLCs' motion, it contended that the factual picture was complicated by the fact that the Gates LLCs never inquired about or demanded that Chelsea Woods obtain a surety bond until it filed suit and that because Chelsea Woods always paid its bills, even if some were paid late, the breaches were not material.

Chelsea Woods argued, as a matter of law, that the "specific and exclusive termination clause" in the Agreement precluded the Gates LLCs from terminating it because the Chelsea Property did not have an independent water and sewer connection. Though acknowledging that it made late payments, Chelsea Woods also maintained that because it never defaulted on any of the reimbursement payments to the Gates LLCs, its breaches were immaterial. Likewise, the failure to post a surety bond or other security, which Chelsea Woods acknowledged, was immaterial given that the Gates LLCs still had received payment and that no bond ever had been in place during the 47-year history of the Agreement. Chelsea Woods emphasized that the Gates LLCs also were in breach of the terms of the Agreement, which specifically required the Gates LLCs to bill Chelsea Woods every 60 days, not monthly, as the Spreadsheet reflected was their practice. It acknowledged that breaches of the billing schedule were "immaterial," but argued that the bond likewise was immaterial to the Agreement. It also relied on the general 3-year statute of limitations, codified at Maryland Code (1973, 2020 Repl. Vol.), Courts and Judicial Proceedings (Cts. & Jud. Proc.), § 5-101, for its position that the Gates LLCs were time

barred from raising the issue of the surety bond. Alternatively, it argued that the Gates LLCs, by their inaction, had waived that provision of the Agreement.

The Summary Judgment Hearing

The court heard argument on the motion on July 2, 2021. Counsel for the Gates LLCs maintained that because the Agreement was under seal, it was a specialty instrument governed by the 12-year statute of limitations at Cts. & Jud. Proc. § 5-102[10] and given that the Gates LLCs did not have an interest in the Gates Property until 2016, the action clearly was filed within that period. They maintained that the waiver defense asserted by Chelsea Woods was a "factual inquiry" and it had supplied no facts to support it. On the undisputed facts, the Gates LLCs argued that Chelsea Woods materially breached the Agreement, and that the Gates LLCs were entitled to terminate the Agreement and to cut, cap, and seal the water and sewer lines on their property that connected it to Chelsea Woods.

Counsel for Chelsea Woods[11] responded that the issue of whether it had materially breached the Agreement was a question of fact that was improper for resolution on summary judgment. Counsel maintained that late payments, without more, are not a

[10] Cts. & Jud. Proc. § 5-102 states that an action on a "[c]ontract under seal" is governed by the 12-year statute of limitations.

[11] Chelsea Woods hired new counsel in the interim between responding to the motion for summary judgment and the hearing on the motion.

material breach of a contract.[12]

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.

[12] She also noted that the billing schedule differed from that provided under Paragraph 2 of the Agreement and questioned whether Chelsea Woods's late payments would have been late had they been billed every 60 days.

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.

The court signed a declaratory judgment that same day, which was entered on the docket on July 20, 2021. The order stated that the Agreement was terminable for a material breach; that Chelsea Woods materially breached Paragraphs 2, 3, and 4 of the Agreement by "failing to timely pay invoices" and "failing to post a $10,000 corporate surety bond or escrow $10,000 of its reserve funds to insure prompt payment of such invoices"; that the August 29, 2019 demand letter effectively terminated the Agreement; and, that the Gates LLCs could disconnect the water and sewer lines from the Chelsea Property on January 17, 2022.

Chelsea Woods noted an immediate, interlocutory appeal from the declaratory judgment, but this Court granted the Gates LLCs' motion to dismiss that notice of appeal as premature.[13]

[13] By the time this Court dismissed the first notice of appeal, Chelsea Woods already had filed a second, timely notice of appeal after resolution of the remaining claims. Consequently, that appeal, which had been consolidated in this Court with the earlier appeal, continued.

The Bench Trial

On August 16 and 17, 2021, the Gates LLCs' claims for breach of contract and unjust enrichment, and Chelsea Woods's mirror image counterclaims were tried to the court. In their case, the Gates LLCs called two witnesses: Mr. Bernstein, who, as mentioned, is the president of The Gates of Cipriano Apartments; and Mr. Dempsey, the professional fire protection engineer who worked with FSCP on the water pressure issues at the Gates Property. In its case, Chelsea Woods called Ms. Baker, a unit owner and the president of the condominium board since 2016.

With respect to the Relining Project, the testimony and evidence showed the following. The Gates LLCs were aware of the water pressure issue in their hydrants in 2016 before they settled on the Gates Property. In 2016, 2017, and early 2018, they worked with the fire marshal, FSCP, Mr. Dempsey, Master Locaters, and McDevitt and Sons to diagnose the problem so that it could be corrected. No communication was made to Chelsea Woods about the issue—which Mr. Bernstein characterized as a "life safety issue" that affected "[a]nybody else who shared our water lines"—until the Fall of 2018, when the Gates LLCs determined that they would need to reline all the water pipes under their property. Even at that point, there was no evidence that the Gates LLCs communicated to Chelsea Woods the reason they were undertaking the Relining Project, but only communicated that they were required to "perform certain work on [their] piping infrastructure" and that the project would necessitate shutting off water. The first time that

the Gates LLCs asked Chelsea Woods to share in the cost of the Relining Project was when they filed suit.

Mr. Dempsey, who was qualified as an expert in the field of fire protection engineering, testified that his involvement in the Relining Project began in late 2017 when the owner of FSCP asked him to work with them to investigate the water flow issue. He visited the Gates Property three times with FSCP and a final time in anticipation of his testimony.

During his most recent visit, Mr. Dempsey walked the Gates Property and drove through the Chelsea Property. He identified a map showing eight fire hydrants servicing the two properties, seven on the Gates Property and one on the Chelsea Property ("Exhibit 14"). Four of the hydrants, numbered 1, 2, 6, and 7 on Exhibit 14, were on the Gates Property *and* served *only* the Gates Property. Two of the hydrants, numbered 4 and 5 on Exhibit 14, were located on the Gates Property and serviced both that property and Chelsea Woods. One hydrant, numbered 3 on Exhibit 14, was located on the Chelsea Property and served both properties. One hydrant, numbered 8 on Exhibit 14, was located on the Chelsea Property *and* served *only* the Chelsea Property.

Mr. Dempsey explained that under Section 11-272 of the Prince George's County Fire Code, a fire hydrant must flow at a rate of 1,000 gallons per minute at a residual pressure of 20 pounds per square inch ("psi"). While investigating the water flow issue on the Gates Property, Mr. Dempsey tested the pressure in hydrants 1 through 7. He determined that the pressure in hydrants 3, 4, and 5, which served both properties, was just

400 gallons per minute at 20 psi, well below the legally required pressure. The investigation revealed an "advanced level of . . . tuberculation," meaning occlusion of the pipes, and it was a "systemic issue." The occlusion also was a "life safety issue" in Mr. Dempsey's view because it caused low pressure in the hydrants.

Mr. Dempsey opined that all the invoices paid by the Gates LLCs for the investigation into the water flow issue and for the Relining Project were fair, reasonable, and necessary. He further opined that Chelsea Woods benefitted from the Relining Project because the "fire flow" to all of the hydrants, including the four that served the Chelsea Property, would be "summarily improved."

On cross-examination, Mr. Dempsey was asked about the "useful life" of various aspects of the water infrastructure. He opined that the original water pipes installed by the WSSC in the 1960s had a useful life of 50-60 years and that relined pipes had a useful life of 40-50 years. A fire hydrant had a useful life of around 50 years. During the Relining Project, the Gates LLCs replaced three hydrants on their property, one of which served both properties. Mr. Dempsey explained that he had conducted testing on all the hydrants except number 8. Counsel for Chelsea Woods was not permitted to elicit an opinion from Mr. Dempsey about the value of the Relining Project over 40-50 years, as opposed to one or two years.

The Gates LLCs introduced into evidence Chelsea Woods's answers to interrogatories and Mr. Perrizo's deposition testimony. Counsel for the Gates LLCs read into the record Chelsea Woods's answer to Interrogatory No. 17, which asked it to "State

with particularity the amount of savings realized by you as a result of the WSSC Credit, and describe the calculations or methodology used to respond to this Interrogatory." Chelsea Woods answered: "$37,448.21. The total amount that WSSC acknowledged overbilling was $164,130.16, of which the Condominium is entitled to 22.81616167% (pursuant to its pro rata share of units using the water provided by WSSC)."

The Gates LLCs also read into the record two excerpts of Mr. Perrizo's deposition. The first excerpt concerned when Chelsea Woods was placed on notice of the Relining Project relative to when the water was temporarily shut off. Mr. Perrizo acknowledged that notice was sent 18 days before the water shut off. In the second excerpt, Mr. Perrizo was unable to specify if or how Chelsea Woods was prejudiced by the short notice. He replied, "Not that I'm aware of. I'm not sure."

Chelsea Woods moved for judgment at the close of the Gates LLCs' case. The court denied its motion at that juncture.

In Chelsea Woods's case, in lieu of calling an expert witness to testify, it entered into a stipulation with the Gates LLCs that under "normal construction principles and procedures" it was customary "to obtain several bids for significant construction so that the client can evaluate which firm they want to use, and obtain and evaluate different prices."

Ms. Baker, president of the condominium board, testified that she first learned of the Relining Project on or about October 9, 2018 and that the water to Chelsea Woods was shut off on October 23, 2018. Chelsea Woods held an emergency meeting to approve the

Mainline America proposal for the temporary water line. She never was notified about the reason for the work and the Gates LLCs never requested permission to test water flow on the Chelsea Property.

During cross-examination of Ms. Baker, the Gates LLCs introduced into evidence a lengthy email chain between Mr. Bernstein, a representative of Mainline America, a representative of FSCP, and others involving negotiations over the Relining Project proposal that had been forwarded to Ms. Baker on October 17, 2018 (though she did not recall having read anything beyond the first email in the chain, which concerned a certificate of liability for Mainline America that Chelsea Woods needed before it could sign off on the proposal for a temporary water supply). The email chain revealed that the Gates LLCs had been negotiating the proposal with Mainline America since at least September 7, 2018.

The court denied Chelsea Woods's counterclaim relative to the $7,500 it paid for a temporary water supply during the Relining Project.

In closing, the Gates LLCs argued that the Relining Project conferred a significant benefit on Chelsea Woods by improving the water pressure to four fire hydrants that serve the condominium in the event of a fire and that these "life safety protections" were a "real benefit." They maintained that Chelsea Woods appreciated this benefit because it protects its residents and that it would be inequitable for it to retain that benefit without the payment of its value because the work was required by law to protect the residents of the two properties. They argued that the same reasoning applied to the WSSC credit and the related

MSCG invoice. Alternatively, they maintained that the Agreement provided for "shared use of the pipes . . . and contribution towards expenses." Addressing Chelsea Woods's suggestion that any benefit it received by means of the Relining Project will terminate when the pipes are disconnected, the Gates LLCs maintained that it still would benefit from potential use of two hydrants on the Gates Property and, in any event, Chelsea Woods may not benefit from its own breach of the Agreement.

Chelsea Woods countered that the Relining Project repaired the pipes on the Gates Property and that the Gates LLCs, not Chelsea Woods, must bear the cost for that. Counsel emphasized that the Gates LLCs never put Chelsea Woods on notice that the water pressure was a safety issue for the condominiums, never gave them input into negotiations over the repairs, and never notified them that the Relining Project impacted them beyond the temporary water shutoff. She acknowledged that the improvements may have had "some value to Chelsea," but disagreed that Chelsea Woods could be held liable under a theory of unjust enrichment for the bill submitted by the Gates LLCs because they were denied any opportunity to investigate or provide input into the process.

After hearing closing argument, the court reserved on the issues.

The Bench Ruling

The court reconvened on August 20, 2021 to rule. The court prefaced its ruling by stating that it had "struggled" with the case but had reached a decision after reviewing the preponderance of the evidence jury instruction. The "easy part" of the case concerned the WSSC credit that the Gates LLCs obtained after contracting with MSCG. The court found

that the Gates LLCs "paid this bill, that [Chelsea Woods] got a credit, that they – were enriched from it, from the work that [the Gates LLCs] did." It awarded the Gates LLCs the full amount it was seeking, $6,758.03, plus prejudgment interest dating from the invoice.

The court had "struggled" with the "breach of contract" relative to the Relining Project, explaining:

> I am not sure there was a contract. There was a contract, I am not sure that it was a good contract.
>
> It just didn't mention[] it. It was a bad contract, it was flawed. But it being a flawed contract didn't take away from the fact that an expert testified that the pipes had to be fixed, that the hydrants had to be fixed, and that not doing it could have caused a serious danger to the residents and owners of the condominium.

On that basis, the court found in favor of the Gates LLCs, awarding them $166,523.29. It determined not to impose prejudgment interest. It reasoned that the issue was "a very close call" "because [the Gates LLCs] did nothing . . . to make sure that [Chelsea Woods] could do something else[.]" The court credited Mr. Dempsey's testimony "that it wouldn't have made a difference" but found that the "penalty for not involving [Chelsea Woods]" was not being awarded prejudgment interest.

Motion for a New Trial

Chelsea Woods noted an appeal and moved for a new trial or to alter or amend the judgment, which it later amended. It asserted that it hired a fire protection contractor to conduct water pressure tests on the two hydrants located on its property and the test results showed that the pressure remained below the rate required under the County Fire Code. It

also argued that the trial court improperly precluded it from inquiring into the nature of the vendor arrangement between the Gates LLCs and MSCG to determine if MSCG's 15 percent fee was deducted directly from the WSSC credit before it was applied to Chelsea Woods's and the Gates LLCs' bills.

The Gates LLCs opposed the motion, arguing that Chelsea Woods could not rely on evidence that it could have presented a trial, but did not, to seek a new trial. Further, they maintained that the report Chelsea Woods submitted showing the water pressure tests definitively showed that Chelsea Woods *did* receive a benefit. They submitted a letter from Mr. Dempsey explaining that the Chelsea Woods's report failed to convert the flow rates based upon the appropriate residual pressure of 20 psi and, consequently, miscalculated the fire flow rate. Once recalculated, the flow rates all were compliant with the Fire Code.

The circuit court held a hearing and, by order entered December 6, 2021, denied the motion for a new trial or to alter or amend the judgment.

Limited Remand

In this Court, Chelsea Woods filed numerous motions seeking to stay the declaratory judgment to prevent the disconnection of the water and sewer lines. As pertinent, on January 12, 2022, five days before the then governing disconnection date, it moved for a temporary restraining order or preliminary injunction to prevent immediate, substantial, and irreparable harm to the residents of the Chelsea Woods condominiums. It supported its motion with an affidavit from Ms. Baker averring to steps Chelsea Woods had taken to obtain an independent WSSC connection. It also argued, as it had in an earlier emergency

motion in this Court, that it was likely to prevail on appeal from the declaratory judgment because the Gates LLCs no longer owned the Gates Property at the time they moved for partial summary judgment, having transferred their interest to Delaware LLCs.

By order entered on January 13, 2022, we granted the motion, in part, and stayed the provision of the declaratory judgment permitting disconnection of the water and sewer lines until the earlier of January 31, 2022 or another order of this Court. We remanded the case without affirmance or reversal to permit Chelsea Woods to file a paper in the circuit court seeking "a stay of [the declaratory judgment], an extension of time to comply with its terms, or the amount of any supersedeas bond it must file to secure any damages to [the Gates LLCs] resulting from the delay in enforcement [of the disconnection provision]."

On January 18, 2022, Chelsea Woods filed in the circuit court a paper seeking a stay, an extension, or alternatively to set a supersedeas bond. The Gates LLCs opposed that relief, arguing that: (1) Chelsea Woods could not show that the four factors necessary to support the grant of injunctive relief weighed in its favor given that it was unlikely to succeed on the merits; (2) the Gates LLCs would be harmed if they were forced to continue acting as Chelsea Woods's water supplier; and, (3) a continued stay of the declaratory judgment amounted to an unlawful encumbrance upon their property rights.

The circuit court held a hearing on February 3, 2022. Ms. Baker testified about the steps Chelsea Woods had taken since July 2021 to obtain an independent WSSC connection for its property. She explained that it 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."

At the conclusion of the hearing, the court found that Chelsea Woods had "proceeded in a[n] expedited basis" to obtain its own WSSC connection and that it was not "dragging [its] feet." It further found that the Gates LLCs had not adduced any credible

evidence of a cost to them to continue providing water to Chelsea Woods given that they continued to reimburse the Gates LLCs for their share of the WSSC bills, even if the payments were late.[14] The court ruled that Chelsea Woods was entitled to an extension of the disconnection date through August 1, 2022.

That same day, the court entered an order amending the declaratory judgment to extend the disconnection date ("the Limited Remand Order"). The Gates LLCs noted a cross-appeal from the Limited Remand Order.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

Joinder

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 LLCs transferred their tenants in common interests in the Gates Property by a "No Consideration Deed" to six wholly owned subsidiary entities ("the Delaware LLCs") as part of a refinancing transaction. Each Maryland LLC became the sole member of a corresponding Delaware LLC. The Delaware LLCs were not joined in the litigation below or named in the pleadings.

[14] Gates introduced a spreadsheet on remand showing the bills submitted since July 2021. It showed that Chelsea Woods was billed once in July 2021, three times in October 2021 (for August, September, and October), once in November 2021, and once in December 2021. On average, it had paid the first five bills 8.4 days beyond the 15-day grace period, all within a month of receipt. The final bill, sent on December 20, 2021, remained unpaid on January 24, 2020. There was no evidence about the last bill adduced at the hearing.

Chelsea Woods only became aware of the conveyance after judgment was entered against it. It raised the issue for the first time in an emergency motion filed in this Court to stay the disconnection clause of the declaratory judgment.

On appeal, Chelsea Woods contends that because the Agreement is a covenant running with the land, only a party in privity of estate with one of the original covenanters could seek a judicial construction of it and a declaration of the rights of the parties. Consequently, because the Maryland LLCs no longer owned the Gates Property when the declaratory judgment was entered, the judgment is null and void.[15]

The Gates LLCs respond that because Chelsea Woods raises this issue for the first time on appeal, it failed to preserve it for review. The law is to the contrary.

The failure to join necessary parties is a defect in the proceeding that cannot be waived and may be raised for the first time on appeal. *See, e.g.*, *Mahan v. Mahan*, 320 Md. 262, 273 (1990) ("Failure to join a necessary party constitutes a defect in the proceedings that cannot be waived by the parties, and may be raised at any time, including for the first time on appeal."). It follows that in the ordinary case, if the Delaware LLCs were necessary and indispensable parties, a remand to the circuit court for them to be joined and for additional proceedings would be required.

[15] 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.").

Though the Delaware LLCs were necessary parties, we conclude that they fall into an exception to necessary joinder. In Count I of the amended complaint, the Gates LLCs asked the court to adjudicate the rights of the parties under the Agreement, which governs interests in the Gates Property and the Chelsea Party. At that time, however, by their own admission, the Gates LLCs no longer *directly* controlled an interest in the Gates Property. Unquestionably, the Delaware LLCs were necessary parties to that count. *See* Md. Code, Cts. & Jud. Proc. § 3-405(a)(1) ("If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party."); Md. Rule 2-211 (requiring joinder of parties if "complete relief cannot be accorded among those already parties" or if "disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action"). Nevertheless, 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. *See Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984) ("persons who are directly interested in a suit, and have knowledge of its pendency, and refuse or neglect to appear and avail themselves of their rights, are concluded by the proceedings as effectually as if they were named in the record." (cleaned up)); *City of Bowie v. Mie Prop., Inc.*, 398 Md. 657, 703 (2007) (identifying the "controlling principles" of the non-joinder exception as "the non-joined party's knowledge of the litigation affecting its interest and its ability to join that litigation, but failure to do so" (emphasis omitted)). In any event, because we will remand

for further proceedings relative to the declaratory judgment count, we shall direct that the circuit court join the Delaware LLCs as parties to this action.

II.

Grant of Partial Summary Judgment

a.

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). This Court reviews the grant of a motion for summary judgment *de novo*, "and we construe all 'reasonable inferences that may be drawn from the undisputed facts against the moving party.'" *Six Flags America, L.P. v. Gonzalez-Perdomo*, 248 Md. App. 580 (2020) (quoting *Mathews v. Cassidy Turley Md., Inc.*, 435 Md. 584, 498 (2013)). A summary judgment movant must "identify portions of the record that demonstrate absence of a genuine issue of material fact." *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646, 660 (2000) (citation omitted). Once the movant has done so, the burden shifts to the nonmoving party. *Id.* "To defeat a motion for summary judgment, the party opposing the motion must present admissible evidence to show the existence of a dispute of material fact." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 386 (1997). Its written opposition must "'identify with particularity each material fact as to which it is contended there is a genuine dispute' and to specify the evidence that demonstrates the dispute." *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 194 (2015) (quoting Md. Rule 2-501(b)).

b.

Chelsea Woods contends that partial summary judgment was granted improperly both because material facts were in dispute and because the court erred as a matter of law in determining that the Gates LLCs were entitled to rescind the Agreement. Assuming that Chelsea Woods failed to pay its water and sewer bills on time and failed to obtain a payment bond—both in violation of the Agreement—it asserts that neither breach was material as a matter of law or, alternatively, that materiality was a question of fact. The circuit court also erred by ruling that the "common law remedy for the alleged breach of contract" was to permit the Gates LLCs to "terminate water supply to the 500 residents of Chelsea Woods[,]" resulting in a forfeiture that is disfavored under the law. Chelsea Woods maintains that the Agreement only was terminable if Chelsea Woods acquired an independent WSSC connection and that allowing termination for a material breach of the payment and bond terms amounted to a rewriting of the contract.

The Gates LLCs respond that the circuit court correctly ruled that Chelsea Woods's recurrent late payments and failure to obtain a bond were material breaches of the Agreement justifying termination. They emphasize that Chelsea Woods did not support its opposition to the motion for partial summary judgment with evidence or identify with particularity any material disputes of fact. Given the undisputed breaches of Chelsea Woods's primary performance obligations under the Agreement and the fact that the termination clause is not phrased exclusively, the Gates LLCs assert that the circuit court correctly ruled that they were entitled to terminate the Agreement.

c.

It is well recognized that "[w]here . . . there has been a material breach of a contract by one party, the other party has a right to rescind it." *Washington Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 728 (1978) (quoting *Plitt v. McMillan*, 244 Md. 450, 454 (1966)). Nevertheless,

> rescission will not be granted "for casual or unimportant breaches, but only for a substantial breach tending to defeat the object of the contract." *Vincent* [*v. Palmer*,] 179 Md. [365,] 373 [(1941)]. Instead, rescission is permitted when "the act failed to be performed [goes] to the root of the contract or . . . render[s] the performance of the rest of the contract a thing different in substance from that which was contracted for." *Traylor[v. Grafton]*, 273 Md.[649, 687, (1975)]. Put another way, rescission is not available as a remedy when the breach is "slight." *Speed v. Bailey*, 153 Md. 655, 660 (1927).

Maslow v. Vanguri, 168 Md. App. 316, 324 (2006). "Whether a breach is considered material is a question of fact, unless the question is 'so clear that a decision can properly be given only one way, and in such a case the court may properly decide the matter as if it were a question of law.'" *Publish America, LLP v. Stern*, 216 Md. App. 82, 102 (2014) (quoting *Speed*, 153 Md. at 661-62). If one party has substantially performed a contract, a court may not rescind the contract due to a material breach but instead may only award damages. *Maslow*, 168 Md. App. at 324 (quoting *Traylor*, 273 Md. at 797).

As the summary judgment movant, the Gates LLCs presented evidence in the form of the Katz Affidavit, the Spreadsheet, and Mr. Perrizo's deposition testimony to establish that Chelsea Woods repeatedly paid its bills beyond the 15-day grace period under the Agreement and never had obtained a payment bond. In its opposition to the motion,

Chelsea Woods did not dispute that it had made the late payments or that it failed to obtain a bond. Rather, it argued that these breaches were immaterial and/or that the Gates LLCs waived strict compliance with the terms of the Agreement. We disagree.

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)). Our task is to "give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation." *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 507 (2021) (citing *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)). "In other words, when the contract language is plain and unambiguous, 'the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.'" *Id*. (quoting *Dennis v. Fire & Police Emps.' Ret. Sys*., 390 Md. 639, 656-57 (2006) (citation and internal quotation marks omitted)).

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.[16] (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 breach absent a showing of excuse or justification. *Fromm Sales Co. v. Troy Sunshade Co*., 222 Md. 229, 233 (1960). By requiring payment "immediately" or no later than 15 days after receipt, the prompt payment clause is not unlike a "time is of the essence" clause, which is per se material. *See Granados v. Nadel*, 220 Md. App. 482, 488 n.5 (2014) (a "time is of the essence" clause in a contract means that "time is such a material matter that strict compliance by performance within the specified periods of time is a prerequisite to the right to require performance by the other party"). The breach of a bond clause securing the prompt payment obligation likewise would be material.

[16] It is worth noting that Gates focuses on the precision of this language but ignores equally precise language, appearing in the same paragraph, requiring that they bill Chelsea Woods every 60 days based upon data from a submeter that never was installed. The spreadsheet attached to the Katz Affidavit reflects that Gates billed Chelsea Woods much more frequently, often billing it twice in one month. Nevertheless, given that Chelsea Woods conceded in its opposition to the motion for summary judgment that breaches of the billing schedule were immaterial, this would not have operated to justify Chelsea Woods's breach of the prompt payment provision.

To be sure, a party that has not demanded strict compliance with certain provisions of a contract may not elect to rescind without warning based upon the breach of those provisions. *See Shriver Oil. Co. v. Interocean Oil Co*., 157 Md. 341, 352-53 (1929). Here, however, to the extent that the Gates LLCs did not initially demand strict compliance with the prompt payment and bond provisions of the Agreement, they demanded compliance by their August 29, 2019 demand letter and there is no dispute that Chelsea Woods never obtained a bond thereafter and continued to make payments outside the 15-day grace period. On these bases, the circuit court did not err by determining that Chelsea Woods materially breached the Agreement as a matter of law.

d.

We now turn to the meaning and effect of the termination clause in the Agreement. "Unless a contract provision for termination for breach is in terms exclusive, it is a cumulative remedy and does not bar the ordinary remedy of termination for 'a breach which is material, or which goes to the root of the matter or essence of the contract.'" *Foster-Porter Enters., Inc. v. De Mare*, 198 Md. 20, 36 (1951) (cleaned up); *Storetrax.com, Inc. v. Gurland*, 168 Md. App. 50, 73 (2006), *aff'd*, 397 Md. 37 (2007). In other words, a party may rescind a contract for a material breach unless the contract provides exclusive conditions upon which it may be terminated. 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,[17] but in the language of the Agreement

[17] A declaratory judgment can be obtained either at law or in equity. *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 411-12 (2007). "The determination of whether the action is properly at law or in equity must be made by an examination of the nature of the claim (Continued)

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)).

This construction furthers one of the central purposes of the Agreement, which is to ensure the Chelsea Property's continued and uninterrupted access to a water and sewer connection. This was the genesis of the Agreement. Upon the subdivision of the lot, the Chelsea Property had no independent WSSC connection. The parties to the Agreement, both sophisticated developers, would have understood that obtaining an independent

asserted and the relief requested." *Id.* at 411 (quoting *Fisher v. Tyler*, 24 Md. App. 663, 668-69 (1975)). Here, Gates sought declaratory relief stemming from a breach of contract, which was a legal remedy. *See Fisher*, 24 Md. App. at 669 (declaratory judgment action arising from alleged breach of contract sought legal remedy).

WSSC connection was both costly and time consuming. By requiring the Gates LLCs' predecessor to pay the WSSC charges for both tracts of land and conditioning termination upon Chelsea Woods being provided "individual sewer and water house connections," the Agreement ensured that if rescission was warranted, the Chelsea Property would not be rendered uninhabitable and subject to condemnation as a result. 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.[18]

Thus, although we affirm the grant of partial summary judgment, on remand, we shall direct 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.*

[18] Because by deferring disconnection of the water and sewer connections, the circuit court prevented the dire consequences that Chelsea Woods foretells, we need not address its arguments that the circuit court erred by not considering that principles of fairness and equity and/or prevention of forfeiture barred the Gates LLCs from exercising the remedy of termination.

III.

Bench Verdict

a.

On appeal from a bench trial, "the appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). We "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." *Id*. When we review for clear error, "we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence." *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 430 (2008) (quoting *Mie Props.*, 398 Md. at 676-77). We review the court's conclusions of law for legal correctness. *Id*. (citation omitted).

Applying these principles, we consider whether the trial court erred by ruling in favor of the Gates LLCs on their claim for reimbursement for a 22.8 percent share of the cost of the Relining Project.[19] The evidence at trial showed that the Gates LLCs were on notice in Spring 2016 that the water pressure in their fire hydrants was below the level

[19] Though Chelsea Woods asserts in a footnote that it also challenges the verdict in favor of the Gates LLCs on the MSCG invoice, it presents no substantive argument on that issue. Consequently, the propriety of the verdict on that issue is not before us. *See Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (declining to address issues raised by the appellant, but on which no argument was presented); Md. Rule 8-504(a)(5) (requiring a party to present "argument in support of the party's position"). In any event, if this issue was before us, we would affirm the circuit court's ruling because Chelsea Woods concedes that it received a benefit because of MSCG's work, the value of that benefit is clear, and the court did not abuse its discretion by finding that it would be unjust for Chelsea Woods to retain it.

required by the Fire Code. They undertook an investigation into the cause of the low pressure, beginning no later than 2017. They ultimately determined to jet out and reline all their pipes and, beginning in September 2018, negotiated a contract with Mainline America to accomplish that. In October 2018, the Gates LLCs notified Chelsea Woods that they would be undertaking a major infrastructure project on their pipes. They did not advise Chelsea Woods of the reason for that project or that there could be an issue with the fire hydrant water pressure serving the condominiums until this litigation commenced. They also did not request payment for a share of the costs until November 2019, when they filed suit. They then demanded payment of $166,523.29, which was 22.8% of the total cost of the investigation and the relining work. The circuit court awarded the Gates LLCs the amount requested, and on September 2, 2021, entered a money judgment in favor of the Gates LLCs in the amount of $166,523.29.

Chelsea Woods contends that that the circuit court erred by so ruling because the Agreement contains no express or implicit cost sharing provision beyond the WSSC bills and because the evidence cannot sustain a judgment against it for unjust enrichment. We agree and shall reverse the court's decision.

b.

As a threshold matter, it is not clear whether the trial court decided to enter the award in favor of the Gates LLCs relative to the Relining Project under Count II (breach of contract) or Count III (unjust enrichment) of the amended complaint. The Gates LLCs attempt to avoid this ambiguity by stating in a footnote that the circuit court did not rule in

their favor on breach of contract. The record is not so straightforward. After ruling that Chelsea Woods was enriched by the WSSC billing credit and that it would be inequitable for it to retain that benefit without paying its share of the MSCG invoice, the court turned to the Relining Project. The court commented that it "struggled with . . . the breach of contract." It went on to preface its ruling in favor of the Gates LLCs by saying that the "contract" was "flawed" because it "didn't mention[]" cost sharing. The court was nevertheless persuaded by Mr. Dempsey's testimony that the "pipes had to be fixed" and that not doing so would have posed a danger to the residents of Chelsea Woods. On that basis, it decided in favor of the Gates LLCs for $166,523.29. The court did not make any findings on the elements of unjust enrichment. Because we conclude that the court's decision is not sustainable under either a contractual or a quasi-contractual theory, however, we need not remand for the trial court to clarify the basis for its ruling.

c.

To the extent the circuit court granted relief under breach of contract, it must be reversed. The Agreement does not include any cost-sharing provisions except for reimbursement of the WSSC charges. There is no basis in the language of the Agreement expressly or implicitly obligating Chelsea Woods to share in maintenance expenses for repairs to the pipes on the Gates Property. The Gates LLCs do not argue to the contrary on appeal.

d.

The Gates LLCs did not meet their burden of establishing the elements of unjust enrichment. A party who is "unjustly enriched at the expense of another is required to make restitution to the other." *Royal Inv.*, 183 Md. App. at 439 (citing *Everhart v. Miles*, 47 Md. App. 131, 138 (1980)). Unjust enrichment requires proof of three elements:

> 1. A benefit conferred upon the defendant by the plaintiff;
> 2. An appreciation or knowledge by the defendant of the benefit; and
> 3. The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Hill v. Cross Country Settlements, LLC, 402 Md. 281, 295 (2007). A restitution award "is not aimed at compensating the plaintiff, but at forcing the defendant to disgorge benefits that it would be unjust for him to keep." *Id.* at 296 (quoting *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 775 (1984)). The recovery is measured, therefore, by "the gain to the defendant, not the loss by the plaintiff." *Mogavero v. Silverstein*, 142 Md. App. 259, 276 (2002).

1. Benefit

The Gates LLCs assert that the benefit to Chelsea Woods from the Relining Project is "readily discernable from the trial record," pointing to Mr. Dempsey's expert testimony and test data showing that the flow rate for three of the four fire hydrants servicing the Chelsea Property was greatly improved after the project was complete. Mr. Dempsey opined that the same would be true of the fourth hydrant serving that property. The Gates

LLCs do not explain, however, how they quantified the *value* of the benefit to Chelsea Woods occasioned by this improvement.

The benefit to the Gates LLCs from the project is apparent. First, they brought themselves into compliance with the fire code and avoided legal penalties that could flow from the correction notice.[20] Second, they replaced three fire hydrants on their property that were in disrepair. Third, they jetted out and relined all the nearly 60-year-old water pipes below their property, pipes that according to Mr. Dempsey, were at the end of their useful life. Consequently, the relined pipes on the Gates Property are expected to last between 40-50 years without need of replacement. Because the Gates LLCs, not Chelsea Woods, owns the pipes, this is a significant benefit to the Gates LLCs.

Conversely, the benefit to Chelsea Woods is less clear. To be sure, the water pipes under the Gates Property connect to those beneath the Chelsea Property and we accept as true Mr. Dempsey's testimony that the tuberculation of the pipes on the Gates Property was a systemic issue that impacted the water pressure on the Chelsea Property. We also accept as true Mr. Dempsey's testimony that the four fire hydrants that serve the Chelsea Property, including the two that are on the Chelsea Property, have a greater fire flow rate now than before the Relining Project. Nevertheless, the burden was on the Gates LLCs to provide the basis for the valuation of this benefit to Chelsea Woods given that the Relining Project did not improve the piping infrastructure beneath Chelsea Woods' property and that

[20] Although the Gates LLCs alleged on information and belief in their amended complaint that Chelsea Woods also received a correction notice, there was no evidence supporting this allegation adduced at trial.

Chelsea Woods remains obligated for repairs and eventual replacement of its own pipes, which, like the pipes beneath the Gates Property, are at or beyond their useful life according to Mr. Dempsey.[21] *See Md. Cas. Co. v. Blackstone Int'l, Ltd*., 442 Md. 685, 709 (2015) ("The measure of damages in an unjust enrichment claim is the value of goods or services rendered by the plaintiff in the hands of the defendant.").

The Gates LLCs did not present expert testimony valuing this benefit. Instead, they presented Mr. Bernstein's testimony verifying the steps taken to accomplish the infrastructure project and identifying the invoices, and Mr. Dempsey's testimony that the bills for the various contractors all were fair, reasonable, and necessary. This evidence established the reasonableness of the cost to the Gates LLCs for a project that significantly improved their property, but not the amount of the incidental benefit to Chelsea Woods. The Gates LLCs cannot satisfy the elements of unjust enrichment by simply relying on the 22.8 percent pro rata share that was the parties' course of conduct under the Agreement for splitting WSSC bills because that percentage does not correspond to the actual benefit to Chelsea Woods of the Relining Project that was performed entirely on the Gates Property.

[21] At trial, Mr. Dempsey testified that although the water and sewer systems for both the Gates and Chelsea Woods properties were "original to the properties and [had] not been replaced," he only inspected the fire hydrants on the Gates Property because he had "no authority" to inspect the hydrants on the Chelsea Woods property because it was on "private property" and would entail checking the "water flow, taking the valves, the covers off, greasing the threads and other things like that." When Mr. Dempsey was asked about whether the problems revealed by the sample pipes that were excavated were "localized issues or systemic to the entire water line system," he responded that it was a "global systemic issue." The Gates LLCs presented no evidence that the "global systemic issue" was confined to the Gates Property, or that any measures were taken to repair the pipes and hydrants on the Chelsea Woods property.

This principle is illustrated by comment d to § 155 of the Restatement (First) of Restitution (1936). The authors explain that a "person may be required to pay for services which he has not requested and for the receipt of which he is not at fault" if the services "constitute the performance of another's duty or which are rendered in an emergency in the protection of another's life or *property*." *Restatement (First) of Restitution* § 155, cmt. D (emphasis added). The Gates LLCs rely upon this principle in their brief in this Court, arguing that they were compelled to undertake the Relining Project to protect the life and safety of its residents and the residents of the condominiums, as well as to comply with the law. The comment adds, however, the following limitation: "the limit of restitution is the amount by which the recipient property has benefited, although the value of the services or the amount which was expended therefor may be greater." *Id.*; *see also* Dobbs, Daniel B., *Law of Remedies: Damages, Equity, Restitution*, § 4.2(2) (3d 2018) ("When the service was not sought by the defendant, if restitution is allowed at all it is usually measured by the increase in defendant's assets resulting from the service, not by the value of the service itself (or by the lessor of the two)."). Here, the Gates LLCs presented evidence of the amount it expended, but for the reasons explained, this was not an appropriate measure of the amount by which the Chelsea Property benefited from the work. Because the Gates LLCs bore the burden of proof on every element of its claim, the failure to prove this element warrants reversal.

2. Appreciation or Acknowledgement of the Benefit and Retention of the Benefit under Circumstances Making it Inequitable

Though not necessary to our decision, we also conclude that the second and third factors, which we consider together, were not satisfied. The Gates LLCs maintain that the October 5, 2018 letter to Chelsea Woods's former counsel constituted evidence satisfying the second element. That letter advised Chelsea Woods that the Gates LLCs were about to begin extensive "work and renovations to its water piping infrastructure" and that Chelsea Woods would need to obtain a temporary water supply at its own cost. It did not provide any information about the reason for the work being performed. The email thread forwarded to Ms. Baker on October 17, 2018 likewise did not apprise Chelsea Woods of any benefit it would receive from the relining of the pipes on the Gates Property. Chelsea Woods did not, by contracting with Mainline America for a temporary water supply, acknowledge a benefit to it from work performed by Gates on its pipes.[22]

As the Court of Appeals explained in *Hill*, "[t]he purpose behind [the acknowledgement or appreciation] requirement is to prevent a true officious intermeddler from maintaining an action for unjust enrichment or quantum meruit when the intermeddler claims he should be compensated for services rendered or value provided to the defendant." 402 Md. at 300, n.12. It provided the following illustration, drawn from Daniel B. Dobbs, *Handbook on the Law of Remedies* § 4.1 n.18 (1973): "While the homeowner is away, a house painter paints the entire house, without the owner's consent, thereby adding value to

[22] As previously noted, even after billing disputes arose between the parties, it was clear from communications between counsel relative to the December 2018 WSSC bill that Chelsea Woods had no appreciation that the Relining Project benefited them in any way.

the homeowner's property. The added value of the home cannot be separated easily and returned to the house painter. Therefore, a court should not permit the house painter to recover." *Hill*, 402 Md. at 300, n.12.

In the case at bar, the benefit to Chelsea Woods in the form of increased water pressure to fire hydrants servicing its property was conferred without its knowledge or request. Its added value cannot be separated and returned to the Gates LLCs. They respond however, citing *Hill*, that they are not pure intermeddlers because they acted based upon "legal compulsion or duty[.]" 402 Md. at 305. They emphasize that the trial court so found, stating that "the hydrants had to be fixed" and "not doing it could have caused a serious danger to the residents and owners of the condominium." The court's findings were supported by the evidence and are not clearly erroneous, but they do not lead to the conclusion that restitution is warranted.

First, the correction notice was served on the Gates LLCs and put it, not Chelsea Woods, in legal jeopardy if it was not corrected. Under the circumstances, the Gates LLCs were protecting their own interests and carrying out their own duty. *See Restatement (First) of Restitution* § 106 ("A person who, incidentally to the performance of his own duty or to the protection or the improvement of his own things, has conferred a benefit upon another, is not thereby entitled to contribution.").

Second, the legal compulsion to act arose more than two years after the Gates LLCs first learned of the water pressure issue in the hydrants. The evidence showed that during that period the Gates LLCs kept Chelsea Woods in the dark about the potential safety issue.

They gave Chelsea Woods less than two weeks' notice before shutting off its water supply to undertake the Relining Project, forcing Chelsea Woods to scramble to obtain a temporary water line, and never asked for contribution until they filed suit. The Gates LLCs may not rely upon their duty to protect Chelsea Woods's occupants when it elected not to warn them of any danger until it sought contribution.

Third, as Chelsea Woods argued at trial, by the time that the Gates LLCs sought reimbursement for a share of the cost of the Relining Project, they already had notified Chelsea Woods that they were terminating the Agreement and intended to disconnect the pipes connecting the two properties, a decision that the circuit court ruled was lawful and that we affirm on appeal, with limitations. Though the fire flow to the two fire hydrants connected to the pipes on the Gates Property that also service Chelsea Woods were improved by the relining work, the hydrants on the Chelsea Property will not be similarly benefited once the pipes are disconnected. Thus, the benefit to Chelsea Woods has been diminished further.

For all these reasons, the evidence did not support a finding that Chelsea Woods was aware of, appreciated, or acknowledged any incidental benefit to it occasioned by the Gates LLCs' undertaking of the Relining Project, and the circumstances here do not render Chelsea Woods's retention of the incidental benefit unjust. *See Alts. Unlimited, Inc. v. New Balt. City Bd. of Sch. Comm'rs*, 155 Md. App. 415, 500 (2004) (stressing "the fundamental principle that it is not enrichment *per se* that obligates the beneficiary to make restitution to the benefactor but only **UNJUST** enrichment" (emphasis in original)).

IV.

Denial of Motion for a New Trial

Chelsea Woods contends that the trial court erred by denying its motion for a new trial on the issues of the WSSC overbilling credit and the Relining Project. Our reversal of the court's award relative to the Relining Project renders the latter contention moot. We briefly address Chelsea Woods's argument relative to the award for the MSCG invoice, reviewing the denial of the motion for abuse of discretion. *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012).

In its motion for new trial, Chelsea Woods argued that the trial court erred by not permitting it to inquire into the "circumstances of the billing arrangement [between Gates and MSCG]" to determine if MSCG's percentage fee was deducted directly from the credit, which would have resulted in a double recovery for the Gates LLCs if Chelsea Woods paid its share of the bill. Chelsea Woods offers no support for this speculative theory. The MSCG proposal and the invoice in the record from MSCG billing Gates for 15 percent of the WSSC bill credit confirms that MSCG's percentage fee was not deducted directly from the WSSC credit. Given this evidence and the fact that Chelsea Woods offered no support for its theory, the circuit court did not abuse its broad discretion by denying the motion for a new trial on this basis.

V.

Denial of Counterclaim

Chelsea Woods contends that the court erred by denying its counterclaim. It asserts that the Gates LLCs were obligated under the terms of the Agreement to ensure that Chelsea Woods "is supplied and has access to water" and that the need for a temporary water supply was caused by the Gates LLCs' actions. It further argues that it was forced to pay the price offered by Mainline America because of the short notice provided by the Gates LLCs. These arguments are without merit.

The Agreement obligates the Gates LLCs to pay the WSSC bills for the two properties and to seek reimbursement from Chelsea Woods. The Relining Project necessitated that both parties to the Agreement bypass the pipes running below the Gates Property to access the WSSC connection. The Agreement does not compel the Gates LLCs to bear the cost of Chelsea Woods's temporary water supply. Chelsea Woods likewise points to no evidence in the trial record supporting its argument that the price for the temporary water line was greater than it would have paid if the Gates LLCs had provided more notice. Mr. Perrizo testified at his deposition that he was unaware of any prejudice to Chelsea Woods occasioned by the late notice and Ms. Baker testified at the bench trial that she does not know whether the amount paid to Mainline America for the temporary water line was a good price. On this evidence, the trial court did not err by denying Chelsea Woods's counterclaim.

VI.

Garnishment

a.

On September 2, 2021, the trial court entered the two money judgments in favor of the Gates LLCs. Twelve days later, they filed six requests for writs of garnishment naming various financial institutions. The writs issued on November 2, 2021, directing each financial institution to hold the property of the judgment debtor, *i.e.* Chelsea Woods, subject to further proceedings and to file an answer to the writ within 30 days. On November 19, 2021, Chelsea Woods filed an emergency motion for "Release of Property from Levy/Garnishment or to Exempt Property from Execution," an emergency motion to "Dismiss/Recall Writ of Garnishment," and a motion to shorten time for the Gates LLCs to respond to the motions. By orders entered December 6, 2021, the circuit court denied Chelsea Woods's motions. That same day, the circuit court entered recorded judgments naming "Council of Unit Owners of the Chelsea Woods Courts Condominium" as the judgment debtor and noting in the comments that entity also was known as "Chelsea Woods Courts Condominium, Unincorporated Association."

On December 9, 2021, PNC Bank, N.A. ("PNC"), answered the writ of garnishment served on it. It explained that it maintained an account in the name of Chelsea Woods Courts Condominium and that that entity was listed on the judgment, but that the caption on the writ of garnishment named the Council of Unit Owners of the Chelsea Woods Courts Condominium. The account had a current balance of $92,969.31 and PNC stated that it

had placed a hold on the account in the amount of the two money judgments, for $174,785.60. Because there was a dispute over the Gates LLCs' entitlement to the funds, PNC would hold the funds pending further determination or order of the court.

On December 17, 2021, Global Service Solutions Trust ("Global") filed in the circuit court a "Payment Bond for Other Than Construction Contracts" in the amount of $200,000.[23] The payment bond was in the name of Global, as surety, and Chelsea Woods, as principal, and purported to secure a debt to the "United States of America" in the amount of the bond. The Gates LLCs objected to the supersedeas bond because it did not, on its face, secure the judgments in favor of the Gates LLCs. The record does not reflect that Chelsea Woods filed a response to this objection or that the bond was approved by the court.

b.

On appeal, Chelsea Woods contends that the circuit court erred by issuing the writs and/or by denying its motions to quash them for four reasons. First, it asserts that the Gates LLCs are only entitled to collect on the smaller judgment because at the time of the bench ruling, the parties discussed on the record that Chelsea Woods intended to file a motion to stay the judgments pending appeal and the trial court expressed an intent to grant such a motion as to the Relining Project judgment. Second, Chelsea Woods argues that the Gates LLCs' requests for writs were premature because the judgment was deprived of finality by Chelsea Woods's filing of a motion for a new trial. Third, it avers that the Gates LLCs are

[23] Global also filed a $2 million "Performance Bond for Other Than Construction Contracts," which also purported to secure a debt to the United States government.

not entitled to collect on the judgment because they no longer own the Gates Property and because the writ did not name the entity that maintained a bank account with PNC. Fourth and finally, Chelsea Woods asserts that the writs should have been quashed upon its filing of a $200,000 supersedeas bond.

c.

A money judgment is automatically stayed for ten days but, thereafter, is subject to enforcement by the judgment creditor unless stayed at the discretion of the circuit court pending resolution of post-trial motions or pending appeal. Md. Rule 2-632(b), (c) & (e). Because the circuit court did not stay the enforcement of the money judgment pending resolution of Chelsea Woods's motion for a new trial, the requests for writs were not premature. The Gates LLCs also were not obligated to await the filing by Chelsea Woods of a motion to stay the judgment to seek enforcement. Notably, no such motion was filed and the circuit court never entered a stay of the money judgments pending appeal.

The filing of the supersedeas bond papers also did not operate to stay enforcement both because the bond papers were defective and did not secure the judgments in favor of the Gates LLCs, and because after they objected, the bond never was approved by the circuit court. *See* Md. Rule 1-402(b) ("[I]f an adverse party objects in writing to the bond, . . ., the bond is subject to approval by the court, after notice and an opportunity for any hearing the court may direct."). Finally, because the judgments listed Chelsea Woods Condominium as an alternative name for the Council of Unit Owners, the Gates LLCs were

entitled to garnish funds in accounts in either name. For all these reasons, the circuit court did not err by denying Chelsea Woods's motions relative to the writs of garnishment.

Of course, because this Court is reversing the trial court's decision to grant the Gates LLCs' reimbursement claim relative to the Relining Project, on remand, the writ of garnishment for the $166,523.29 judgment must be quashed as that amount is no longer a debt owed to the Gates LLCs. The Gates LLCs still are entitled to collect on the $6,758.03 judgment, however.

CROSS-APPEAL

As discussed above, while this case was pending on appeal, this Court issued a limited remand order permitting Chelsea Woods to seek a stay or extension of the provision of the July 20, 2021 declaratory judgment permitting Gates to disconnect the water and sewer pipes on January 17, 2022. On remand, Chelsea Woods moved for an extension and, after an evidentiary hearing at which the trial court heard testimony about the steps Chelsea Woods had taken to obtain an independent WSSC connection since the July 20, 2021 order was entered, found that Chelsea Woods had been acting expeditiously to comply and granted it an extension of the disconnection date until August 1, 2022. The court did not order Chelsea Woods to post any security because it found that the Gates LLCs were not damaged by the extension given that Chelsea Woods continued to reimburse Gates for its share of the WSSC charges each month.

The Gates LLCs noted this cross-appeal from the extension order. They contend that the extension order is unlawful because the circuit court's revisory power over the

declaratory judgment had expired and the limited remand order only empowered the circuit court to stay, not modify, the disconnection provision of the declaratory judgment. They further argue that the circuit court erred by invoking powers under Md. Rule 2-632(f), which governs stays pending appeals taken from an "order or judgment granting, dissolving, or denying an injunction[.]" Because the order at issue on limited remand was a declaratory judgment, the Gates LLCs contend this Rule did not empower the circuit court to act. The Gates LLCs also argue that Chelsea Woods did not satisfy the factors supporting an injunction pending appeal because the trial court specifically found at the hearing on limited remand that Chelsea Woods was not likely to prevail on appeal. Finally, they maintain that it was error for the circuit court not to order Chelsea Woods to pay compensation or post a bond "in connection with its continued use of [the Gates LLCs'] water and sewage pipes despite the Agreement's termination."

We conclude that the issues raised in the cross-appeal all are resolved by 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. Consequently, the circuit court retains jurisdiction over the judgment for the limited purpose of determining when that independent connection reasonably may be accomplished. 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.

CONCLUSION

For all these reasons, we affirm, in part, and reverse, in part, the judgment of the circuit court. On Count I of the amended complaint, we affirm the grant of the motion for partial summary judgment, but remand for the entry of an amended declaratory judgment that substitutes the following language in place of the two final declarations:

> **FOUND AND DECLARED** that, as of August 29, 2019, Plaintiffs presented grounds for termination of the Agreement due to Defendant's material breaches of the Agreement; and it is further
>
> **FOUND AND DECLARED** that Plaintiffs are entitled to disconnect their water and sewage lines from Defendant's water and sewage when Defendants, acting with reasonable expeditiousness, have obtained an independent WSSC connection, as determined by the circuit court.

On remand, the court shall: (1) enter an order joining the appropriate parties for purposes of the declaratory judgment; and (2) hold additional proceedings, as necessary, to determine the date upon which Chelsea Woods may obtain an independent WSSC connection and enter appropriate orders to carry out the mandate of this Court.

On Counts II and III, we affirm the award in favor of Gates for $6,758.03 but reverse the award of $166,523.29. We affirm the court's decision denying Chelsea Woods's counterclaim.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED, IN PART, AND REVERSED, IN PART; CASE REMANDED FOR ADDITIONAL PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID 58.8% BY APPELLANT/CROSS-APPELLEE AND 41.2% BY APPELLEES/CROSS-APPELLANTS.