UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0901

September Term, 2014

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100 HARBORVIEW DRIVE CONDOMINIUM COUNCIL OF UNIT OWNERS

v.

PENTHOUSE 4C, LLC

Meredith,
Nazarian,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: August 20, 2015

In early 2009, Appellee Penthouse 4C, LLC ("PH4C"), filed a complaint alleging that Appellant, 100 Harborview Drive Council of Unit Owners ("Harborview" or "the Council"), failed to properly maintain the common elements of its condominium building to prevent water damage and mold. The resulting arbitration award provided Harborview with two years in which to complete certain repairs to the roof system and façade of the building. At the expiration of that time period, the work was not complete, and PH4C filed a petition for civil contempt. Although the record tells a story of Harborview's efforts to comply with the arbitration award in the face of construction delays and other setbacks compounded by an economic recession, the focus of the contempt proceedings was Harborview's failure to take even initial steps to remove and replace the building's exterior balcony railings as required by the arbitration award and subsequent court orders.

On July 24, 2014, the Circuit Court for Baltimore City entered a Memorandum and Order holding Harborview in constructive civil contempt and awarding compensatory damages to PH4C. This appeal followed.

Harborview presents the following issues for review (reordered and renumbered for organizational purposes):

I. Whether the circuit court was clearly erroneous in its finding that appellant committed willful violations of the court's June 5, 2012, and June 25, 2012, Orders.

II. Whether the circuit court erred as a matter of law by imposing a finding of civil contempt where appellant had no present ability to purge the contempt.

III. a) Whether the circuit court was clearly erroneous in finding exceptional circumstances and erred as a matter of law in awarding monetary damages to appellee.

b) Whether the circuit court was clearly erroneous in finding that appellee incurred monetary damages from appellant's failure to make the ordered repairs within two years of the arbitration award.

IV. Whether the circuit court erred as a matter of law in striking appellant's counterclaim for injunctive relief and money damages and its demand for jury trial.

V. Whether the circuit court erred as a matter of law in holding that Mr. Ancel is the actual party in interest.

We agree with the circuit court that Harborview remains obligated to complete the necessary repairs and that substantial compliance with the order is still possible. Accordingly, we find no error in the circuit court's finding of constructive civil contempt. Additionally, because PH4C is unable to resort to any adequate form of self-help to prevent the continued accrual of water damage to the condominium unit, we agree with the circuit court that the extraordinary circumstances predicate to an award of compensatory damages in a contempt action are present. Similarly, we find no error in the decisions of the circuit court to strike Harborview's request for jury trial and counterclaim. We affirm.

BACKGROUND

Harborview is an unincorporated condominium association formed pursuant to the 100 Harborview declaration and bylaws and the Maryland Condominium Act ("MCA"). Maryland Code (1974, 1988 Repl. Vol., 1993 Supp.), Real Property Article ("RP") § 11-101 *et seq*.[1] Pursuant to Harborview's Bylaws and RP § 11-108.1, the Council is

[1] Citation to the 1993 Supplement reflects the MCA at the time that the 100 Harborview Condominium association was formed. The current MCA is codified in Maryland Code (1974, 2010 Repl. Vol., 2014 Supp.) Real Property Article § 11-101 *et seq*.

responsible to all unit owners for the maintenance and repair of all of the common elements in the building.

Unit owner PH4C is a single member limited liability company ("LLC") formed on March 28, 2007, for the purpose of owning unit Penthouse 4C in the 100 Harborview Condominium building. Mr. James W. Ancel is the sole member of the LLC and was the primary resident of Penthouse 4C. However, Mr. Ancel and his family have been unable to reside in the unit since 2010 due to the damage caused by water infiltration into his unit.

Harborview engaged Construction Systems Group, Inc. ("CSG") to perform visual and invasive inspections of the building, and on August 18, 2009, CSG produced a Building Envelope Survey Inspection Report. The Inspection Report detailed "a number of significant issues associated with the window systems, balcony through wall flashings, railings, and main roofs[,]" and made numerous recommendations for rehabilitative repairs to the roof and façade of the condominium building.

Underlying Lawsuit and Arbitration Award

On March 9, 2010, PH4C commenced the underlying litigation by filing a complaint against Harborview and other defendants,[2] alleging breach of fiduciary duty, negligence and violations of the Maryland Consumer Protection Act. The complaint claimed, *inter alia*, that Harborview failed to maintain the building properly, thereby

[2] The original complaint also named individual Council members, at that time, as defendants: Molli Merzach, President; Craig Laudauer, Vice-President; Mike DeLorenzo, At-Large Member; Josh Gordon, Secretary; and, John Cochran, Treasurer. PH4C's August 12, 2011, Amended Complaint dropped the claims against the individual Council members, and they do not participate in this appeal.

causing damage to PH4C from water leaks and exposure to mold. PH4C sought specific performance of Harborview's duties under the Bylaws to perform the required building maintenance.

Harborview moved to compel arbitration pursuant to Article XV of the Bylaws, and the circuit court granted that motion on June 4, 2010. On August 12, 2011, PH4C filed an Amended Complaint dropping the Consumer Protection Act claim and adding a breach of contract claim regarding Harborview's duties under the Bylaws and the condominium Declaration.

A five-day arbitration hearing was held from September 12-16, 2011.[3] On November 28, 2011, the arbitration panel issued its majority arbitration award signed by Judges Alpert and Levitz. The majority panel awarded specific performance, including repairs to the roof system and exterior façade "in accordance with Page 18 of the CSG report," and awarded monetary damages in the amount of $1,252,487.00.[4] The Arbitration panel found, by a preponderance of the evidence, that:

> The CSG report 'confirm[ed] a number of significant issues with the building envelope' and 'revealed issues with the masonry façade, EIFS façade, curtain wall window systems, balcony through wall flashings, railings, and main roofs that will require attention over the coming years.'
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> * * *

[3] Each party chose an arbitrator. Harborview chose the Honorable Dale R. Cathell, and PH4C chose the Honorable Dana M. Levitz. Judge Cathell and Judge Levitz chose the third arbitrator: the Honorable Paul Alpert.

[4] Judge Cathell signed a dissenting award and partial concurrence.

> Because of the condition of PH 4C- water damage, mold growth, and mold deposition, the unit cannot be said to be safe for normal occupancy and a remediation protocol must be followed to correct the problems.

Of the monetary damages, the panel described $433,722.00 as "Mr. Ancel's 'Consequential Costs,'" finding that he sustained damages related alternate living costs and relocation expenses in the amounts of $373,032.00 and $60,690.00 respectively.

Awarding PH4C specific performance, the arbitration panel stated:

> The Council must replace the building's roof system and repair the exterior façade and other matters in accordance with Page 18 of the CSG's report of August 18, 2009. The work must be completed within 2 years. CSG's proposal is attached and incorporated herein.

Page 18 of the incorporated CSG report, in pertinent part, calls for the following rehabilitative work:

- Supplement fall arrest protection system.
- Curtain wall glazing.
- Selective tuckpointing.
- Selective brick replacement.
- Selective masonry flashing installation.
- Masonry expansion joint width modification.
- Selective precast concrete repairs.
- Selective precast concrete cornice stabilization.
- Selective EIFS repairs.
- Selective polyurethane terrace/balcony coating repair.
- Selective balcony drain/pipe connector fitting replacement.
- Selective repair of balcony drywall soffits.
- Install flashing pans under penthouse/Beacon access hatches.
- **Remove and replace railings**.
- Clean façade.
- Apply penetrating sealer to masonry and precast.
- Clean and paint exposed structural steel.
- EIFS/CMU elastomeric coating.
- Paint drywall soffits.

(Emphasis added).

Harborview's Attempts to Modify the Award

On December 15, 2011, Harborview filed a motion for modification and correction with the arbitration panel seeking, among other things, to delete the requirement "to remove and replace all balcony railings." The motion for modification was granted in part, but the request to delete the requirement to remove and replace all balcony railings was denied.

Following PH4C's petition in the Circuit Court for Baltimore City to confirm the arbitration award and enter judgment, Harborview filed another motion to modify the arbitration award along with a petition to vacate the award in part. In its petition, Harborview sought to vacate the monetary damages for alternate living costs and to modify the award of specific performance to incorporate a recently produced construction project manual—which did not require the replacement of *all* of the railings on the condominium building—by arguing that the extent and method of repairs needed was not decided by arbitration panel.

The circuit court held a hearing on both parties' petitions on March 16, 2012, and entered final judgment affirming the arbitration award and denying the motion to modify on June 6, 2012.[5] In its memorandum opinion denying Harborview's requests to modify and to incorporate the construction project manuals, the court explained:

> Both the Amended Complaint and the testimony and exhibits make clear that the issue of how to do the repairs was submitted to the Panel.

[5] The circuit court entered a corrected Order and Final Judgment on June 25, 2012. The corrected order re-confirmed the arbitration award and added a portion of the award regarding cleaning the HVAC system that was inadvertently left out of the circuit court's original award confirmation.

* * *

> [T]here was a consensus on how the work would be done[. I]t would be done in accordance with Page 18 of the Inspection Report. As [Harborview] acknowledges, the Panel "endorse[d] the recommendations of CSG."
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> The Project Manuals were not offered into evidence despite the fact that the Council had distributed them, obtained bids, and selected contractors to perform the work. Not only were the Manuals not offered into evidence, their very existence was not disclosed to the Panel until [Harborview] filed its motion for modification. . . .
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> * * *
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> There was no testimony on the repair of the exterior handrails because Page 18 of the Inspection Report recommends "Remov[al] and replace[ment of the] railings." The recommendation to "remove and replace railings" was one of the recommendations CSG's President said was "still the same," in answer to Judge Levitz's question on what "need[s] to be done [] to make this building water tight." [PH4C] and its experts were satisfied with a replacement of the handrails, thus nothing more needed to be said.
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> [Harborview's] silence [regarding the possibility of simply repairing existing railings] in the face of its expert's answer to Judge Levitz's question cannot be overcome at this stage of the proceedings.

(Footnote omitted).

On July 5, 2012, Harborview filed a timely Notice of Appeal, and on July 1, 2013, we affirmed the decisions of the circuit court in an unreported opinion. We stated:

> [C]ounsel for [Harborview] repeatedly put Page 18 of the Inspection Report at issue—its own exhibit—and asked several witnesses if all of the items listed on Page 18, which *included replacement of the railings*, were necessary to correct the problems with the Building. Mr. Ewell, [Harborview's] own expert, testified in the affirmative. Indeed, he was asked specifically whether the recommendations listed on Page 18 of the Inspection Report, "to make this building watertight," were still the same, and Mr. Ewell agreed that they were. At no point did [Harborview] seek to exclude CSG's recommendation that the Building[']s railings should be removed and replaced, and each expert agreed that the recommendations in the report were correct and "the most comprehensive." Thus, this Exhibit was the evidence the Panel had before it with respect to the recommended repairs and the claim for specific

> performance. Under these circumstances, [Harborview] cannot now argue that the issue of repairs to the whole building was not before the Panel[.]

100 Harborview Drive Council of Unit Owners v. Penthouse 4C, LLC, No. 908, Sept. Term 2012, slip op. at 48-49 (Md. Ct. Spec. App. Jul. 1, 2013) (emphasis in original).[6] We affirmed the judgment of the Circuit Court for Baltimore City entering final judgment and affirming the arbitration award.

Status of Repairs on December 30, 2013

Following the circuit court's July 2012 decision, Harborview satisfied the arbitration award of compensatory damages in full. However, the specific performance was not complete by December 30, 2013 as mandated by the arbitration award and as ratified by the circuit court and this Court. As further discussed *infra*, Harborview entered into a contract with C.A. Lindman to make the necessary repairs to the building roof and façade in February of 2012. However, Harborview had difficulty obtaining funding for the necessary remediations after approximately 15 percent of its unit owners failed to pay a November 2011 special assessment levied to raise funds to fight pending lawsuits and pay for roof repairs. After numerous loan application rejections, Harborview obtained an 18-month construction loan in April of 2013. Harborview and its contractors completed the project manual, obtained permits, and in December 2013, erected scaffolding in various

[6] Pursuant to Md. Rule 1-104(b) an unreported opinion of this Court may be cited "when relevant under the doctrine of the law of the case." The Court of Appeals denied Harborview's Petition for Certiorari in Case No. 908, Sept. Term 2012 on October 21, 2013.

locations around the building. However, as of December 30, 2013, it appears from the record that no significant repair work had yet been undertaken.

Between the December 30, 2013, deadline and the May 19, 2014, contempt hearing, the record shows that the physical work on the remediation project progressed significantly. At the contempt hearing, John Cochran testified that, as of that date, work had begun on various terraces and the west mechanical penthouse; mortar between brick elements and precast was in the process of being replaced; EIFS on the west tower had been removed and replaced; and the west tower roof had been entirely replaced. Nonetheless, he acknowledged that only some of the building's railings were being replaced at the direction of Harborview's engineers, and neither the project manual nor the construction contract contemplated the removal and replacement of all railings.

Contempt Proceedings

On January 3, 2014, after the two-year deadline for the completion of repairs under the arbitration award had passed, counsel for PH4C sent a letter to Harborview's counsel requesting the opportunity to inspect the work on the building and any related documents. The letter states, in part:

> There are still active water leaks in PH-4C at the same locations discussed at the 2011 arbitration hearings, as well as at multiple new locations that have been reported to the Council in writing throughout 2012 and 2013, and it is apparent that all of the aforementioned work has not been completed or completed properly. Indeed, many of the repairs to the exterior façade in all areas remain incomplete, and the Council's own schedules for the work establish that it will not be completed for some time. Accordingly, now that the specific performance deadlines have passed, Penthouse 4C requests the opportunity to inspect the ordered work, and to review any supporting documentation concerning the work, to ensure that it was done, or is being

> done, in accordance with the express terms of the Award and Final Judgment and to determine what work still needs to be completed.
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> * * *
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> [T]here are still active water leaks in PH-4C. As a result, PH-4C remains unsafe for normal occupancy—as determined in the Award—and Mr. Ancel continues to live in alternate housing, awaiting the ability to return to the unit.

The letter also requested that Harborview continue to pay Mr. Ancel's monthly alternative living costs, based upon the amount calculated in the arbitration award, for each month beyond the two-year deadline that Mr. Ancel and his family remain unable to inhabit the unit. By letter dated February 10, 2014, Harborview refused all the requests made by PH4C, stating: "none of the demands set forth in your correspondence are contained with[in] the terms of the arbitration award."

On March 10, 2014, PH4C filed a Petition for Constructive Civil Contempt and to Enforce Judgment Mandating Action Against Harborview. PH4C's petition provided, in relevant part:

> 5. More than two years after receiving the Award, [Harborview] has failed to comply with the court-ordered work, despite the fact that all of its challenges to modify and vacate the Award (made to the arbitrators, this Court, the Court of Special Appeals, and the Court of Appeals) have been denied. In some cases [Harborview] has refused to perform certain repairs mandated in the Award (such as removing and replacing all balcony railings), even though its own engineering expert at the arbitration hearings testified that this work was necessary to make the Building watertight.
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> * * *
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> 7. PH4C's engineering experts with Simpson Gumpertz & Heger ("S[GH]") have confirmed [Harborview's] woeful progress and lack of compliance with the construction specifications set forth in the Award and Final Judgment. SGH has determined that, among other things: (a) [Harborview] failed to

> meet the court-ordered deadline of December 30, 2013 to complete the exterior façade and roof system repairs; (b) [Harborview] only completed about 25% of the exterior façade contract work by December 30, 2013; (c) [Harborview] has willfully ignored certain scopes of work required by the Award and Final Judgment, such as the removal and replacement of all balcony railings; and (d) the additional work required to comply with the Award and Final Judgment will extend the project completion date to mid-2016.

On April 2, 2014, the circuit court issued a show cause order requiring Harborview to submit a written answer to the contempt petition no later than April 22, 2014, and setting the matter for hearing on May 19, 2014. In its answer, filed April 22, 2014, Harborview denied all allegations contained in the petition for contempt and demanded a jury trial on "all claims asserted by PH4C in its Petition."

PH4C moved to strike Harborview's demand for jury trial two days later on April 24, 2014, citing *Bryant v. Howard County Department of Social Services*, for the proposition that a "defendant in a constructive civil contempt action is not entitled to a jury trial." 387 Md. 30, 47-48 (2005). PH4C further argued that "the only fact finding required at the hearing is whether [Harborview] has complied with the Award and Final Judgment[,]" and that submitting such limited fact-finding to a jury in a civil contempt proceeding is contrary to Maryland law.

Harborview responded, on May 12, 2014, by filing an opposition to PH4C's motion to strike and by filing a Counterclaim for Injunctive Relief and Money Damages and Demand for Jury Trial. Harborview's request for injunctive relief stated, in pertinent part:

> 10. The Condominium has repeatedly requested access to the unit to maintain, repair, or replace common elements. . . .

> 11. To date, Penthouse 4C has failed and refused to allow [Harborview] access. . .
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> * * *
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> 15. [Harborview] has the right to maintain, repair and replace the sixteen storm drains above the ceiling of Penthouse 4C, the exterior building cladding, and the terraces and balconies surrounding the unit. This right will be irrevocably injured if Penthouse 4C does not provide access to the unit as required by the Governance Documents . . . .

On April 10, 2014, both parties, at the direction of the court, submitted memoranda outlining the scope of the show cause hearing, after which the court entered an order limiting the scope of the May 19, 2014, hearing. The order provided:

> **ORDERED** that the scope of the show cause hearing for constructive civil contempt shall be limited to the issue of whether Defendant/Judgment Debtor 100 Harborview Drive Council of Unit Owners should be held in contempt for failing to comply with Majority Arbitration Award dated November 24, 2011 ("Award"), and subsequently confirmed by this Court in a Corrected Order and Final Judgment dated June 25, 2012 ("Final Judgment"); and it is further
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> **ORDERED** that Defendant/Judgment Debtor 100 Harborview Council of Unit Owners shall not present any evidence or testimony at the show cause hearing to collaterally attack the Award and Final Judgment; however, Defendant/Judgment Debtor 100 Harborview Drive Council of Unit Owners may present evidence or testimony to explain why a finding of contempt should not be entered and Plaintiff/Judgment Creditor Penthouse 4C, LLC shall be permitted to present rebuttal evidence or testimony; and it is further
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> **ORDERED** that Plaintiff/Judgment Debtor Penthouse 4C, LLC shall not present any evidence or testimony at the show cause hearing regarding any collateral issues, including, but not limited to, the interior redecorating project, verification of the specific performance repairs, additional alternate living costs.

On May 19-21, 2014, the circuit court held the civil contempt proceeding. During the three-day hearing, the circuit court accepted testimony and exhibits from both parties.

One of the arguments Harborview presented was that it had no present ability to comply with the order to complete repairs by the December 30, 2013 deadline, so that a finding of civil contempt was precluded by the doctrine of impossibility. Unpersuaded, the circuit court issued an order from the bench at the conclusion of the hearing finding Harborview in contempt, imposing sanctions, and describing the method of purging the contempt. The written Memorandum and Order of the circuit court, entered on July 28, 2014, provided:

> At issue in this case is the interpretation of page 18 of the [Arbitration] Award, which outlines the work to be completed to the roof and façade. The specific language at issue is the requirement that [Harborview] "remove and replace railings." The relevant evidence adduced at the hearing to determine whether [Harborview] willfully violated the Award and Final Order is as follows: the Award was decided in 2011; and, by December of 2013, [Harborview] failed to comply with the Award. Mr. John Cochran, president of the condominium, testified that only 35% of the work has been completed. From his testimony, it is apparent that [Harborview] ha[s] not fully accepted the Final Judgment to remove and replace the railings.
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> * * *
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> At the hearing, [Harborview] robustly contested the interpretation of the Award's language "remove and replace railings" on page 18. [It] maintained that the Award's language applied to only some of the railings This Court finds no ambiguity with respect to this language. Section 5A of page 18 contains objectives which qualify the scope of work. However, "remove and replace rails" contains no qualifying language. Thus, the "remove and replace rails" language applies to all of the railings. Additionally this Court notes that [Harborview] w[as] previously unsuccessful in seeking to modify the Award with respect to the scope of the railings work before the arbitration panel, the Circuit Court and the Court of Special Appeals.
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> It is abundantly clear that [Harborview] failed to remove and replace all of the railings within two (2) years.
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> * * *
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> This Court notes that had [PH4C] filed for constructive civil contempt before the two (2) year deadline, it would have been premature as there were

> no project completion phase dates, just a term certain of two (2) years. Therefore, none of the cited cases are helpful in the instant matter, as the *impossibility doctrine* does not apply to the facts of this case. . . . The application of the *doctrine of impossibility* in the instance would lead to an absurd and unjust result.
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> * * *
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> [T]his Court **FINDS** by the preponderance of the evidence that [Harborview's] conduct in failing to comply with the Award and Final Judgment was willful. Accordingly, this Court holds [Harborview] in **CONSTRUCTIVE CIVIL CONTEMPT**.

The court then addressed the question of whether the case presented exceptional circumstances warranting compensatory damages as a sanction to motivate Harborview to complete the work in the ordered time-period. The Court found:

> [Harborview's] failure to comply with the Award and Final Judgment caused monetary loss to [PH4C]. . . . [PH4C's] sole purpose is to provide living quarters for Mr. Ancel and his family in the Harborview Condominium. As a result of the delayed work, Mr. Ancel and his family had to seek alternate living arrangements.
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> In addition, the prior Court ordered monies have served as an insufficient motivating factor to compel [Harborview] to complete the work on time. [Harborview] knew that [PH4C] suffered and will continue to suffer monetary loss, as the Court initially awarded [PH4C] monetary losses of $1,200,000.00, $373,032.00 for living expenses plus moving expenses for two (2) years.
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> This Court accepts this dollar amount for living expenses. Further, this Court notes that a mere imposition of a timeline will not necessarily motivate [Harborview] to comply.
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> Under all the circumstances, this Court **FINDS** that this case presents exceptional circumstances allowing for compensatory damages [under *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406 (2008)].

(Footnote omitted). The circuit court's civil contempt order provides:

> **FINDS AND DECLARES** that the Defendant 100 Harborview Drive Council of Unit Owners to be in **CONSTRUCTIVE CIVIL CONTEMPT**; and it is further,

ORDERED, that the Defendants shall pay **$15,543.00** a month to the Plaintiff, for a total of eighteen (18) months, retroactive to 1 January 2014. Each payment shall be due by the 25th day of each month. The balance of the months prior to this hearing shall be paid within sixty (60) days of 21 May 2014 as ordered in open court. The Defendants can purge this sanction by completing the work as directed in the Award and Final Judgment; and it is further,

ORDERED, that after eighteen (18) months, if the work is not completed, then the monthly amount of $15,543.00 shall increase to **$25,000.00** per month, to be paid on the 25th day of each month. The Defendants can purge this sanction by completing the work as directed; and it is further,

ORDERED, that if the work is not completed in two and a half (2 ½) years from 1 January 2014, then additional remedies will be granted as authorized by law; and it is further,

ORDERED, that the Defendants, within thirty (30) days of this Order, shall provide the Plaintiff unrestricted quarterly access to the common elements of the condominium building in question to observe if the work is progressing with respect to the roof and the façade. The Defendants may be present during these inspections; and be it finally,

ORDERED, that if quarterly access is denied to the Plaintiff, or quarterly access reveals the work has stopped or otherwise delayed, the parties may seek additional remedies with this Court.

Prior to the circuit court's entry of the above quoted Memorandum and Order, PH4C filed a motion to strike Harborview's counterclaim arguing that Maryland law does not allow the prosecution of such a counterclaim in a contempt proceeding. The circuit court agreed and, on May 27, 2014, entered an Order striking Harborview's counterclaim and the accompanying request for jury trial.

On June 19, 2014, Harborview filed a Notice of Appeal regarding the May orders denying its request for jury trial and striking its counterclaim. On August 4, 2014, Harborview filed a Notice of Appeal from the July 28, 2014 order.[7]

We include additional facts in the discussion relevant to the issues there examined.

DISCUSSION

On appeal, Harborview argues that the circuit court erred in finding that it willfully violated the Award and Final Judgment where Harborview's conduct did not rise to the level of willfulness and Harborview no longer had a present ability to comply with the deadline for specific performance. Harborview also disputes the appropriateness of compensatory damages in this civil contempt proceeding, arguing that the circumstances of this case do not present the exceptional circumstances contemplated in *Royal Investment Group, LLC v. Wang*.

PH4C responds that this is an appropriate case for civil contempt because Harborview has a continuing obligation to complete the ordered repairs on the condominium building; thus, the impossibility argument is inapplicable. PH4C also

[7] During the pendency of this Appeal on August 14, 2014 PH4C filed a motion to enforce compliance with the contempt judgment alleging that Harborview was not making the required payments. The next day, Harborview filed a motion to stay enforcement in the circuit court, and on August 29, 2014, requested a hearing on the compliance motion. The circuit court denied Harborview's motion to stay enforcement on September 4, 2014.

On September 18, 2014 Harborview filed a motion to stay enforcement in this Court. We denied that motion on October 7, 2014. Undeterred, Harborview returned to the circuit court and filed a supersedeas bond and an amended request for a stay of enforcement. This too was denied on March 10, 2015. On March 23, 2015, Harborview again moved this Court to stay the enforcement of the July 24, 2014 order of the circuit court. We denied the motion on April 23, 2015.

contends that this case does present exceptional circumstances warranting compensatory damages because (1) it is prohibited from resorting to self-help to make the necessary repairs on the property; and (2) damages continue to accrue through Harborview's willful noncompliance with the Award and Final Judgment.

In a case tried without a jury, "the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). "An appellate court may reverse a finding of civil contempt only 'upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous.'" *Gertz v. Maryland Dep't of Env't*, 199 Md. App. 413, 424 (2011) (quoting *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 448 (2008)). Under the clearly erroneous standard, "'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.'" *City of Bowie v. Mie Properties, Inc.,* 398 Md. 657, 676-77 (2007) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n,* 361 Md. 371, 394 (2000)). With respect to legal conclusions, however, an appellate court "'must determine whether the lower court's conclusions are legally correct[.]'" *White v. Pines Cmty. Improvement Ass'n, Inc.,* 403 Md. 13, 31 (2008) (quoting *YIVO Inst. for Jewish Research v. Zaleski,* 386 Md. 654, 662 (2005)).

Maryland Rule 15-206 provides that a proceeding for constructive civil contempt may be filed in the action in which the alleged contempt occurred by any party to the action. Md. Rule 15-206(a), (b)(2). Rule 15-207(d)(2), governing disposition of such a petition for contempt, states:

> When a court or jury makes a finding of contempt, the court shall issue a written order that specifies the sanction imposed for the contempt. In the case of a civil contempt, the order shall specify how the contempt may be purged. In the case of a criminal contempt, if the sanction is incarceration, the order shall specify a determinate term and any condition under which the sanction may be suspended, modified, revoked, or terminated.

"[I]t is beyond cavil that 'the power to hold a person in contempt is inherent in all courts as a principal tool to protect the orderly administration of justice and the dignity of that branch of government that adjudicates the rights and interests of the people.'" *Gertz*, 199 Md. App. at 423 (quoting *Usiak v. State,* 413 Md. 384, 395 (2010)). Accordingly, a court may hold a party in contempt for willfully violating an order of the court. *Dodson v. Dodson,* 380 Md. 438, 452 (2004). However, "[t]he violation must be intentional; it is not enough that it result from the alleged contemnor's negligence." *Gertz*, 199 Md. App. at 423 (citing *Dodson*, 380 Md. at 452).

I. Willful Violation

It is settled under Maryland law that one may not be held in contempt of a court order unless the failure to comply with the order was willful. *Dodson*, 380 Md. at 452. "A negligent failure to comply with a court order is simply not contemptuous in a legal sense." *Id*. In *Royal Investment Group, LLC v. Wang*, we stated:

> "Before a party may be held in contempt of a court order, the order must be sufficiently definite, certain, and specific in its terms so that the party may

> understand precisely what conduct the order requires." *Droney v. Droney,* 102 Md. App. 672, 684, 651 A.2d 415 (1995). Moreover, "one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful." *Dodson,* 380 Md. at 452, 845 A.2d 1194. Civil contempt must be proven by a preponderance of the evidence. *Bahena v. Foster,* 164 Md. App. 275, 286, 883 A.2d 218 (2005).

183 Md. App. at 447-48. Thus, where the requirements of the court's order are clear and the failure to comply is found to be willful, this Court will not lightly reverse a decision finding contemptuous behavior.

As the parties acknowledge, Harborview has sought, through numerous levels of review, to delete or limit the arbitration award requirement to "remove and replace railings." At each level the requirement has been construed to require removal and replacement, rather than repair. Despite this, Harborview has failed to include removal and replacement of the railings in its remedial contracts for the building.

On May 18, 2011, Harborview issued a Project Manual as part of its package for obtaining bids for the rehabilitation project. That Project Manual was modified by Addendum No. 2—issued on June 6, 2011 and directed to prospective bidders. Addendum No. 2 actually deleted the majority of the remedial measures directed toward the testing, replacement, and repair of the railings. Each deleted portion was replaced with the language "[s]elective railing post sealant joint removal, substrate preparation and replacement under railing escutcheon plates." It is clear from the amended Project Manual that Harborview's remediation plans did not include the removal or replacement of *any* of the railings.

On February 28, 2012, after the arbitration panel declined to adopt the amended Project Manual and modify the portion of its award of specific performance requiring Harborview to "[r]emove and replace railings," Harborview entered into a contract with C.A. Lindman, Inc. ("Lindman") to perform the façade replacement and rehabilitation work. Attachment A to the contract, entitled "Harborview Towers – Façade Replacement – Bid Form," does not include removal and replacement of the railings as part of the scope of work. Indeed, Harborview President Mr. Cochran acknowledged in his testimony during the show cause hearing on May 19, 2014, that "[r]emoval and replacement of balcony railings is not listed as one of the 47 scopes of work in the original contract with C.A. Lindman." The following day, Mr. Cochran further testified: "[w]e are not replacing any railing unless our engineer tells us we need to replace it. They will make the decision of which railings need to be treated in what manner." Based on Mr. Cochran's testimony, the circuit court concluded that it was "apparent that [Harborview] ha[s] not fully accepted the Final Judgment to remove and replace the railings."

Harborview argues that it was making a good faith attempt to comply with the Award and Final Judgment, but was unable to do so due to difficulties obtaining financing. Nevertheless, Harborview still seeks to limit the removal and replacement requirement to merely some (but not all) of the railings. As the circuit court observed, on Page 18 of the CSG Report 9 of the 19 requirements call for "selective" repairs. The court noted that "'remove and replace rails' contains no qualifying language[; t]hus, the 'remove and replace rails' language applies to all of the railings."

Based on Harborview's conduct, the circuit court found by the preponderance of the evidence that Harborview willfully failed to comply with the Arbitration Award and Final Judgment. We agree. Harborview's pattern of delay and persistent attempts to modify or avoid the requirements of the arbitration award amount to a willful failure to comply with the Award and Final Judgment. We hold that the circuit court was not clearly erroneous in its finding that Harborview willfully violated the Award and Final Judgment.

II. Ability to Comply or Purge

Harborview argues that, because the deadline set by the Arbitration Panel (December 30, 2013) has already passed, it is now impossible for them to comply with the order. Thus, Harborview asserts that it lacks the present ability to comply or purge the contempt, and, therefore, no penalty may be imposed.

PH4C responds that such an interpretation of the deadline and the "impossibility doctrine" would lead to an absurd result. PH4C maintains that it could not have petitioned for contempt prior to the deadline for completion because Harborview would have simply asserted that it had additional time within which to comply. Thus, barring a finding of contempt on the ground asserted by Harborview would mean that Harborview could never be held in contempt for failure to comply with the court's order and Harborview simply needed to wait out the time period to avoid being bound by the order for specific performance.

The Court of Appeals has made clear that "a civil contempt proceeding 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." *Dodson*, 380 Md. at 448

(quoting *State v. Roll and Scholl*, 267 Md. 714, 728 (1973)). Civil contempt proceedings are, therefore, remedial in nature and are intended to coerce future compliance. *Id.* Accordingly, a penalty for a civil contempt must provide for purging the contempt. *Id.* In *Dodson*, *supra,* the Court of Appeals stated:

> Although we have repeatedly stated that the sanction in civil contempt actions is "remedial," our opinions have explained that "remedial" in this context means to coerce compliance with court orders for the benefit of a private party or to issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders. We have not used the term "remedial" to mean a sanction, such as a penalty or compensation, where compliance with a prior court order is no longer possible or feasible. *See, e.g., Long v. State,* 371 Md. 72, 89, 807 A.2d 1, 11 (2002) ("[T]he purpose of [sanctioning] the contemnor is remedial, ... i.e..... 'to compel obedience to orders'"); *Rawlings v. Rawlings,* 362 Md. 535, 552 n. 15, 766 A.2d 98, 107 n. 15 (2001) ("An example of a remedial sanction in civil contempt is [a] Rule 15-207(e)(4)-type order"); *Ott v. Frederick County,* 345 Md. 682, 688, 694 A.2d 101, 105 (1997) ("'[T]he purpose of civil contempt proceedings is to coerce future compliance'"); *Lynch v. Lynch, supra,* 342 Md. at 519, 677 A.2d at 589 (Civil contempt " 'proceedings are generally remedial in nature and are intended to coerce future compliance'"); *In re Ann M.,* 309 Md. 564, 569, 525 A.2d 1054, 1057 (1987) ("The sanction imposed for civil contempt is coercive and must allow for purging"); *Rutherford v. Rutherford,* 296 Md. 347, 355, 464 A.2d 228, 233 (1983) ("[T]he purpose of the contempt proceedings ... was to coerce the defendants to comply with court orders"); *McDaniel v. McDaniel,* 256 Md. 684, 689, 262 A.2d 52, 55 (1970) (The sanction "for civil contempt ... is intended to be remedial by coercing the defendant to do what he has refused to do") (internal quotation marks omitted); *In re Lee,* 170 Md. 43, 47, 183 A. 560, 562, *cert. denied,* 298 U.S. 680, 56 S.Ct. 947, 80 L.Ed. 1400 (1936) ("[C]ontempts have been divided into two classes with regard to their inherent character or nature, namely, criminal and civil, or punitive and coercive").

380 Md. at 448-49.

The Court in *Dodson* also found that the coercive nature of civil contempt requires that the contemnor have a *present* ability to comply with the prior court order, or with the purging provision if it is different from the prior order. *Id.* at 449. Thus, the inability to

comply or purge is a defense in a civil contempt action and precludes the imposition of a penalty. *Id.* (citing *Long, supra,* 371 Md. at 89-90). However, we have previously stated that a court does not err in looking to a past failure to establish a civil contempt finding. *Gertz*, *supra*, 199 Md. App. at 425 (citing *Fisher v. McCrary Crescent City, LLC,* 186 Md. App. 86, 114 (2009)). Indeed, the court's threshold task is to decide whether the "past conduct" reflects a failure to comply with the court's order. *See Id.* at 425-26 (affirming a finding of constructive civil contempt where that finding was based on a past failure to meet a court mandated deadline and the continuing failure to otherwise comply with the court's order).

Both parties cite heavily to *Dodson v. Dodson*. In *Dodson,* the alleged contemnor, who was obligated by court order to pay for certain insurance policies, failed to pay an insurance premium, resulting in a discontinuation of insurance coverage. Following a fire that would have been covered but for this lapse in coverage, Ms. Dodson sought a civil contempt order for Mr. Dodson's failure to pay the insurance premium. However, the resulting civil contempt order contained no separate purging provision, and the Court of Appeals noted that Mr. Dodson had no *present* ability to comply with any requirement to pay the insurance premium that was due in the past and, thereby, avoid the December 2000 cancellation of the insurance policy. *Dodson*, 380 Md. at 451. The Court of Appeals observed:

> Unlike every other case in this Court which has upheld a constructive civil contempt sanction, **this case involves no current obligation** under a court order. Instead, the only failure to comply with a court order was a single episode of inaction which took place in the fall of 2000. The direct adverse result, namely the cancellation of the insurance policy, was a one-time event

> in December 2000, and it is over with. It is not possible to reinstate the insurance policy retroactive to December 2000 when the fire occurred.

Id. at 451-52 (emphasis added).

PH4C asserts that *Dodson* is distinguishable from the present case because here there has been no single inaction or single past effect of that action. We agree. Certainly, the specific deadline set by the earlier order cannot now be met; however, the purpose of the order was to require the remediation of the condominium building. Thus, there remains a current obligation, unlike the circumstances present in *Dodson*. Harborview remains under obligation to complete the necessary repairs to the building façade and roof systems as required in the Award and Final Judgment. That obligation may and must still be met, and PH4C continues to accrue damages as a result of Harborview's failure to comply. Moreover, by completing the work as directed in the Award and Final Judgment, Harborview may purge the contempt. At that point, no further sanctions will apply to Harborview. We find no error or abuse of discretion in the circuit court's finding of constructive civil contempt.

III. Exceptional Circumstances and Compensatory Damages

Harborview contends that the circuit court erred in awarding compensatory damages to PH4C in a constructive civil contempt action and maintains that the monetary sanction was not based on ensuring future compliance with the Award and Final Judgment. Harborview cites *Dodson*, in which the Court of Appeals held "that compensatory damages may not *ordinarily* be recovered in a civil contempt action." 380 Md. at 454 (emphasis added). Importantly, the Court of Appeals also stated:

> [W]e specifically hold that compensatory damages may never be recovered in a civil contempt action based upon a past negligent act by the defendant. **This case does not present the issue of whether, under exceptional circumstances, a willful violation of a court order, clearly and directly causing the plaintiff a monetary loss, could form the basis for a monetary award in a civil contempt case.** We shall leave the resolution of that question for another day.

Id. (emphasis added).

In *Royal Investment Group, LLC v. Wang*, *supra*, this Court addressed when such exceptional circumstances might exist. 183 Md. App. at 452-53. In *Wang*, appellant Don Wang and appellee Sean Shahparast, the sole member of Royal Investment Group, LLC, ("Royal"), engaged in negotiations for Royal to purchase certain real property from Mr. Wang; however, the parties never proceeded to settlement. *Id.* at 417. Even after the contract for sale was terminated, Royal demolished the existing home on the Property, and built a new home. *Id.* In our review of the subsequent proceeding for constructive civil contempt, we stated:

> [O]n October 3, 2007, the trial court issued orders declaring that Mr. Wang owned the Property, finding that Royal was liable for trespass, and denying Royal restitution for improvements it made on the Property. On October 8, 2007, after receiving a copy of the orders, Mr. Shahparast wanted to remove things from the Property. After being told by Mr. Wang's attorney that he could not enter the Property, and after agreeing not to reenter the house until the issue could be resolved when the court opened the next day, Mr. Shahparast reentered the Property and removed a large number of installed cabinets. The trial court found Mr. Shahparast in constructive civil contempt for violating the October 3 court orders.

183 Md. App. at 446. The circuit court included in its order of constructive civil contempt a purge provision requiring Royal pay a $75,000 fine to Mr. Wang. *Id.* at 452.

Before this Court, Mr. Shahparast argued, *inter alia*, that the trial court exceeded its power by awarding compensatory damages. *Id.* at 447. He argued that the fine imposed against him was essentially an award of compensatory damages, which the Court of Appeals held, in *Dodson*, could not be recovered in a civil contempt action. *Id.* at 452. In response, Mr. Wang argued that the trial court's purge provision was a proper order to coerce present or future compliance with a court order, and, alternatively, even if the fine was an award of compensatory damages, it was appropriate under the "exceptional circumstances" of the case. We affirmed the circuit court's ruling and concluded that the facts in *Wang* presented that kind of "'exceptional circumstances' that the Court of Appeals in *Dodson* suggested 'could form the basis for a monetary award in a civil contempt case.'" *Id.* at 452-53 (quoting *Dodson*, 380 Md. at 454).

In *Wang,* we made clear that "[w]e believe that Maryland should join the 'clear majority of state courts' that permit, in appropriate circumstances, a monetary sanction in a civil contempt proceeding to compensate for damages caused by the contemnor." 183 Md. App. at 454 (quoting Annotation, *Right of Injured Party to Award of Compensatory Damages or Fine in Contempt Proceedings,* 85 A.L.R.3d 895, 897 (1978)). The facts in *Wang* surrounding Mr. Shahparast's unlawful entry into the home; the intentional removal of $75,000 worth of installed cabinets; facts elicited at the hearing (that Royal demolished the original home before a permit was issued and constructed the new home after being told to stay off the property) presented "exceptional circumstances[, where] a willful violation of a court order, clearly and directly causing the plaintiff a monetary loss, [did]

form the basis for a monetary award in a civil contempt case." *Id.* at 453, 455 (quoting *Dodson*, 380 Md. at 454)).

To meet the requirements articulated in *Wang*—willful violation, exceptional circumstances, and direct causation of monetary loss—PH4C first argues that Harborview's failure to contract for the replacement of the railings and its repeated attempts to modify or limit the order show that it has willfully ignored the requirements of the order. We have already concluded, *supra*, that Harborview willfully violated the Award and Final Judgment.

Second, the record demonstrates that the court was presented with exceptional circumstances where neither the imposition of a timeline nor prior monetary awards were sufficient to motivate Harborview to comply with the Arbitration Award, and where PH4C continued to incur monetary losses providing for Mr. Ancel and his family's alternative housing. Moreover, PH4C argues that exceptional circumstances exist here because it cannot resort to self-help. Under the Bylaws and Maryland Condominium Act, PH4C is unable to unilaterally make the necessary repairs to the common elements of the building, and thereby, make the unit habitable again.

The Maryland Condominium Act provision in RP § 11-108.1 provides:

> Except to the extent otherwise provided by the declaration or bylaws, and subject to § 11-114 of this title,[8] the council of unit owners is responsible for maintenance, repair, and replacement of the common elements, and each

[8] RP § 11-114 governs the duties of a Council of Unit Owners to maintain property and liability insurance and directs the repair or reconstruction of damaged or destroyed common elements or units.

> unit owner is responsible for maintenance, repair, and replacement of his unit.

Article XII of the Bylaws, entitled "Maintenance of the Property," provides, in pertinent parts:

> Section 1. By the Council. The Council shall be responsible for the maintenance, repair and replacement . . . of all of the common elements, as defined herein or in the Declaration, whether located inside or outside of the units. . . .
>
> * * *
>
> [Section 2.] (b) The unit owner of any unit to which a unit balcony or limited common element is appurtenant shall perform the normal maintenance for such structure including keeping it in a clean sanitary condition, free and clear of snow, ice and accumulation of water and shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. **All painting, structural repair or replacement shall be made by the Council as a common expense, as provided in Section 1 of this Article XII.**

(Emphasis added). Thus, PH4C contends that any structural repair or replacement must be made by the Council of Unit Owners and PH4C was not free to undertake the necessary repairs as a sole unit owner. The result of this unhappy state is the continued accrual of water damage that PH4C is unable to remedy through any form of self-help.

Last, as to damages, it is undisputed that Mr. Ancel and his family have had to acquire alternative housing. Further, PH4C is unable to rent, sell, or otherwise make reasonable, profitable use of the property. The original CSG Inspection Report, entered into evidence in the contempt proceeding, notes a myriad of water infiltration sites in the building affecting numerous units including PH4C. Additionally, the Majority Arbitration Award found by a preponderance of the evidence that:

> The CSG report "'confirm[ed] a number of significant issues with the building envelope'" and "'revealed issues with the masonry façade, EIFS façade, curtain wall window systems, balcony through wall flashings, railings, and main roofs that will require attention over the coming years.'"
>
> * * *
>
> On January 28, 2010, air sampling by P&B revealed 5,500 cladosprium spores per meter cubed ("spores/m") in the foyer area. As noted by Bruce Jacobs, CIH, in his P&B reports, this was a highly elevated level as compared to the outdoor air sample.
>
> * * *
>
> **Because of the conditions on PH 4C- water damage, mold growth, and mold deposition, the unit cannot be said to be safe for normal occupancy** and a remediation protocol must be followed to correct the problems.

(Emphasis added).

At the May 19, 2014, hearing, Mr. Ancel testified that no one resided in the unit and that, at that time, there were "in the neighborhood of somewhere in 15 to 20 different active water leaks in the unit." Mr. Ancel also testified that he continued to pay monthly condominium fees in the amount of $4,000.00, and that he continued to pay his percentage interest share in any assessment. PH4C's expert, structural engineer Mr. David Slick, testified that the waterproofing and leakage issues were results of the faulty railings and that removal and replacement of the railings was necessary to facilitate waterproofing. Mr. Slick's expert report also indicated that the problems in PH4C had worsened over time.

The record supports the reasonable conclusion that Harborview's failure to comply with the Award and Final Judgment has caused ongoing damage to the Unit, resulting in both monetary loss and Mr. Ancel's inability to use the Unit as a family residence. We agree with counsel for Harborview that further evidence establishing the amount of

damages or expenses accrued (or accruing) during the post-arbitration award time frame (*i.e.*, after the deadline set by the Award and Final Judgment, December 30, 2013) would have been preferred. However, it is clear from the record that the Unit remains uninhabitable and that Mr. Ancel continues to accrue expenses related to the Unit and alternate living expenses. Recognizing that there had been no practical change in circumstances or in Mr. Ancel's living expenses since the calculation made by the arbitrators, the circuit court accepted their judgment as to the amount of reasonable alternate living expenses made 31 months prior. The circuit court's Memorandum and Order states:

> [Harborview] knew that [PH4C] suffered and will continue to suffer monetary loss, as the Court initially awarded [PH4C] monetary losses of $1,200,000.00, $373,032.00 for living expenses plus moving expenses for two (2) years.
>
> This Court accepts this dollar amount for living expenses.

The circuit court then arrived at a monthly award of $15,543.00 by simple division.

On the record before us, we cannot say that there was no competent, material evidence to support the circuit court's findings of fact, or that those findings are clearly erroneous. Moreover, we can perceive no benefit to the parties, nor to the interests of justice, in unnecessarily prolonging this already protracted litigation. Therefore, we are compelled to affirm the award of compensatory damages.

IV. Jury Trial Request and Counterclaim

"A party in a civil contempt action . . . is not entitled to a jury trial." *Dodson*, 380 Md. at 453 (citing *Harryman v. State,* 359 Md. 492, 508-509 (2000); *Whitaker v. Prince George's County,* 307 Md. 368, 387-388 (1986)); *see also Bryant*, *supra,* 387 Md. at 48-

49. Although Harborview argues that, like *Dodson*, "[t]his litigation, although labeled a civil contempt action, was in essence a tort suit for money damages based upon [appellant's] alleged negligent inaction," 380 Md. at 453, this case does not present a past negligent action that can only be remedied through an award of damages in tort, as was the case in *Dodson*. Accordingly, we hold that the circuit did not err in striking Harborview's demand for a jury trial.

Similarly, "[i]n a circuit court tort action, the defendant is entitled to file[] counterclaims, cross-claims, or third party claims under Maryland Rules 2-331 and 2-332; [however,] there is no rule or Maryland precedent explicitly allowing such claims in a contempt action." *Id.* at 454. Maryland Rule 2-331(a) provides:

> A party may assert as a counterclaim any claim that party has against any opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

A contempt action, however, is itself a part of the underlying action that produced the order allegedly violated by the contemnor. *See* Md. Rule 15-206(a) ("A proceeding for constructive civil contempt shall be included in the action in which the alleged contempt occurred."). The pertinent questions in a contempt proceeding are whether there has been compliance with the court's order and, if not, what sanction is necessary to coerce future compliance. *See Wang,* 183 Md. App. at 447. Thus, the allocation of traditional tort liability and Harborview's counterclaim for injunctive relief and monetary damages are beyond the scope of the proceeding. *See Dodson*, 380 Md. at 454 (stating that there is no

rule or precedent allowing a party to bring a counterclaim in a contempt action; however, "Dodson may well have been able to convince a jury that the plaintiff was contributorily negligent or that the negligence of the insurance agency was a proximate cause of the property damage[,]" had the case been brought as a tort action).

Maryland Rule 2-322(e) allows the circuit court discretion to strike a pleading that is improper or not in compliance with the Maryland Rules.

> On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

We conclude that the circuit court did not abuse its discretion by striking Harborview's Counterclaim for Injunctive Relief and Money Damages and Demand for Jury Trial.[9]

[9] Harborview's counterclaim seeks (1) injunctive relief to allow Harborview's contractors access to the Unit, (2) monetary damages allegedly resulting from PH4C's failure to properly maintain the Unit, and (3) monetary damages for breach of their right to access the Unit to facilitate repairs. Harborview could have raised these counterclaims in conjunction with the underlying complaint pursuant to Md. Rule 2-331. However, the deadline for timely filing of a counterclaim passed 60 days after service of PH4C's original complaint, and, upon motion, any late filed counterclaim would be stricken absent a showing that no prejudice had resulted. Md. Rules 2-321, 2-331.

To the extent that Harborview attempts to raise these new issues in the contempt proceeding, they are procedurally barred. *See Dodson*, 380 Md. at 454. However, we recognize that the ability to allege and present evidence regarding damages and extraordinary circumstances as outlined in *Dodson*, 380 Md. 438 and *Wang*, 183 Md. App. 406, can muddle the scope of issues before a court on a petition for contempt. Certainly, the respondent to a contempt petition may present evidence to dispute any alleged damages or extraordinary circumstances in their defense. Notwithstanding, they may not raise wholly new claims within the contempt proceeding. As *Dodson* instructs, such new claims sounding in tort should be brought in a separate proceeding. 380 Md. at 454. This extends to Harborview's request for equitable relief. We acknowledge that the (continued…)

V. Actual Party in Interest

Harborview argues that the circuit court erred by holding that Mr. Ancel, and not PH4C, is the actual party in interest. It maintains that, although PH4C was recognized as the party in interest at the arbitration—and damages were awarded and paid to PH4C at that level—that the circuit court improperly considered damages incurred by Mr. Ancel personally as the basis for its award of compensatory damages.

The circuit court, however, articulated no such holding. The circuit court determined that "[Harborview's] failure to comply with the Award and Final Judgment caused monetary loss to the Plaintiff [PH4C]." After recognizing that Mr. Ancel was not a party to the case, the circuit court stated: "Penthouse 4C, LLC's sole purpose is to provide living quarters for Mr. Ancel and his family in the Harborview Condominium." (Footnote omitted). As noted *supra*, the amount of post-arbitration-deadline damages suffered by PH4C as a result of Harborview's willful violation of the Award and Final Judgment is a matter that requires additional fact-finding in the circuit court. But, the court did not err in considering the purpose of the Limited Liability Company when assessing the damages incurred.

(…continued) assertion that Harborview had been denied access to the Unit was intended partly as a defense to the contempt allegations, but the request for relief was not something the court could entertain within the contempt proceeding. Here, the circuit court properly narrowed its focus to the substance of the contempt violation—the requirement to remove and replace railing—and maintaining the status quo regarding alternate living expenses.

CONCLUSION

For the aforementioned reasons the judgments of the Circuit Court for Baltimore City are affirmed.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.