

Circuit Court for Howard County  
Case No. 13-C-07-069573

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

Nos. 873 & 2399

September Term, 2018

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LUBNA KHAN

v.

ZUBAIR KHAN NIAZI

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Graeff,  
Beachley,  
Alpert, Paul E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: June 4, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Ms. Lubna Khan, appellant, obtained a divorce from Mr. Zubair Niazi, appellee, in 2010 in the Circuit Court for Howard County.<sup>1</sup> Approximately four years after their divorce, Ms. Khan and Mr. Niazi reached an agreement regarding the disposition of their marital home (“the Property”), and the circuit court issued an order incorporating that agreement. Litigation subsequently ensued regarding the terms of the order.

On appeal, Ms. Khan, a self-represented litigant, challenges the circuit court’s orders, which found that, pursuant to the 2014 order, she was required to refinance the Property and awarded attorney’s fees to Mr. Niazi. She presents multiple questions for our review, which we have consolidated and rephrased, as follows:<sup>2</sup>

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<sup>1</sup> Mr. Niazi did not file a brief on appeal.

<sup>2</sup> Ms. Khan presented the following questions:

1. Did the trial court err and/or abuse its discretion denying Appellant affirmative defense under the Agreement and enrolled judgment dated 4/19/2017?
2. Did the trial court err and/or abuse its discretion when granted Appellee’s various court action to relitigate the issue of refinance as separate causes of action?
3. Did the trial court err and/or abuse its discretion when it revised an enrolled judgment beyond 30 days without finding fraud, mistake or irregularity R.2-355?
4. Did the trial court err and/or abuse its discretion holding contradictory/discretionary dispositions to the *Agreement* and enrolled judgment?

1. Did the circuit court err in finding that the parties’ agreement included a condition that Ms. Khan refinance the mortgage on the property, and that enforcement of that agreement was not barred by res judicata or collateral estoppel?
2. Did the circuit court abuse its discretion in denying Ms. Khan’s request for recusal?
3. Did the circuit court err in awarding attorney’s fees to Mr. Niazi?

For the reasons set forth below, we shall affirm the circuit court’s orders enforcing the parties’ agreement and denying the motion for recusal, and we shall dismiss Ms. Khan’s remaining contention as moot.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 15, 2010, the circuit court entered a Judgment of Absolute Divorce, awarding, *inter alia*, Ms. Khan use and possession of the parties’ marital home, located in Ellicott City, Maryland, for a period of three years, and ordering that, “unless the parties reach an agreement regarding its disposition, the marital home shall be sold at the end of the use and possession period with the net proceeds divided equally.” At the expiration of

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5. Did the trial court err and/or abuse its discretion when it awarded Appellee attorney fee as default judgment under R. 10341 without considering Appellant’s opposition, and making the mandatory finding of bad faith, lack of substantial justification, and ability to pay?
  6. Did the trial court err and/or abuse its discretion to adjudicate (a) award of attorney fee when the Appellate court stayed the proceeding (Appeal 0873), Appellee never requested fee, and order for fee was vacated (Appeal 1804)?
  7. Can the judge rule with impartiality if the record shows judge has an unyielding pre-determined position in Appellee’s favor, if not should he recuse?

the use and possession period, the parties were unable to reach an agreement regarding the disposition of the home. Mr. Niazi was the sole mortgagor on the mortgage loan for the home.

On July 11, 2013, Mr. Niazi filed a Motion to Order Immediate Sale and Partition of the Marital Home, arguing that he no longer wished to pay the mortgage on the home after the expiration of the use and possession period as Ms. Khan and their child had relocated to North Carolina and no longer resided in the home. On October 23, 2013, Ms. Khan filed a Response to Defendant’s Motion to Order Sale and Partition of the Marital Home, arguing that she and Mr. Niazi had “an agreement” that he would sell his interest in the home to her, and she would buy the home “as is.”

On May 23, 2014, at a hearing in the circuit court, the parties advised that they had an agreement regarding the disposition of the home. Mr. Niazi’s counsel recited the terms of the agreement on the record:

[COUNSEL FOR MR. NIAZI]: [Mr. Niazi] has agreed to waive any and all rights and sign a quit claim deed with respect to that property in favor of Ms. Khan. But he is relinquishing all rights and interest to that property.

It’s my understanding that as a result of that, Ms. Khan will immediately assume – assume all responsibility for that property, including but not limited to, the mortgage, taxes, any other bills and expenses, lawn care, maintenance, home owner’s association fees, and any expenses beyond insurance or repairs that are currently being made on that property.

Dr. Niazi will also take steps that are necessary to insure that the insurance proceeds, which are necessary for current repairs being made to that property are assigned to Ms. Khan. Or that if they’re not assigned, that he will make sure that any proceeds that are issued for the repairs to that property are immediately made available to Ms. Khan. He’ll make no efforts whatsoever to interfere with the insurance proceeds with respect to those repairs.

And as of today, both parties are agreeing to waive any and all monetary claims which were made, or could have been made or asserted today or prior to today.

THE COURT: Okay.

[COUNSEL FOR MR. NIAZI]: That’s the sum and substance of the agreement, Your Honor.

THE COURT: All right. So . . . the defendant is going to waive any and all rights to the property. He will be executing the quit claim deed, whereas Ms. Khan will assume the responsibility for the property, which includes mortgage, the whole nine yards, et cetera, except for the issue of the insurance proceeds. Your client is going to take whatever steps necessary to make sure the insurance proceeds for the repair are made available to Ms. Khan. And then the parties are going to waive any other monetary claims that exist between the two of them?

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[MS. KHAN] . . . I will attempt to refinance. I had – I had available mortgage way back in last July. The deal didn’t go through. So, I am – I may need some time to bring myself to maybe refinance to get myself all the mortgage, of which Mr. Niazi holds at this time. But that will take some time. But in the meantime, I assume responsibility upon signing of the quit claim deed, and upon signing of the assignable rights from the Encompass that I will assume all responsibility of the property.

THE COURT: Okay. It sounds to me that you are in agreement.

The court, the parties, and an insurance adjuster then discussed details regarding insurance payments for repairs on the Property.

Following the May 23, 2014, hearing, the parties failed to submit to the court a written consent order memorializing their agreement. On July 18, 2014, the court entered the following Order (the “July 2014 Order”) incorporating the parties’ agreement that was placed on the record at the May 23, 2014 hearing:

Order

WHEREAS, the parties having come before this Court on May 23, 2014, and having reached an agreement that was placed on the record, and the parties after being placed under oath, having acknowledged the agreement as their voluntarily and binding agreement; and

WHEREAS, the parties were to submit a Consent Order to this Court and have failed to do so, and have informed the Court that they cannot agree on certain language to be included in an Order, therefore, it is then, by the Circuit Court for Howard County, Maryland, this 17th day of July, 2014, hereby

ORDERED, ADJUDGED, AND DECREED, that the transcript of the May 23, 2014 hearing, is the binding Agreement of the parties; and it is further

ORDERED, ADJUDGED, AND DECREED, that the parties Agreement shall be governed by the language of the transcript attached herein, and said transcript of the Agreement shall be incorporated, but not merged into this Order of Court; and it is further

ORDERED, ADJUDGED, AND DECREED, that the parties shall equally divide the costs of the transcript, and shall pay the costs of the transcript within 10 days of the date of this Order.

In the two years that followed, Mr. Niazi insisted that Ms. Khan was obligated to refinance the mortgage on the property so that she would become the sole borrower on the loan, and he would be removed from any financial responsibility for the property. Ms. Khan made the payments on the existing mortgage, but she disputed that she was obligated to refinance the property.

On August 10, 2016, Mr. Niazi filed a “Second Motion to Order Sale and Partition of the Marital Home and Request for Attorney Fees.” He argued: “Implicit in the agreement was that [Ms. Khan] would take steps to refinance the home mortgages and relieve [Mr. Niazi] of the responsibility that he has under the loans for the home. The loans

for the home are solely in the name of [Mr. Niazi] and therefore, [Ms. Khan] while making the mortgage payments, has not ‘assumed all responsibility for the property.’”

The court held a hearing on November 7, 2016, and it stated that it was implicit in the agreement that Ms. Khan would refinance. Counsel for Ms. Khan, while arguing that Ms. Khan never agreed to refinance, stated that she had attempted to do so, but she was unsuccessful due to extensive mold problems in the house. In any event, counsel argued that the court did not have the authority to order a sale of the home, which at that time was solely owned by Ms. Khan. The court agreed that it did not have the authority to order a sale of the home, and it denied Mr. Niazi’s motion, stating that it was “somewhat confident” that it would see the parties again with other pleadings.

As predicted, on November 14, 2016, Mr. Niazi filed an Amended Petition for Contempt of Court, claiming that Ms. Khan was in contempt for failing to refinance the mortgage on the home, as mandated in the circuit court’s July 2014 Order. On December 30, 2016, Ms. Khan filed an Answer to the Amended Petition for Contempt of Court, denying the allegations in the petition.

A hearing on Mr. Niazi’s Amended Petition for Contempt was held before a Magistrate. On April 5, 2017, the Magistrate issued a Report and Recommendations. The Magistrate made findings of fact, including:

3. [Mr. Niazi] complains specifically that [Ms. Khan] is in contempt of court for her failure to refinance the mortgage on the former marital home. Counsel for [Mr. Niazi] placed the parties’ agreement on the record . . . at the hearing on May 23, 2014. The agreement is recited on pages 4 and 5 of the transcript. It reads: “Your Honor, the parties currently own a home, which was the marital home, . . . in Ellicott City, Maryland. That home currently is empty. It was being used pursuant to the use and possession order by Ms.

Khan. [Mr. Niazi] has agreed to waive any and all rights and sign a quit claim deed with respect to that property in favor of Ms. Khan. But he is relinquishing all rights and interest to that property. It's my understanding that as a result of that, Ms. Khan will immediately assume – assume all responsibility for that property, including but not limited to, the mortgage, taxes, and any other bills and expenses, lawn care, maintenance, home owner's association fees, and any expenses beyond insurance or repairs that are currently being made to that property are assigned to Ms. Khan. Or that if they're not assigned, that he will make sure that any proceeds that are issued for the repairs to that property are immediately made available to Ms. Khan. He'll make no efforts whatsoever to interfere with the insurance proceeds with respect to those repairs. And as of today, both parties are agreeing to waive any and all monetary claims which were made, or could have been made or asserted today or prior to today.”

4. Counsel for [Mr. Niazi] concluded his recitation of the agreement on pages 4 and 5 of the transcript by stating: “That's the sum and substance of the agreement, Your Honor.”

5. Although later in the transcript, the Plaintiff, [Ms. Khan], who was not represented by an attorney at the hearing in May 2014, in discussing her understanding of her ability to receive the insurance proceeds for repairs to the home, also stated: “Also, I will attempt to refinance. I had – I had available mortgage way back in last July. The deal didn't go through. So, I am – I may need some time to bring myself to maybe refinance to get myself all the mortgage, of which Mr. Niaz[i] holds at this time. But that will take some time. But in the meantime, I assume responsibility upon signing of the quit claim deed, and upon signing of assignable rights from the Encompass that I will assume all responsibility of the property.”

6. It is clear from a plain reading of the transcript, that [Ms. Khan's] refinance of the loans on the property were not part of the agreement placed on the record. Even if the parties had meant for that parameter to be part of their agreement, the language of the transcript regarding the refinance, which language is incorporated into the court's order of July 2014, is not sufficiently clear and precise that [Ms. Khan's] failure to refinance the loans on the property constitute willful contempt of the court's order.

7. Further, Plaintiff, [Ms. Khan] did make two attempts to refinance the home after the May 2014 hearing and both of those attempts to refinance failed. Plaintiff has pursued litigation with the insurance company to pay for necessary repairs to the home for damage which includes water damage and perhaps mold damage as well.



8. In one effort, [Ms. Khan] was denied a mortgage because of her credit history. In another effort, she was denied a mortgage because of the condition of the home and its need for repairs.

9. [Mr. Niazi] has failed to prove that [Ms. Khan] is in willful contempt of court order.

The Magistrate then recommended that Mr. Niazi’s petition for contempt be denied.

On April 20, 2017, the circuit court issued the following Order (“Contempt Order”) denying Mr. Niazi’s Amended Petition for Contempt:

UPON CONSIDERATION of the pleadings filed in the premises and the testimony received in a hearing on the 4th day of April, 2017, before the Magistrate, her report having been read and considered, it is, then, by the CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND, this 19th day of April, 2017,

ORDERED, ADJUDGED, AND DECREED, that the Defendant’s Petitions . . . for Contempt . . . are hereby denied.

On August 22, 2017, Ms. Khan filed a “Motion to Modify Court Agreement or in the Alternative Specific Performance for Breach of Contract or Justifiable Reliance with Exhibit and Request for Hearing.” On October 11, 2017, the court denied Ms. Khan’s motion because she “ha[d] not complied with this Court’s July 18, 2014 Order,” which required her to refinance the parties’ marital home. The court awarded Mr. Niazi “reasonable attorney fees” to be determined “upon the submission of a Fee Petition or Line regarding fees with supporting documentation.”

On October 19, 2017, Ms. Khan filed a motion to alter or amend or revise, and Mr. Niazi filed his opposition. Ms. Khan argued that the court’s April order on the contempt

petition held that she was not required to refinance and this judgment was unreviewable on the grounds of res judicata and collateral estoppel.

Mr. Niazi argued that the Magistrate’s factual findings were not adopted by the circuit court in its order. Further, he argued that, pursuant to the July 2014 Order, in exchange for his signing a quitclaim deed and relinquishing to Ms. Khan all of his rights and his interest in the marital home, Ms. Khan was required to assume all responsibility for the property, including, but not limited to, the mortgage. He asserted that the agreement included the understanding that Ms. Khan would refinance the mortgage on the marital home and relieve Mr. Niazi of the responsibility of having to carry the burden of the mortgage on his credit.

On November 17, 2017, the court denied Ms. Khan’s motion for reconsideration. As discussed, *infra*, Ms. Khan appealed to this Court.

On December 22, 2017, Mr. Niazi filed a Motion to Enforce and/or Modify the Settlement Agreement, arguing: “Implicit in the [July 18, 2014] agreement was that [Ms. Khan] would take steps to refinance the home mortgages and relieve [Mr. Niazi] of the responsibility he has under the loans for the home.” Mr. Niazi requested “the assistance of the Court in ordering [Ms. Khan] to refinance the mortgages within a specified time period or grant a judgment to [Mr. Niazi] in the amount of the outstanding mortgage loans.”

On January 2, 2018, Ms. Khan filed an Opposition to Mr. Niazi’s Motion to Enforce and/or Modify the Settlement Agreement. In her opposition, Ms. Khan argued that the circuit court’s order of April 20, 2017, denying Mr. Niazi’s Amended Petition for Contempt, was a final order not subject to further review or modification under the

doctrines of res judicata and collateral estoppel because the circuit court adopted the Magistrate’s finding that Ms. Khan was not in violation of the parties’ agreement for failing to refinance the property.

The circuit court held hearings on Mr. Niazi’s Motion to Enforce and/or Modify the Settlement Agreement on several days between February 22 and April 24, 2018. At the April 22, 2018, hearing, the court heard argument and addressed Ms. Khan’s argument that Mr. Niazi was collaterally estopped from seeking enforcement of any obligation to refinance the mortgage on the property because that issue had been resolved in the Contempt Order, as follows:

[COUNSEL FOR MR. NIAZI]: We’ve also been at this in the hearing in February with regards to the Magistrate’s findings. And argued this and case law was put on regarding the fact that the Magistrate’s findings were not case law and that she also - - I’m sorry, an[d] also not binding to the extent that the Magistrate Judge cannot make findings with respect to interpreting Court Orders, which is what was attempted to be placed into evidence at the last hearing and now it’s the same thing being attempted again.

[COUNSEL FOR MS. KHAN]: Yes, but Your Honor, Your Honor had ratified . . . and accepted her recommendations. That became the Order of this Court, it became the Order of Your Honor, it became the law of this case and we would like to offer that into evidence to establish that for the record that Your Honor affirmed her recommendations, one of which is that [Ms. Khan] had no obligation to refinance that property.

[COUNSEL FOR MR. NIAZI]: That - - I’m sorry. That was not - -

THE COURT: Well I thought it was a - - that she was not in contempt.

[COUNSEL FOR MR. NIAZI]: That is correct. That’s the only Order that was issued.

[COUNSEL FOR MS. KHAN]: Your Honor, she was found [not] in contempt for two reasons. One reason was that she had no obligation to refinance. And two, because she wasn’t able to refinance after having made

attempts to do so. And that's in both of the recommendations and so, and Your Honor adopted the recommendations and there were no exceptions made to the recommendations.

So Your Honor I think this is critical because it is the law of the case and because I believe and would argue that they were collaterally estopped from challenging it. And I would also point out, Your Honor, that that's the ultimate decision from this Court. This is in the Court record. I think Your Honor could take judicial notice of it. If you decide that it's not the law of the case and that they're not collaterally estopped, I mean this is something I would want to establish for the record for appeal purposes.

THE COURT: Okay, you can establish it. I'm going to deny it. It is the law of the case that she was found not in contempt as a willful violation of the Court order. And I explained last time, we're not here for a contempt because your client tried to raise that last time. We are here to enforce the agreement, whatever that agreement is. You can do it by way of a specific performance, i.e., enforce this agreement or that you willfully violated this Court Order as a contempt.

She was not found in contempt which is why [Mr. Niazi's counsel] filed what he filed which is why we were here. I can accept the fact. I'm not saying it's collaterally estopped because I'm not here on a contempt. I'm here to enforce the agreement that was placed on the record. It's clear it boils down to interpretation of the phrase or what that agreement is. It's clear to this Court.

But, it's not collateral estoppel because we're not here on a contempt. I'll accept the fact, I may even be the one that signed the Order that said she's not in contempt.

[MS. KHAN'S COUNSEL]: You did.

THE COURT: Okay, I can take notice of that.

[MS. KHAN'S COUNSEL]: Okay, Your Honor - -

THE COURT: Collateral estoppel is not my issue.

On June 15, 2018, the court issued the following Order:

UPON CONSIDERATION of the Defendant's Motion to Enforce and/or Modify Settlement Agreement, (DE #642/000) and the testimony and

exhibits received in the hearing, and the Court having held the matter sub curia, it is, then, by the CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND, this 15th day of June, 2018,

FOUND, that the July [18], 2014 agreement included a condition that the Plaintiff refinance the mortgage on the property even though that condition was not recited into the record; and it is further

FOUND, that [Ms. Khan’s] comments to the Court clearly indicate her understanding that the mortgage was going to be refinanced to remove [Mr. Niazi’s] name from that obligation; and it is further

FOUND, that [Ms. Khan] has failed to refinance the mortgage and has the ability but refuses to do so; and therefore, it is

ORDERED, ADJUDGED, AND DECREED, that the Plaintiff shall refinance the home within ninety (90) days of the date of this Order or be subject to further sanction by this Court; and

All subject to further Order of this Court.

On July 10, 2018, Ms. Khan noted an appeal of the June 15, 2018, Order to this Court.<sup>3</sup> On August 28, 2018, this Court granted Ms. Khan’s motion to stay enforcement of the circuit court’s June 15, 2018, order, subject to further order of this Court.

On July 24, 2018, pursuant to the court’s order of October 5, 2017, authorizing an award of reasonable attorney’s fees, Mr. Niazi filed a Request for Order of Attorney Fees in the amount of \$17,255. On August 21, 2018, the circuit court issued an Order granting Mr. Niazi’s Request for Attorney’s Fees, noting that it had “received no opposition from [Ms. Khan].”

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<sup>3</sup> Ms. Khan’s appeal of the June 15, 2018, Order is at issue in this appeal; it was docketed as *Lubna Khan v. Zubair Khan Niazi*, No. 873, September Term, 2018.

On August 31, 2018, Ms. Khan filed a “Motion to Reconsider and Vacate Order Awarding Attorneys Fees,” stating that she had filed an opposition to Mr. Niazi’s Request for Attorney’s Fees. On September 4, 2018, the circuit court issued an Order, stating that “[t]he Court was unaware of the Opposition and Request for [F]ees filed by Plaintiff,” and ordering that any enforcement of its August 21, 2018, Order awarding attorney’s fees to Mr. Niazi be stayed. On September 24, 2018, the circuit court ordered that Ms. Khan’s Motion to Reconsider and Vacate Order Awarding Attorney’s Fees be set for a hearing.

On October 3, 2018, Ms. Khan filed a Notice of Appeal of the circuit court’s orders of August 21, 2018,<sup>4</sup> September 4, 2018, and September 24, 2018. This appeal, No. 2399, September Term 2018, was consolidated with the appeal of the June 15, 2018, Order, No. 873, September Term, 2018.

### **STANDARD OF REVIEW**

In reviewing an action tried without a jury, we “[w]ill 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.” Md. Rule 8-131(c). We “defer to the trial court’s findings of fact, and will not disturb those findings unless they are clearly erroneous.” *Kunda v. Morse*, 229 Md. App. 295, 303 (2016). The trial court’s application of law to the facts, however, we review de novo. *Id.*

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<sup>4</sup> Ms. Khan’s Notice of Appeal identified the court’s Order of August 21, 2018, as the Order of “August 22, 2018.”

## DISCUSSION

### I.

Ms. Khan contends that the circuit court erred or abused its discretion in its June 2018 Order when it found that the parties' agreement included a condition that she refinance the mortgage on the Property. She asserts, as she did in her prior appeal in this Court, that the parties' agreement did not include a condition that she refinance the mortgage. She further asserts that the circuit court previously made such a finding when it denied Mr. Niazi's petition for contempt, and therefore, the circuit court erred in finding that modification or enforcement of the parties' agreement was not precluded by the doctrines of res judicata and collateral estoppel.

### A.

#### **Relevant Events Since Appeal**

Before addressing the issues presented by Ms. Khan, we will address relevant events that have occurred since Ms. Khan noted her appeal. On December 21, 2018, this Court issued its opinion in Ms. Khan's appeal of the circuit court's October 2017 Order, in which the circuit court denied Ms. Khan's Motion to Modify Court Agreement or in the Alternative Specific Performance for Breach of Contract or Justifiable Reliance on the ground that Ms. Khan had not complied with the 2014 Order, which required her to refinance the Property. *Khan v. Niazi*, No. 1804, September Term 2017 (filed December 21, 2018), Slip op. at 7. The appeal in that case raised similar claims as those raised in this appeal.

In that appeal, we noted that this case had a “long and torturous past.” We ultimately determined, however, that it was in the interest of justice to remand the case given the Magistrate’s April 4, 2017, finding that the agreement placed on the record did not require Ms. Khan to refinance, the lack of specificity in the court’s April 19, 2017, Order denying the petition for contempt, and the court’s subsequent October 2017 Order stating that she was required to refinance. The remand was to give the circuit court the opportunity to clarify its rulings, “taking into account the Magistrate’s findings of fact, and the circuit court’s order of April 14, 2017, and October 5, 2017.” *Id.*, slip op. at 19–20.

On April 15, 2020, after holding a hearing, the circuit court issued a Memorandum Opinion clarifying its reasoning. The court explained:

While the Court’s April 14, 2017 Order may seem paradoxical to the Court’s October 5, 2017 Order, discussed *infra*, the Court seeks to explain the issuance of the April Order. As argued by [Ms. Khan’s] counsel in closing argument and as found by the Magistrate, [Ms. Khan] had made two attempts to refinance the home. While both attempts were unsuccessful, [Ms. Khan’s] attempts are antithetical to a finding of contempt. [Ms. Khan] did not act willfully or intentionally to violate the Court’s Order, the very finding that must be made to hold a person in contempt. [Ms. Khan’s] inability to secure a mortgage for other various reasons cannot be the basis for the finding of a contempt. Further, neither the Magistrate’s Report and Recommendations nor the April 14, 2017 Order made any reference to the merits of the refinancing argument, thereby exonerating or demanding that [Ms. Khan] refinance the home. The Magistrate’s Report and Recommendations simply stated that the language contained on the record pertaining to refinancing was not clear or precise enough to warrant a finding of contempt. Accordingly, the Court’s only logical finding could be that of denying the Defendant’s Petition for Contempt.

The court noted that, contrary to Ms. Khan’s contention,

the Court has not made “a finding of fact that [Ms. Khan] was not required to refinance under the July 18, 2014 Order.” . . . Rather, in terms of [Mr. Niazi’s] Petition for Contempt, the Magistrate found



It is clear from a plain reading of the transcript, that [Ms. Khan’s] refinance of the loans on the property were not part of the agreement placed on the record. Even if the parties had meant for that parameter to be part of their agreement, the language of the transcript regarding the refinance, which language is incorporated into the court’s order of July 2014, is not sufficiently clear and precise that [Ms. Khan’s] failure to refinance the loan on the property constitute willful contempt of the court’s order.

Magistrate’s R. & R. ¶ 6 (Apr. 5, 2017). [Ms. Khan] asserts that [Mr. Niazi] is barred from re-litigating the refinance issue because of the Court’s April 14, 2017 Order. [Ms. Khan] raises defenses of *res judicata* and collateral estoppel, alleging that the Order stated that “[Ms. Khan] was not required to refinance under the consent agreement” and because “[Mr. Niazi] did not file an exception or [seek] an appeal,” the judgment has been enrolled and cannot be appealed. Pl.’s Opp’n, ¶ 1 (Jan. 2, 2018). [Ms. Khan’s] argument fails because the Court’s order did not find that [Ms. Khan] was not required to refinance under the consent agreement, but rather that the language was not clear enough to find that [Ms. Khan’s] failure to refinance the property would be considered a contemptuous action. Accordingly, the Court finds that the issues of *res judicata* and collateral estoppel are not applicable at the instant matter.

Further, the Court notes that the Magistrate’s finding of fact is accurate as to the literal words contained within the four corners of the transcript. However, the Court also notes that the agreement placed on the record, contains in part, that [Ms. Khan]

will immediately assume -- *assume all responsibility for that property, including but not limited to*, the mortgage, taxes, any other bills and expenses, lawn care, maintenance, home owner’s association fees, and any expenses beyond insurance or repairs that are currently being made on that property.

Tr. 4-5 (May 23, 2014). (emphasis added). While [Mr. Niazi’s] counsel did not explicitly state that [Ms. Khan] shall refinance, the Court agrees with [Mr. Niazi] that refinancing—or some assumption of the mortgage – was implicit in the agreement placed upon the record. Further, the Court notes that shortly after [Mr. Niazi’s] counsel recited the agreement – which both parties understood was to be fleshed out and filed with the Court – [Ms. Khan] stated,

Also, I will attempt to refinance. I had -- I had available mortgage way back in last July. The deal didn't go through. So, I am -- I may need some time to bring myself to maybe refinance to get myself, all the mortgage, of which [Mr. Niazi] holds at this time. But that will take some time.

Tr. 9 (May 23, 2014). Upon review of the transcript, it is [Ms. Khan] who first raised the matter of refinance, which this Court finds as indicative of the parties' intent that the statement, "assume all responsibility for that property, including but not limited to, the mortgage," meant that [Ms. Khan] would, in some manner, assume the mortgage, most likely achieved through financing.

It continued:

"[Ms. Khan's] own testimony at the May 23, 2014 hearing (in which she stated she would refinance), the mortgagee's letter which provides that just a month later, in June 2014, both parties requested that [Ms. Khan] assume the note and release [Mr. Niazi], and [Ms. Khan's] own testimony at the April 4, 2017 contempt hearing (in which she stated that she attempted to refinance the house twice), confirms to this Court that the intent of the parties was for [Ms. Khan] to refinance the mortgage into her name. While the Court finds that the word "refinance" was not recited on the record at the May 23, 2014 hearing, [Ms. Khan's] comments and actions clearly indicate to the Court that her understanding—and the parties' intent— was that the mortgage was going to be refinanced to remove [Mr. Niazi's] name from the obligation of the mortgage.

It would only seem reasonable that such an action would take place as the situation that has been created is unsustainable. The agreement placed on the record on May 23, 2014, as noted *supra*, stated that in exchange for the quit claim deed, [Ms. Khan] would immediately assume all responsibility for, including but not limited to, the mortgage. The agreement did not say that [Ms. Khan] was to only *pay* for the mortgage; therefore, a reasonable person would conclude that the terms of the agreement included transferring the mortgage from [Mr. Niazi's] name to [Ms. Khan's] name. Further, there should be no reason that [Mr. Niazi's] credit and liability should take a hit if and when [Ms. Khan] is unable to make timely mortgage payments.

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In sum, the Court finds that this difficult situation cannot be sustained, nor should i[t] have even happened in the first place. The evidence shows that the parties' intent was for [Ms. Khan] to refinance the mortgage as part of her assumption of the mortgage. Further, the Court

finds that there are no previous orders that provided disposition of the refinancing issue. Accordingly, the Court reaffirms the final order, denying [Ms. Khan’s] motion to modify because [Ms. Khan] has failed to refinance the home.

**B.**

**Res Judicata and Collateral Estoppel**

With that additional history of the case, we begin with Ms. Khan’s claim that, based on the contempt order, the court was precluded by res judicata and collateral estoppel from addressing whether the 2014 Order included a condition that she refinance. To do that, we first consider the scope of the contempt proceedings.

“A contempt proceeding, even though it may grow out of or be associated with another proceeding, is ordinarily regarded as a collateral or separate action from the underlying case[.]” *Unnamed Attorney v. Atty Grievance Comm’n*, 303 Md. 473, 483 (1985). A proceeding for civil contempt is “intended to preserve and enforce the rights of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.” *Marquis v. Marquis*, 175 Md. App. 734, 745–46 (2007) (quoting *State v. Roll and Scholl*, 267 Md. 714, 728 (1973)). “Civil contempt proceedings are generally remedial in nature, and are intended to coerce future compliance[.]” *Id.* at 746 (quoting *Bahena v. Foster*, 164 Md. App. 275, 286 (2005)). A party cannot “be held in contempt of a court unless the failure to comply with the court order was or is willful.” *Bahena*, 164 Md. App. at 285 (quoting *Dodson v. Dodson*, 380 Md. 438, 452 (2004)). In this context, willfulness is “action that is ‘[v]oluntary and intentional, but not necessarily malicious.”’ *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 451 (2008) (quoting

Black’s Law Dictionary 1630 (8th ed. 2004)), *cert. granted*, 408 Md. 149, *appeal dismissed*, 409 Md. 413 (2009). “[W]hile the failure to obey a court order may constitute a contempt if the failure is deliberate, ‘[i]t is not the mere failure itself that is the contempt . . . but rather the intent behind and effect of that failure.’” *Tobin v. Marriott Hotels, Inc.*, 111 Md. App. 566, 576 (1996).

Here, the Magistrate’s findings of facts appeared to include two findings that precluded a finding of contempt. First, the Magistrate found that refinancing was “not part of the agreement placed on the record.” The Magistrate found that, even if the parties meant for that to be part of the agreement, it was not “sufficiently clear and precise that [Ms. Khan’s] failure to refinance the loans on the property constitute willful contempt of the court’s order[.]” noting that Ms. Khan had made two unsuccessful attempts to refinance the Property after the May 2014 hearing. Accordingly, the Magistrate found that Mr. Niazi had failed to prove that Ms. Khan was in “willful contempt” of the July 2014 Order.

The circuit court’s order stated that it had “read and considered” the Magistrate’s Report. It then denied the petition for contempt without further explanation. On remand from the prior appeal, however, the court explained that it denied the petition because, based on Ms. Khan’s attempts to refinance, there was no willful violation of the terms of the July 2014 Order.

With that backdrop, it is clear that Ms. Khan’s claims regarding *res judicata* and collateral estoppel are without merit. “The doctrine of collateral estoppel precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action.” *Shader v. Hampton Improvement Ass’n, Inc.*, 217 Md. App.

581, 605 (2014), *aff'd*, 443 Md. 148 (2015). To establish the applicability of collateral estoppel, a party must show: (1) that “the issue decided in the prior adjudication [is] identical [to] the one presented in th[is] action”; (2) that there was “a final judgment on the merits”; (3) that the party against whom collateral estoppel is asserted was “a party or in privity with a party to the prior adjudication”; and (4) that “the party against whom [collateral estoppel] is asserted [was] given a fair opportunity to be heard on the issue.” *Id.*

“Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because” the judgment already rendered “is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit.” *Powell v. Breslin*, 430 Md. 52, 63 (2013) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)). The doctrine “restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly.” *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005). Res judicata applies when the following requirements are met: “(1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and (3) that there was a final judgment on the merits.” *Davis v. Wicomico Cty. Bureau*, 447 Md. 302, 306 (2016) (quoting *Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 392 (2000)).

The doctrines of collateral estoppel and res judicata are inapplicable here. Contrary to Ms. Khan’s assertion, the Contempt Order did not decide the underlying merits of the

dispute as to whether Ms. Khan had an obligation under the July 2014 Order to refinance the mortgage for the property. Rather, the court determined that there was no willful violation of any obligation to refinance. Because Mr. Niazi’s Motion to Enforce and/or Modify Settlement Agreement was not a re-litigation of the same claim or identical factual issue that the court had decided in the contempt proceeding, the doctrines of collateral estoppel and res judicata did not preclude the circuit court from considering Mr. Niazi’s request to modify or enforce the agreement.

**C.**

**Obligation to Refinance**

We turn next to whether the circuit court’s interpretation of the parties’ agreement regarding the requirement to refinance the Property was erroneous. “Maryland adheres to the principle of the objective interpretation of contracts.” *Clancy*, 405 Md. at 557 (quoting *Cochran v. Norkunas*, 398 Md. 1, 16 (2007)). This Court interprets a contract by “consider[ing] the contract from the perspective of a reasonable person standing in the parties’ shoes at the time of the contract’s formation.” *Ocean Petroleum Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010). We “consider[] the plain language of the disputed provisions in context, which includes not only the text of the entire contract but also the contract’s character, purpose, and ‘the facts and circumstances of the parties at the time of execution.’” *Id.* at 88 (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388 (1985)).

Here, as the circuit court noted, the agreement placed on the record states that Ms. Khan will “assume all responsibility for the Property, including but not limited to the

mortgage.” That refinancing was implicit in the agreement is evidenced by Ms. Khan’s statement that she was going to refinance, although “that will take some time.” As the circuit court stated at the April 11, 2018, hearing:

You had this agreement that was placed on the record. It was clear even by her own comments about needing time to refinance, that that was part of this no matter what she says, and I don’t find her comments here to be credible at all.

So it is clearly from what I see, intended on a refinance and she’s a very intelligent woman because she obviously owns two other properties. She’s a physician and now she’s an attorney. So she’s not a novice. **So clearly, it’s implicit, and that even by her own comments refinancing was part of this agreement even though they’re trying to say, [oh] it’s not.**

(Emphasis added.)

Based upon our review of the record, we conclude that the circuit court’s finding in the June 15, 2018, Order, that the parties’ agreement included a condition requiring Ms. Khan to refinance the mortgage for the Property, was not erroneous. We affirm the court’s ruling in this regard and lift the stay on the ruling previously imposed.

## II.

Ms. Khan contends that the circuit court’s rulings demonstrate an “unyielding predetermined disposition” in favor of Mr. Niazi. She asserts that this warranted the judge’s “recusal and reversal of any grant of attorney fee, and reversal of the orders of October 5, 2017, and 6/15/18.”

“The standard in determining whether recusal of a judge is warranted is an objective one – ‘whether a reasonable member of the public knowing all [of] the circumstances would be led to the conclusion that the judge’s impartiality might be reasonably

questioned.” *Surratt v. Prince George's Cty.*, 320 Md. 439, 465 (1990) (quoting *In re Turney*, 311 Md. 246, 254 (1987)). We review a judge’s decision whether to recuse from a case for an abuse of discretion. *Surratt*, 320 Md. at 465.

Here, Ms. Khan filed, on September 3, 2018, a motion for the judge to recuse himself. The judge denied the request on October 5, 2018. After a review of the record of this case, which has been described as “long and torturous,” we cannot conclude that the judge’s impartiality reasonably could be questioned. The circuit court did not abuse its discretion in denying the motion for recusal.

### III.

On July 24, 2018, Mr. Niazi filed a Request for Attorney’s Fees, arguing that he had incurred \$17,255 in attorney’s fees to respond to “[Ms. Khan’s] consistent filings, what sometimes appears to be legal ramblings, and time consuming hearings.” On August 6, 2018, Ms. Khan filed an “Opposition to Defendant’s Request for Order of Attorney Fee” and “Plaintiff Counterclaim/Motion for Grant of Attorney Fee Under MD Rule 1-341” and “Request for Hearing MD R 2-311(f).”

On August 21, 2018, the circuit court issued an Order granting Mr. Niazi’s Request for Attorney’s Fees, noting that it had “received no opposition from [Ms. Khan].” On August 31, 2018, Ms. Khan filed a “Motion to Reconsider and Vacate Order Awarding Attorneys Fees,” notifying the court that she had, in fact, filed an opposition to Mr. Niazi’s Request for Attorney’s Fees.

On September 4, 2018, the circuit court issued an Order, stating that “[t]he Court was unaware of the Opposition and Request for [F]ees filed by Plaintiff.” Additionally,



because this Court had granted Ms. Khan’s motion to stay the operation of the court’s June 15, 2018, Order,<sup>5</sup> the court ordered that any enforcement of its August 21, 2018, Order awarding attorney’s fees to Mr. Niazi be stayed pending a ruling by the Court of Special Appeals. On September 24, 2018, the circuit court ordered that Ms. Khan’s Motion to Reconsider and Vacate Order Awarding Attorney’s Fees be set for a hearing.

On January 10, 2019, following a hearing, the circuit court vacated its order awarding attorney’s fees to Mr. Niazi in the amount of \$17,255. The court indicated that it intended “to issue a new order,” and it ordered that a new hearing be set “for remand” and attorney’s fees. Because the orders on which Ms. Khan appealed are no longer in effect, this issue is not properly before us.

“A case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court or when the court can no longer fashion any effective remedy.” *Dept. of Human Resources, v. Roth*, 398 Md. 137, 143 (2007) (quoting *In re Kaela C.*, 394 Md. 432, 452 (2006)). “[A]ppellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course.” *La Valle v. La Valle*, 432 Md. 343, 351–52 (2013) (quoting *State v. Ficker*, 266 Md. 500, 506–07 (1972)).

Here, because the circuit court vacated the order of August 21, 2018, awarding attorney’s fees to Mr. Niazi, that order, and the other orders relating to that order, do not

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<sup>5</sup> As indicated, this order, which we have affirmed, ordered Ms. Khan to refinance the home within 90 days.

present issues on which this Court can provide relief to Ms. Khan on appeal. Case No. 2399, therefore, is dismissed as moot.

**JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IN CASE NO. 873 AFFIRMED. THE STAY OF THE OPERATION OF THE JUNE 15, 2018, ORDER OF THE CIRCUIT COURT IS LIFTED, EFFECTIVE THE DATE THE MANDATE IS ISSUED. APPEAL IN CASE NO. 2399 IS DISMISSED AS MOOT.**

**COSTS TO BE PAID BY APPELLANT.**