Circuit Court for Worcester County
Case No. C-23-CV-20-000034

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 921

September Term, 2021

WICKED PROFESSIONAL SERVICES INC.

v.

DANIEL HOLLAND, ET AL.

Kehoe,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: November 3, 2022

This appeal and cross-appeal arise from a custom home construction contract dispute. Laura and Daniel Holland, appellees/cross-appellants, contracted with Wicked Professional Services, Inc. ("WPS"), appellant/cross-appellee, a home building company owned and operated by Donald Littleton, for the construction of a new home on land titled in the name of their limited liability company, Chesapeake Bay Land Company, LLC ("Chesapeake"). The Hollands filed suit against WPS for breach of contract and related claims, and WPS filed a counterclaim and a third-party complaint against Chesapeake, asserting claims for breach of contract, unjust enrichment, and related claims. The claims, cross-claims, and third-party claims were tried to the court over one day. The trial court ruled in favor of the Hollands on their breach of contract claim, awarding them $57,853.46 in damages, but against them on their claim for breach of the Maryland Custom Home Protection Act ("MCHPA"), Maryland Code, (1974, 2015 Repl. Vol., 2017 Supp.), Real Property Article ("RP"), §§ 10-501–10-509. The court entered judgment against WPS on its counterclaims and third-party claims.

On appeal, WPS presents four questions,[1] which we have consolidated and rephrased as two:

[1] The questions as posed by WPS are:

"1. Did the [c]ourt err by finding the written proposal to control when the Hollands pled that the contract was not a written contract?
2. Assuming that the proposal was fully signed and delivered to WPS, did the court err by simply voiding paragraph 28 of the proposal without trying to reconcile the provisions of the document, or using extrinsic evidence and course of conduct to interpret its terms?

(Continued)

I. Did the circuit court err by determining that the parties had entered into a written construction contract and that WPS breached that contract?

II. If the written contract is binding, did the circuit court err by not enforcing paragraph 28 of the contract, which provided for WPS to receive a construction management fee?

In their cross-appeal, the Hollands challenge the trial court's decision not to award attorneys' fees under the MCHPA, and ask: "Does the [MCHPA] apply to the construction of a single family dwelling for a married couple on land owned by the couple's limited liability company?"

We hold that the circuit court did not err in determining that the parties entered into a written contract that established a fixed total price for the construction of the Hollands' home, and that WPS breached the contract when it demanded money above and beyond the total price as a condition to completing the work. We also hold that the court did not err, based on the evidence in this case, in ruling that the Hollands were not obligated to pay WPS a construction management fee.

---

3. Did the [c]ourt erred [sic] by finding the proposal controlling for the construction of the plans dated January 18, 2018[?]
4. Did the [c]ourt err, given the course of conduct of the parties during the term of the construction contract, in failing to have change orders, by allowing changes by the Hollands (including expansion of the project by more than 2000 square feet of construction), by rejecting charges for additional work by WPS, and failing to consider the Unjust enrichment of [Chesapeake] thereby?"

Despite including an unjust enrichment theory in its fourth question, WPS does not present any argument on this issue in its brief. Consequently, that issue is not before us. *See Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (declining to address issues raised by the appellant, but on which no argument was presented); Md. Rule 8-504(a)(5) (requiring a party to present "argument in support of the party's position").

On the cross-appeal, however, we conclude that the circuit court erred in ruling that the MCHPA did not apply in this case. Accordingly, we shall vacate the denial of the Holland's request for attorneys' fees under Count III of the amended complaint and remand for the circuit court to hold additional proceedings to determine whether the contract violated the MCHPA, and if so, whether an award of attorneys' fees under the MCHPA is justified.

BACKGROUND

Since 2011, the Hollands, through Chesapeake, have owned and managed Chesapeake Bay Dairy, a dairy farm located at 3847 Whitesburg Road in Pocomoke City ("the Property"), which previously was owned by Mr. Hollands' parents' family business. For many years, the Hollands lived in an existing farmhouse on the Property. In 2017, they contracted with David Quillen, an architect, to design a "Proposed New Holland Residence" to be built on the Property. Mr. Quillen drew up plans, dated May 4, 2017, for a 3,912 square foot custom home.

Contract Negotiations

In late May or early June 2017, the Hollands were introduced by their pastor to Mr. Littleton, who owns and operates WPS. Initially, the Hollands asked WPS to construct the shell of the house for them and make it "watertight," with the expectation that they would finish the inside over time. Mr. Littleton emailed Ms. Holland on June 7, 2017 with a costs and materials proposal, with a total cost of $249,500 to construct the house, which was then planned to be built on a concrete slab except for a 400 square foot

basement room. He stated that the pricing in the email included "material & labor," but that he would "try and get things done cheaper"[2] if he could. Any savings would be "passed on" to the Hollands and WPS would charge a 10 percent management fee "for scheduling and getting this project done on [sic] a timely manner [within] the budget[.]"

By June 20, 2017, the Hollands had advised WPS that they wanted him to construct and finish the house, and Mr. Littleton sent them a new proposal by email. In that email, Mr. Littleton estimated a total cost of $665,750 if the Hollands separately contracted for the well, permits, site work, and "digging for the mason." He estimated a total cost of $700,250 for him to do the whole project but added that he would try to get them "better pricing as we go along."

The Hollands decided to hire WPS to construct their home, "soup to nuts[.]" According to Mr. Quillen's contemporaneous notes from a July 7, 2017 meeting between him, the Hollands, and Mr. Littleton, WPS would be "doing the project as a mix between a [general contractor] and a [construction manager]." Mr. Littleton would "giv[e] [the Hollands] a not-to-exceed number in the contract, but will also show them bids for subs."

The Contract

On July 24, 2017, WPS emailed Ms. Holland a "Construction Contract" created from a template available on the website "rocketlawyer.com" ("the Contract"). WPS agreed to begin providing services to the Hollands on September 4, 2017. Specifically, it

[2] The emails from WPS are written in all uppercase letters. For ease of reading, we use sentence case capitalization.

would "CONSTRUCT A CUSTOM HOME IN ACCORDANCE WITH PLANS AND SPEC SHEETS DESIGNED BY DAVID QUILLEN THE ARCHIETECT [sic] WITH PLANS DATED MAY 4TH, 2017 JOB # 1608." Under section 2 of the Contract, WPS would "provide all services, materials and labor for the construction" of the house, but was not responsible for the driveway, the well, clearing the lot, or the geothermal system, "unless otherwise written on a change order to be approved by all parties involved." The Hollands agreed, in section 3, to make the plans, specifications, and related construction documents available to WPS. In section 5, the Hollands "warrant[ed]" that they owned the Property and were authorized to enter into the contract.

WPS agreed, in section 6 of the Contract, to provide to the Hollands "a List of each and every party furnishing materials and/or labor to [WPS] as part of the Services, and the dollar amounts due or expected to be due with regards to provision of the Services herein described." That list was to be attached to the Contract as Exhibit A.

Section 7 governed the terms of payment. The Hollands agreed "to pay [to WPS] the total sum of $700,250.00" under a specified draw schedule. That schedule provided for six payments tied to specific events, with the first payment due upon signing the Contract and breaking ground and the final payment due when a certificate of occupancy was issued by the building department.

WPS agreed to begin construction within 30 days of September 4, 2017, and to complete the work by May 16, 2018, with "time being of the essence."[3]

Section 9 provided that modifications to the scope of the Contract only could be made by "written 'Change Order,' which is signed and dated by both parties." If a change order was executed, it would be become part of the Contract and the Hollands agreed to "pay any increase in the cost of the Construction work" resulting from a change order. Likewise, any other modifications to the Contract were required to be made in writing, signed by both parties. ¶ 24.

The indemnification clause contained in section 13 provided, in relevant part:

> With the exception that this Section shall not to be [sic] construed to require indemnification by [WPS] to a greater extent than permitted under the public policy of the State of Maryland, [WPS] may agree to indemnify [the Hollands] against, hold it [sic] harmless from, and defend [the Hollands] from all claims, loss liability, and expense, including actual attorneys' fees, arising out of or in connection with [WPS]'s Services performed under this Contract.

So, it appears that the Contract permitted, but did not require, WPS to indemnify and defend the Hollands against claims, losses, liability, and expense arising from its provision of services under the Contract.

[3] "Time is of the essence" is a term of art in contract law. 15 Richard A. Lord, *Williston on Contracts* § 46:2 (4th ed. 1998) (Meaning of "time is of the essence"). It requires strict adherence to the time designated for performance. When "time is of the essence" is included in a contract, time is such a material matter that strict compliance by performance within the specified periods of time is a prerequisite to the right to require performance by the other party. *Granados v. Nadel*, 220 Md. App. 482, 489, 104 A.3d 921, 925 (2014) (citations omitted).

Events of material default were defined in section 18 to include a failure to "make a required payment when due" by the Hollands and a failure to perform the construction services by WPS.

An integration clause in section 22 provided:

> This Contract contains the entire Contract of the parties, and there are no other promises or conditions in any other contract whether oral or written concerning the subject matter of this Contract. Any amendments must be in writing and signed by each party. This Contract supersedes any prior written or oral agreements between the parties.

Section 28, entitled "Additional Provisions," specified that WPS would "RECEIVE A MINIMUM OF TWELVE PERCENT CONSTRUCTION MANAGEMENT FEE FOR ALL ASPECTS OF CONSTRUCTION ON THE HOLLAND PROJECT."

Mr. Littleton signed the Contract electronically, on behalf of WPS, on July 24, 2017. According to Ms. Holland, she and her husband later met with Mr. Littleton and went over a hard copy of the Contract "very specifically." The Hollands then signed the Contract.

The Construction Loan

Meanwhile, the Hollands, on behalf of Chesapeake, applied for a $600,000 construction loan through First Shore Federal bank ("FSFB"). The loan was approved on January 11, 2018 and was secured by a deed of trust on the Property. "Chesapeake Bay Land Company, LLC" was named in the Construction Agreement securing the loan as "Owners" [sic] and that document stated that it was the borrower on the loan. Faith

Bissonette, supervisor of the servicing division at FSFB, created a draw schedule reflecting six payments split between Chesapeake and FSFB triggered by completion of various phases of construction. It reflected that the total "cost of improvements" was $700,250. Of that amount, Chesapeake already had paid $19,000 directly to Shore Lumber and for a building permit and would owe $81,250 in installment payments. FSFB would pay the remaining $600,000. The draw schedule later was revised in April 2018 to reflect the following six payments: 1) $100,250 when the foundation was installed ($4,330 by Chesapeake and $95,920 by FSFB); 2) $115,000 when the subfloor and framing was complete and the survey was received ($10,188.80 by Chesapeake and $104,811.20 by FSFB); 3) $115,000 when the house was sheathed and wrapped, windows were installed, and rough-ins were in progress ($16,468 by Chesapeake and $98,532 by FSFB); 4) $131,000 when insulation and drywall was complete, siding installed, and appliances ordered ($18,759.20 by Chesapeake and $112,240.80 by FSFB); 5) $120,000 when drywall, paint, and trim were complete, and cabinets and countertops were ordered ($17,184 by Chesapeake and $102,816 by FSFB); and 6) $100,000 when a certificate of occupancy was issued and inspections completed ($14,320 by Chesapeake and $85,680 by FSFB).

The Hollands signed the revised draw schedule on April 18, 2018, and Mr. Littleton signed it, on behalf of WPS, on May 4, 2018.

Revision of the Plans

The Worcester County Department of Development Review and Permitting ("the County") a building permit on November 18, 2017. The applicant on the permit was Mr. Littleton and the owners were listed as "Chesapeake Bay Land Company, LLC [and] Laura Holland[.]" By the end of that month, however, the Hollands, at the suggestion of Mr. Littleton, had decided to forgo their original plan to construct their home on a concrete slab with one small basement room and, instead, elected for WPS to construct a full basement. On December 6, 2017, they met with Mr. Littleton and Mr. Quillen to discuss this change. According to Mr. Quillen's contemporaneous notes, Mr. Littleton advised that this change would "only add[] $10,000 to the cost."

Mr. Quillen drafted revised plans, dated January 22, 2018, to reflect the addition of the basement and other changes to the house. On that date, WPS filed a revised permit application with the County and a new permit on February 2, 2018. The permit revision application states that the proposed revision will "Enlarge basement area for additional living space" and that the estimated construction cost was $10,000. Mr. Littleton signed the application and affirmed that he was "duly authorized to make [the] permit modification application on behalf of Chesapeake Bay Land Company, LLC" and that "the work proposed" was authorized "by the property owner."

Construction of the House

WPS began work on the project in January 2018, after the loan was funded. The progress initially was slow because of rainy conditions that delayed the digging of the

basement. By May 4, 2018, the foundation was completed, and FSFB released the first draw.

By July 2018, the house was "pretty much under roof," and Ms. Holland asked Mr. Littleton for a list of "allowances" for fixtures and finishes so that she could pick out items. On July 23, 2018, Mr. Littleton sent her a list of allowances totaling $192,000, specifying the maximum amount she could spend within budget on items including windows and doors, kitchen cabinets, appliances, countertops, shower tiles, and other items. Ms. Holland met with Mr. Littleton at various distributor show rooms to pick out items, such as tile and appliances. She was not always advised of the pricing, but throughout the process, she confirmed with him that they were on budget.

FSFB and the Hollands released the second and third draws on August 22, 2018 and September 15, 2018, respectively.

Ms. Holland met with Mr. Littleton at Shore Appliances in October 2018 to select appliances, agreeing to pay extra for a high-end range. Mr. Littleton stated that he would return the next day to give the appliance store a certified check for the appliances. In fact, he did not do so at any time during the project.

The fourth draw was due after insulation and drywall were complete, siding installed, and all appliances ordered. FSFB sent an inspector to the Property at the end of November 2018 to determine if the fourth draw could be released. He reported to Ms. Bissonnette that, although insulation was complete, and drywall had been started, siding was not installed, and no siding materials were on site. Ms. Bissonnette relayed this

information to Mr. Littleton and asked him to provide her with a copy of the appliance orders he told her had been made so that she could reimburse him for that amount until the remainder of the draw was released. Mr. Littleton did not provide proof that he had ordered appliances. He responded that the stucco siding would not be completed until the end of construction and that he had done considerable work that was not accounted for in the draw schedule. Ms. Bissonnette asked the Hollands if they would approve release of the fourth draw based upon Mr. Littleton's representations, and they agreed. The draw was paid on December 3, 2018.

The fifth draw, payable when drywall, paint, and trim were complete and the cabinets and countertops were ordered, was paid in two installments, the last of which was paid on July 8, 2019.

Payment Dispute

On the night of July 17, 2019, Mr. Littleton sent an email to Ms. Holland with the subject line, "Payments Needed to Help Project Along." He stated:

> Do [sic] to the weather this job has been held up alot [sic] of months. At which we keep accumalating [sic] bills for the construction of this custom home with equipment and other delays to the contractors.
> At this time funds are really tight on the house. I have all the bills and paper work at my accountants [sic] office being put on a spread sheet so you can see where we stand. I really need to collect from you is [sic] your portion on draw # 6 please which is $ 14,320.00.
> Also, we have been paid by you and the bank the sum of $581,250.00. Wicked Professional management fee on the monies above is $58,125.00.
> I really need to collect $29,062.00 of this please.
> I will be bringing all trades back now that flooring is almost complete. From Monday on I'll be there running everybody to get this house turned over for inspection.
> Please call with any questions anytime tomorrow.

Ms. Holland responded by requesting a copy of the spreadsheet in advance of the meeting so that she and her husband could go over it with him and there would be "no surprises."

On July 25, 2019, WPS's accountant forwarded Ms. Holland a spreadsheet. It reflected that the project would cost $1,075,102.30, nearly $400,000 over the budget. It showed that WPS had paid nearly $800,000 out of pocket already.

Three days later, Mr. Littleton emailed Ms. Holland, advising that he had been trying to contact her about finishing the house. He understood that the spreadsheet was "more than a bomb went off[.]" Ms. Holland responded that the information he had sent her was shocking given that she had "stressed from the beginning that [she] had to stay on budget" and asked him to keep her informed. She emphasized that this was the first time she was learning that the budget was not "on target." Ms. Holland stated that she did not want Mr. Littleton to do any more work until they sat down to discuss matters because she could not afford the overages.

Mr. Littleton responded that he had to keep working because he needed the final draw payment given that he had put in more money than he had been paid. He apologized "that it got away from [him,]" explaining that "[i]t was to[o] much going on at one time."

The Hollands met with Mr. Littleton at the Property on August 7, 2019. He brought with him copies of the supporting documentation for the data in the spreadsheet.

He asked the Hollands for more money to finish the job, but they told him they needed to review everything first.

After the meeting, Mr. Littleton sent several emails to the Hollands requesting payment of the 12 percent management fee on the amounts already paid by the Hollands and FSFB. By August 30, 2019, he gave them an ultimatum, stating that if he did "not receive a check of some sort by Tuesday, September 3rd[,] 2019," he would have to cease all work on the project.

On September 3, 2019, the Hollands contacted WPS through counsel, advising that they disputed that any further funds were due to him until such time as a certificate of occupancy was issued. A month later, WPS responded through counsel that work continued on the project and that the contract amount had been modified by agreement when the Hollands selected numerous upgrades. Counsel maintained that aside from the upgrades, the contract explicitly provided for a 12 percent management fee and suggested that if the Hollands would pay that fee on the amounts already paid, which it calculated to be $72,000, that should "be sufficient to get this moved along quickly."

The Hollands, through counsel, disputed that the management fee was a valid charge and, in the alternative, maintained that it would not be due until the project was complete and passed inspection.

In October and December 2019, two WPS subcontractors filed mechanic's lien actions against Chesapeake. On January 21, 2020 and March 17, 2020, respectively,

interlocutory mechanic's liens in the amount of $17,015 and $16,330 were entered against the Property.

The Legal Action

On January 24, 2020, the Hollands filed suit against WPS for breach of the Contract. The amended complaint asserted four counts. Counts I and II asserted claims for breach of the Contract and breach of the indemnification clause in the Contract. Count III asserted that the Contract did not comply with the MCHPA, which amounted to an unfair or deceptive trade practice under the Maryland Consumer Protection Act, Maryland Code (1975, 2013 Repl. Vol., 2019 Supp.), Commercial Law Article, §§ 13-101–13-501. Count IV asserted that, if the Contract was not the agreement between the parties as WPS claimed, then WPS violated the MCHPA by not having a written contract with the Hollands.

WPS filed a counterclaim and a third-party complaint, naming Chesapeake as a third-party defendant. In Count I of its counterclaim, WPS asserted that the Hollands breached the Contract by not paying for "services rendered plus the profit thereon[.]" Count II asserted that the Hollands misrepresented their ownership of the Property. Counts III and IV asserted claims for unjust enrichment and breach of contract against Chesapeake. Count V asserted a claim for fraud against the Hollands, also based upon an alleged misrepresentation of their ownership interest in the Property.

The Bench Trial

The bench trial commenced on June 28, 2021. In the Hollands' case, they called five witnesses: Ms. Bissonnette; Mr. Quillen; Daniel Ruark, an excavating subcontractor; Chris Puckett, a contractor who provided an estimate to the Hollands to complete the house; and Ms. Holland. In WPS's case, Mr. Littleton testified and called one witness, E.P. Cronshaw, Jr., the owner of Shore Lumber. Ms. Holland was recalled in rebuttal. The Hollands introduced 32 exhibits, and WPS introduced 23 exhibits. Both parties filed trial memoranda in advance of trial and written closing arguments at the conclusion of trial.

In addition to the above stated facts, the following evidence was adduced. Ms. Bissonnette testified that after WPS ceased work on the home, FSFB had the Property inspected and disbursed funds to subcontractors for completion of aspects of the home. The total remaining undisbursed loan funds totaled $14,370.13, which were held subject to the mechanic's liens.

Mr. Quillen explained the difference between a general contractor and a construction manager arrangement. In the former arrangement, the general contractor gives the client "a fixed price to deliver the project as it's shown in the construction documents." The general contractor builds his or her profit into that figure. In a construction management arrangement, the "contractor just shows all of his expenses for time, labor, and material plus a management fee." Mr. Quillen's understanding of WPS's arrangement with the Hollands was that it would be "somewhere in the middle[,]" with a

"not to exceed number" typical of a general contractor, but "open book" as the project progressed, "plus a management fee." Mr. Quillen understood the contract price of $700,250 to be "a hard cap on the total expenses."

Ordinarily, Mr. Quillen performed "construction administration" over projects he designed, meaning that he would conduct site visits and ensure that the project was being built to specifications. In this case, he explained that because of difficulties with site access and communication issues with Mr. Littleton, he notified the Hollands that he could not perform that function and would not charge them his fee for that service. In his view, the lack of construction administration was "where things went off the rails[.]"

Mr. Ruark testified that he was present when Mr. Littleton suggested the alternate basement plan to the Hollands. Mr. Littleton suggested other changes to the plans that could offset any price increase.

Ms. Holland testified that throughout the project her focus was on staying within the budget and she routinely questioned whether proposed changes to the design would increase her costs. She identified two extra expenses that she agreed to pay – the cost for arched doorways ($2,000) and the cost for a kitchen vent ($10,000). Aside from those costs, Ms. Holland testified that Mr. Littleton never emailed her, texted her, or verbally advised her of any change in the cost until his email in July 2019.

She explained that she requested the list of allowances to ensure that she would not go over budget. At one point, Ms. Holland chose appliances at Lowes that cost less than the allowance of $8,000. Upon informing Mr. Littleton, he told her that she should

not purchase appliances for her "fine house" from Lowes and directed her to meet him at Shore Appliances instead. He likewise insisted that she purchase cabinets from a distributor in Centreville even though the same cabinets were available at Lowes for less money.

Ms. Holland testified that, as of trial, the house was not complete, and a certificate of occupancy still had not issued. She and her husband had since paid for the appliances that Mr. Littleton never ordered, paid out of pocket for countertops because those also were not ordered, purchased some vanities, purchased a new door to replace one that was the wrong size, and had arranged for certain of WPS's subcontractors to return and finish some work for them.

Given the budget overages and the time the Hollands had been forced to spend arranging for the remaining work to be completed, Ms. Holland did not believe that WPS earned its management fee. She explained that "[p]art of managing is managing the budget and managing to finish the work on time and [WPS] did neither." As an example, Ms. Holland explained that when she discussed a movie room in her house with Mr. Littleton, she asked for a darkened room where her children could watch television. Without consulting her, Mr. Littleton subcontracted with Impact Theaters for a $20,000 theater room and that cost was reflected on the spreadsheet. She was never given the option to choose or decline that option.

On cross-examination, Ms. Holland testified that Mr. Littleton told her that the 12 percent management fee was built into the contract price of $700,250. Counsel for WPS

questioned how Ms. Holland could believe that the cost for the job would remain unchanged after the plans were revised to add a full finished basement. Ms. Holland responded that her expectation was that any change in the price would be reflected in a change order, as required under the terms of the Contract. She emphasized that aside from the two changes for which she explicitly agreed to pay more, Mr. Littleton represented to her that every other change they made was within budget because she also agreed to forgo certain items in exchange.

In response to questions posed by the circuit court, Ms. Holland explained that she agreed to swap out other items in the house to ensure that the basement did not impact the budget. Specifically, she agreed to eliminate a spiral staircase, to swap a gas insert in place of a masonry fireplace, to change rooflines, and to remove a covered walkway from the plans.

In WPS's case, Mr. Cronshaw testified that he suggested the full, finished basement to Ms. Holland and showed her his basement in his home. He recalled speaking with her about staying in budget when she picked out floor coverings and cabinets. She decided against custom cherry cabinetry because it was too expensive, choosing a less expensive semi-custom product.

Mr. Littleton testified that he had worked as general contractor for 35 years. During that time, he had built fifteen custom homes. When he began working with the Hollands, he agreed to "provide them with [his] cost, and then add something . . . so that

[he] got paid for doing what [he was] doing[.]" He explained that because the Hollands had not picked the finishes out for their home, he could not "give [them] a solid number."

He testified that he did not ordinarily use an online template to prepare a contract, but that the Hollands "needed something for the bank." He included Paragraph 28, which pertained to his 12 percent management fee, because he did not build any profit into the contract price. Mr. Holland testified, "from what [he] could gather," that the Hollands never signed the Contract.

With respect to the revision of the plans, Mr. Littleton explained that because the full basement added 1,700 square feet to the house, they were required to go to the County to get it "repermitted." The "swaps" that Ms. Holland testified had offset the cost of adding the basement only covered the cost of the basement walls, according to Mr. Littleton. The cost to finish the basement was much greater, and they never agreed on a price for that. Mr. Littleton explained that he did not prepare any change orders on the job "[b]ecause [he] was working for a percentage at the end just like a construction manager does."

The spreadsheet came about after WPS's accountant reached out to tell Mr. Littleton he needed an influx of cash. At that time, Mr. Littleton was working on two jobs. He provided the accountant with all the invoices he had received on the Hollands' job. "Every price" in the spreadsheet was "straight up pricing from the people." When the "numbers came out to be as high as they were" Mr. Littleton was surprised. That was

the "first time" he told Ms. Holland that the project was over budget. Up until that point, he unaware because he was working 90 hours a week.

On cross-examination, Mr. Littleton clarified that the other project he was managing simultaneously was much larger, with a total price of $5 million for a 276-unit complex. He acknowledged that he was very busy and "lost track of everything."

Mr. Littleton did not dispute that he told the owner of Shore Appliances that he would return the next day with a certified check to order the appliances Ms. Holland selected. He also did not dispute that he never did so. He denied that he ever told Ms. Bissonnette that he had already ordered them, however.

Mr. Littleton agreed that the Contract was the "only contract [he] had with Mr. and Mrs. Holland" and that it "never got changed by any written change order[.]"

In response to questioning by the court, Mr. Littleton testified that he ordinarily draws up his own contracts after sitting down with his clients and talking through everything that they want.

After receiving all the evidence, the court directed the parties to submit written closing arguments. In their memorandum, the Hollands argued that the Contract was the sole agreement between the parties and had not been modified by any change orders or other writings, which was the only way it could modified. The Contract entitled WPS to receive $700,250 in six payments tied to the progress of construction. It received the first five payments but did not receive the final payment because it did not complete construction and no certificate of occupancy was issued. In contrast, the Hollands fully

performed their obligations under the Contract. They maintained that they were entitled to judgment for breach of contract and breach of the indemnification provision and submitted a summary of damages totaling $189,557, comprising unused allowances for three items ($15,500); payments made and amounts due directly to subcontractors after WPS ceased work ($9,205 and $25,649); estimates received for work necessary to complete the house ($89,516); the two mechanic's liens ($33,345); and attorneys' fees and costs incurred defending the lien actions and prosecuting and defending this action ($45,032).

The Hollands further argued that WPS's counterclaims should be denied because there was no evidence supporting its position that they failed to pay amounts "due" given that they complied with the draw schedule. With respect to the misrepresentation and fraud counts, WPS presented no evidence to support his claim that the Hollands concealed that their land was owned by Chesapeake or to show reliance on the alleged misrepresentation.[4] The Hollands did not dispute that the Contract bound them and Chesapeake but denied that they breached its terms. Finally, they argued that to the extent that the management fee in section 28 of the Contract was enforceable, that the court should find that WPS did not earn the fee due to its mismanagement of the project and material breaches of the Contract.

[4] We note that the FSFB loan and the draw schedule were in the name of Chesapeake, not the Hollands. Mr. Littleton signed the draw schedule when he received his first check from FSFB. He also signed the application to revise the building permit on behalf of Chesapeake.

WPS argued that Ms. Holland's trial testimony was "disingenuous" and that she was trying to paint herself as an unsophisticated farmer when she owned and managed a concierge business in Washington, D.C.[5] It asked the court to reject Ms. Holland's testimony that she believed that the revision of the plans to include a full basement would not affect the price of the house. According to WPS, the negotiations between the parties coupled with the language of the Contract support their position that this was a construction manager arrangement, not a general contractor arrangement. WPS pointed to Ms. Holland's testimony that she was "concerned about what they were spending" as evidence that she was aware that the price for her home was not fixed and that the finishes she chose would impact the final cost.

WPS also disputed Ms. Holland's testimony that she and her husband signed the Contract shortly after Mr. Littleton emailed it to them. It pointed to evidence that the Hollands printed the Contract from the Rocket Lawyer website on multiple occasions, including on the day the bank funded their loan.

WPS acknowledged that the Hollands did not willfully misrepresent their ownership of the Property but maintained that it "made it more difficult for WPS to pursue a Mechanic's Lien." It asked the court to enter judgment in its favor and award damages consistent with an attached damages statement. That statement calculated total

[5] Ms. Holland testified that in addition to running the dairy farm with Mr. Holland, they also managed a business in Washington, D.C. that provided front desk personnel for apartment buildings. She was able to manage that business largely from Pocomoke City and spent about five percent of her time on it.

damages of $352,647.25, comprising the total unreimbursed amount WPS paid out of pocket ($218,347); the 12 percent management fee on the total cost of the $845,372 project ($101,444)[6]; and prejudgment interest ($32,856.25).

The Court's Ruling

The court reconvened to rule from the bench on July 27, 2021. The judge prefaced his ruling by noting that this was an unusual construction contract dispute because there were no complaints about the quality of the workmanship. It found no evidence of bad faith or dishonesty on the part of any of the parties, but rather a "complete and utter failure to effectively communicate." The court credited Mr. Quillen's testimony that the arrangement between the parties was anticipated to be a mix between a construction manager and a general contractor arrangement, with a "not to exceed number."

Turning to the Contract, the court found that it was "legally deficient and woefully in[adequate]" and that that was the underlying cause of the dispute. In any event, it was drafted by WPS and "tilted in [its] favor" given the indemnification clause and the management fee that was "tacked onto the end[.]" The court emphasized that though there was considerable extrinsic evidence presented about the contract negotiations and the understanding of the parties, it would "limit its interpretation to the four corners of the contract." The Contract "present[ed]" as a "standard general contractor contract" as

[6] The 12 percent fee was applied against all amounts paid during the time WPS worked on the project, including amounts paid by the Hollands.

"accepted in the industry with a management fee tacked onto the end." Section 7 set forth the total sum that the Hollands agreed to pay. The court acknowledged that section 6 obligated WPS to provide documentation of the costs as an attachment to the Contract. However, there was no evidence that WPS ever provided that documentation and, consequently, it was not incorporated into the Contract. The court concluded that section 6, read in conjunction with section 28, was "not sufficient to establish the contract in the nature of a construction management or a cost-plus contract as is generally recognized." The court reasoned that the management fee was "inconsistent with a general contractor arrangement generally and with the subject contract specifically" and was poorly defined. It did not specify when the fee was earned and how it would be paid. Given that WPS drafted the Contract, it could have made the terms of the management fee clear but did not. On those bases, the court ruled that section 28 was unenforceable for vagueness. Alternatively, the court ruled that the fee was not earned because "[t]he job was not completed" and was "not effectively managed."

The court determined that the allowances were incorporated into the Contract when they were requested by Ms. Holland and provided by WPS. Those amounts were used to determine the Contract price. The court agreed with the Hollands that to the extent items listed in the allowances never were provided by WPS, they were entitled to a credit for those unused allowances. On the other hand, the court ruled that WPS was entitled to credits for "costs incurred in excess of any allowance," consistent with the industry practice.

The court reviewed all the invoices introduced into evidence by WPS and the allowances sheet and determined that four allowances required additional findings. In sum, the court found that WPS was entitled to a credit of $47,088.75 for expenditures by the Hollands in excess of the allowances for flooring and tile, kitchen cabinets, and specialty doors.

In the court's view, the evidence showed that the Contract was "satisfactorily adjusted by the parties as it relates to the basement." Specifically, the Hollands agreed to revise the plans to cover the cost of expanding the basement *and* to pay an additional $10,000. To the extent that there was an additional cost increase associated with the revision of the plans to include a full basement, the Contract required the parties to execute a change order and that did not occur.

The court found that WPS was entitled to a $10,764.71 credit for the cost of the driveway, which was an item specifically excluded from the Contract.

On the other hand, the court ruled that WPS breached the Contract "by stopping work and purporting to terminate [it]." WPS "erroneously viewed the [C]ontract as a construction management or cost plus cont[r]act" and it was 'indisputable" that it "overspent on the project due to inattentiveness, which [Mr. Littleton] acknowledge[d]." Because the court concluded that the Contract was a general contractor contract with a fixed price, with a purported management fee tacked on, however, it ruled that the Hollands were not in breach of its terms when WPS ceased worked and attempted to terminate the Contract. They had made all payments to which WPS was entitled under

the draw schedule "and then some" and WPS's demands for additional money was itself a breach of the Contract.

As a direct consequence of WPS's breaches, the Hollands suffered damages in the form of costs to complete the work on their home, one of the two mechanic's liens,[7] and the costs to defend against that mechanic's lien, plus the unused allowances under the Contract, totaling $115,920. The court denied the Hollands' request for attorneys' fees incurred in prosecuting this action, however, because the indemnification clause in the Contract was phrased in discretionary language and did not obligate WPS to indemnify the Hollands. It likewise denied their fee request under the MCHPA, ruling that because the Hollands executed the Contract with WPS, but the land upon which their home was to be constructed was owned by Chesapeake, they did not qualify for protection under the Act.

On July 27, 2021, the court entered judgment for the Hollands on Count I of the amended complaint, awarding damages of $58,066.54. It denied the relief sought by WPS in its counterclaim. This timely appeal and cross-appeal followed.

STANDARD OF REVIEW

"When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). We review the circuit court's factual findings for clear error, "giv[ing] due regard to the opportunity of the trial court to

[7] The court found that the second mechanic's lien, which arose from monies due to a subcontractor for refinishing the floors, was a cost that already exceeded the allowance for flooring and, consequently, the Hollands were responsible for that cost.

judge the credibility of the witnesses." *Id*. We will only overturn the trial court's findings of fact that are "clearly erroneous[.]" *Torboli v. Torboli*, 127 Md. App. 666, 672 (1999) (internal citations omitted). "If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *L.W. Wolfe Enterprises., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quotations and citation omitted). But we review a trial court's legal rulings without deference to determine whether the trial court was legally correct. *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 388 (2019)

DISCUSSION

APPEAL

I.

Enforcement of the Contract

A. Parties' Contentions

WPS's primary position is that the Contract is not binding. First, it contends that the Hollands are judicially estopped from relying upon the Contract because they pled in the alternative in their amended complaint that the parties' agreement was not in writing. Second, it argues that the Contract was not executed by the Hollands and, consequently, that though the writing is evidence of the structure of the parties' agreement, it does not bind them. WPS contends that the court should have treated the Contract as a proposal and looked to other extrinsic evidence to determine that the parties' agreed to a construction management arrangement. It also argues that the court should have

considered that the parties' course of conduct showed that they never intended the Contract to govern the construction project, particularly after the January 18, 2022 revision of the plans to expand the basement.

The Hollands respond that the court correctly found that the Contract was the entire written agreement between the parties and that they were bound by its terms. Because the Contract is clear and unambiguous, the Hollands maintain that the circuit court was not permitted to look beyond its language. With respect to the revision of the plans for the home, the Hollands assert that the Contract specified that the only way the scope of the work could be revised was by a written change order signed by both parties and that to the extent that the revisions increased the cost to build the home, WPS was obligated to follow that procedure to alter the parties' agreement.

B. Estoppel

As a threshold matter, we hold that the Hollands are not estopped from relying upon the Contract for their claims. Under Maryland Rule 2-303(c), "[a] party may set forth two or more statements of a claim . . . alternatively or hypothetically" and "may also state as many separate claims . . . as the party has, regardless of consistency[.]" In Counts I, II, and III of their amended complaint, the Hollands pled that the July 24, 2017 Contract was the governing agreement between the parties and alleged that WPS breached its terms *and* violated the MCHPA by not including certain terms in the Contract. In Count IV, they pled in the alternative that, if the circuit court agreed with WPS that there was no executed, written contract between the parties, the lack of a

written contract also would violate the MCHPA. The Hollands were not precluded from pleading and obtaining relief on the theory that WPS breached the Contract merely because it alleged an alternative theory of WPS's liability under the MCHPA.

We likewise perceive no merit in WPS's argument that the amended complaint did not allege that there was "an executed written contract between the parties." To the contrary, the first paragraph in the amended complaint alleges that the Hollands and WPS "entered into a Construction Contract dated July 24, 2017, ("Contract") for [WPS] to build a custom home in Pocomoke, Maryland for [the Hollands] for $700,250." This allegation cannot reasonably be understood to refer to any document other than the written Contract bearing that date.

C. Contract Interpretation

Turning to the Contract,[8] we are guided by the well-established principles of contract interpretation. "The cardinal rule of contract interpretation is to effectuate the intentions of the parties." *Owens-Illinois, Inc. v. Cook*, 386 Md. 468, 497 (2005). Our task is to "give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation." *Impac Mortg. Holdings,*

[8] WPS contends throughout its brief that the Contract never was executed by the Hollands. To be sure, it advanced this position during the bench trial, questioning why the Hollands printed copies of the Contract from Rocket Lawyer after the date they claimed to have executed it. Nevertheless, the Hollands introduced a fully executed copy of the Contract into evidence, and Ms. Holland testified that she and her husband executed it in Mr. Littleton's presence in July 2017, shortly after they received it. The circuit court plainly credited Ms. Holland's testimony. As the finder of fact, the court was free to accept her testimony and to reject Mr. Littleton's testimony to the contrary.

Inc. v. Timm, 474 Md. 495, 507 (2021). "In other words, when the contract language is plain and unambiguous, 'the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.'" *Id*. (quoting *Dennis v. Fire & Police Emps.' Ret. Sys.*, 390 Md. 639, 656-57 (2006)).

"Ambiguity arises when a term of a contract, as viewed in the context of the entire contract and from the perspective of a reasonable person in the position of the parties, is susceptible of more than one meaning." *Impac Mortg.*, 474 Md. at 507. "If a contract provision is ambiguous, 'the narrow bounds of the objective approach give way,' and the court may consider extrinsic evidence to ascertain the mutual intent of the parties." *Id.* (citing *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 394 (2019)).

The Contract, read as a whole, obligated WPS to construct a custom home for the Hollands based upon plans and specifications designed by Mr. Quillen, then dated May 4, 2017, and to provide all materials and services with certain specified exceptions. The Hollands were obligated to make the plans, specifications, and construction documents available to WPS, to make the work site accessible, and to pay a fix price to WPS according to a draw schedule.

Section 7 of the Contract, entitled "Payment" is the only clause of the Contract that obligates the Hollands to pay any money to WPS. It specifies that the "total sum" the Hollands would be obligated to pay for the construction of their home was $700,250. This clause also established a timeline upon which the payments were to be made. Each

payment was tied to a progress point in the construction, with final payment not due until a certificate of occupancy issued. Nothing in the Contract evidences an intent for the price to fluctuate based upon costs incurred. WPS agreed to complete the work by May 16, 2018, specifying that "time was of the essence."

Sections 9 and 24 make clear that the Hollands only were obligated to pay for costs above $700,250 if a price increase was reflected in a written change order, executed by all parties, and that other modifications also were required to be in writing and signed. The circuit court found that the parties modified the Contract in three ways during the project. First, the allowances provided to Ms. Holland by WPS were a signed writing incorporated into the Contract. Neither party disputes that ruling on appeal, and the Hollands do not challenge any of the credits awarded to WPS for costs that exceeded the allowances. Second, the court implicitly ruled that the revised draw schedule prepared by FSFB and executed by both parties modified the draw schedule set out in the Contract. Neither party disputes this. Third, the circuit court implicitly ruled that the January 22, 2018 revised plans were incorporated into the Contract. WPS disputes this, arguing that the Contract only governed construction of the custom home according to the original plans.[9]

[9] Even if we did not conclude that the parties modified the Contract to incorporate the revised plans, we would decline to address WPS's argument that the Contract "was specifically only applicable to the plans dated May 4, 2017." WPS did not advance this argument in its trial memoranda or its written closing arguments. To the contrary, it argued that the significant expansion of the custom home after the Contract was executed, (Continued)

We hold that the revised plans were incorporated into the Contract when, as discussed, Mr. Littleton, filed an application to revise the building permit with the County, which he signed as an agent of Chesapeake. The application was a writing signed by and on behalf of all the parties and it specified that price increase for this revision was $10,000. The Hollands do not dispute that the Contract price was increased to accommodate this adjustment. WPS did not at any time propose an increase in the price outside of this $10,000 figure, which Ms. Holland and Mr. Quillen testified was the amount quoted during a discussion of the revision. There is no change order or other writing documenting any other price increase agreed to by the parties, presumably because the parties testified that they agreed to offset the additional cost for the basement by removing other construction costs.

For all these reasons, we conclude that the circuit court did not err: 1) in determining that the Contract established a fixed total price for the construction of the Hollands' home; 2) in ruling that WPS breached the Contract when it demanded money above and beyond the total price as a condition to completing the work and then terminated the Contract; or, 3) in awarding damages to the Hollands, offset by credits due to WPS.

as reflected in the revised plans, was evidence that the parties were operating under a construction management arrangement.

II.

Section 28 of the Contract

WPS contends that if the Contract is deemed binding, the circuit court failed to enforce its unambiguous language requiring the Hollands to pay WPS a 12 percent management fee on top of the Contract price. The Hollands respond that the circuit court correctly found that WPS did not earn the management fee.[10]

Section 28 of the Contract states that WPS "will receive a minimum of twelve percent construction management fee for all aspects of construction on the Holland project." The circuit court determined that this clause was unenforceable because it does not specify how and when the fee becomes payable or whether it is incorporated into the Contract price of $700,250, as would be standard in a general contractor arrangement. Consequently, the circuit court severed this provision from the Contract under the section 22 ("If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.). Alternatively, the court ruled that WPS was not entitled to collect its management fee because "[t]he job was not completed" and was "not effectively managed." Because we agree that WPS could not collect the fee considering its material breaches, we need not reach the issue of enforceability.

[10] The Hollands do not argue on appeal that the management fee clause was unenforceable.

Generally, where one party has materially breached a contract, the other party is no longer obligated to perform. *See Barufaldi v. Ocean City Chamber of Com.*, 196 Md. App. 1, 26 (2010). Here, the circuit court found that WPS materially breached its performance obligations by stopping work and demanding money it was not entitled to receive and failed to deliver to the Hollands a completed home for which a certificate of occupancy could be issued. It also found that WPS mismanaged the budget. The evidence unquestionably supported these findings. Mr. Littleton testified at trial and at his deposition that he was unaware that the project was significantly over budget until July 2019—well over a year after construction commenced and after the home was to be delivered completed under a "time is of the essence" provision. *See Granados v. Nadel*, 220 Md. App. 482, 488 n.5 (2014) ("When 'time is of the essence' is included in a contract, time is such a material matter that strict compliance by performance within the specified periods of time is a prerequisite to the right to require performance by the other party." (citing *Elderkin v. Carroll*, 403 Md. 343, 358 (2008)). Mr. Littleton admitted that it "got away from [him]" because he was working on two projects at once. He did not dispute that he did not notify the Hollands that they were over budget until he made his demand for additional payments. As a direct consequence of the breaches, the Hollands were forced to manage the completion of the project, which remained unfinished. On this evidence, the circuit court did not err by ruling that the Hollands were not obligated to pay WPS a construction management fee.

III.

Custom Home Protection Act

A. Parties' Contentions

In their cross-appeal, the Hollands contend that the circuit court erred as a matter of law by ruling that the MCHPA did not apply to them because the land on which their custom home was built was titled in Chesapeake's name and never was owned by them individually. Because that was an alternative basis upon which they sought an award of attorneys' fees, the Hollands maintain that remand is necessary for the circuit court to consider their fee request.[11]

WPS responds that the "Hollands do not describe any basis for ignoring the corporate entity in this matter" and that "[t]here is no[] basis for ignoring how the land was owned and thereby increasing the requirements on WPS." WPS further avers that "even if the statute applied to this matter and the contract was found wanting, the remedy for not having a compliant contract should not be the unjust enrichment of the Hollands."

B. Analysis

The General Assembly enacted the MCHPA in 1986. The stated purposes of the legislation included:

> requiring certain payments to custom home builders to be held in trust; providing for certain funds to be kept in escrow; providing for a surety

[11] The Hollands do not challenge in their cross-appeal the circuit court's construction of the indemnification clause in the Contract to permit, but not require, WPS to pay their attorneys' fees. They also do not suggest that they are entitled to additional damages for violations of the MCHPA.

> bond in lieu of an escrow fund; defining certain terms; providing that certain contracts be in writing; providing that the contract shall provide certain information and disclosures under certain conditions; providing that certain provisions of law apply to a sale by a vendor or builder that has outstanding a certain number of certain contracts; providing for penalties for certain violations of this Act; and generally relating to custom home contracts.

Schwartz v. State, 103 Md. App. 378, 388 (1995) (quoting 1986 Md. Laws, ch. 853). The Act's overall purpose is "to provide a specific remedy for custom homeowners dealing with impecunious contractors." *Id.* at 389.

The MCHPA requires that "[e]very custom home contract between a custom home builder and the buyer . . . be in writing" and that the contract comply with these provisions:

> (1) Include a draw schedule that shall be set forth on a separate sheet . . . that shall be separately signed by the buyer and the [builder];
>
> (2) Identify to the extent known the names of the primary subcontractors who will be working on the custom home;
>
> (3) Expressly state that any and all changes that are to be made to the contract shall be recorded as "change orders" that specify the change in the work ordered and the effect of the change on the price of the house;
>
> (4) Set forth in bold type whether or not the vendor or builder is covered by a warranty program . . . ;
>
> (5) Require the vendor or builder to deliver to the purchaser within 30 days after each progress payment a list of the subcontractors, suppliers, or materialmen who have provided more than $500 of goods or services to date and indicate which of them have been paid by the [builder]; and
>
> (6) Require that the [builder] provide waivers of liens from all applicable subcontractors, suppliers, or materialmen within a reasonable time after the final payment for the goods or services they provide.

RP § 10-505. Additionally, section 10-506 requires a custom home builder to "include in each custom home contract a disclosure concerning a buyer's risk under mechanics' lien laws." RP § 10-506(a). A builder who violates these sections is subject to several penalties, and a violation constitutes "[a]n unfair or deceptive trade practice" under the Maryland Consumer Protection Act. RP § 10–507. In order to be entitled to damages or an award of reasonable attorneys' fees in an action under the Consumer Protection Act premised upon a violation of the MCHPA, a homeowner must show that they "were actually injured by [the] violation of the Act[.]" *DeReggi Constr. Co. v. Mate*, 130 Md. App. 648, 665 (2000).

Of significance here, section 10-501(b) of the MCHPA defines a "Buyer" as "any *person* who seeks or enters into a contract for the construction of a custom home." "Person" is elsewhere defined to include individuals, corporations, and "any other legal or commercial entity." RP § 10-501(h). A "Custom home" is "a single-family dwelling constructed for the buyer's residence *on land currently or previously owned by the buyer*." RP § 10-501(c) (emphasis added).

The circuit court reasoned that the Hollands did not fall within the ambit of the statute because they signed the Contract in their own names and did not currently or previously own the land upon which the custom home was to be constructed. Consequently, they were not a "Buyer" as that term was defined under the Act. We disagree.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the legislature." *State v. Bey*, 452 Md. 255, 265 (2017) (quoting *State v. Johnson*, 415 Md. 413, 421 (2010)). We begin "with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology." *Blackstone v. Sharma*, 461 Md. 87, 113 (2018). "The statutory language should be read so that no word or phrase renders any part of it 'meaningless, surplusage, superfluous, or nugatory.'" *Bd. of Educ. of Howard Cnty. v. Howard Cnty. Educ. Ass'n-ESP, Inc.*, 445 Md. 515, 533 (2015) (quoting *Blitz v. Beth Isaac Adas Israel Congregation*, 352 Md. 31, 40 (1998)). "We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone." *Johnson v. State*, 467 Md. 362, 372 (2020) (quoting *Wash. Gas Light Co. v. Md. Pub. Serv. Comm'n*, 460 Md. 667, 685 (2018)). Instead, "'[w]e presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.'" *Gerety v. State*, 249 Md. App. 484, 498 (2021) (quoting *Bey*, 452 Md. at 266). We will also "consider the consequences resulting from one meaning rather than another and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense." *Bolling v. Bay Country Consumer Fin., Inc.*, 251 Md. App. 575, 589 (2021), reargument denied (Sept. 2, 2021) "In addition to these well-

established canons, we liberally construe a remedial statute to effectuate its broad remedial purpose." *Id.*

Here, the Contract contemplated the construction of "single-family dwelling" that the Hollands would use as their residence on land owned by them indirectly, as the sole members of their limited liability company. The Hollands took out a construction loan in Chesapeake's name, and the draw schedule, which was incorporated into the Contract, reflected Chesapeake's ownership of the Property. WPS executed the draw schedule and the revised building permit, both of which named Chesapeake as the owner. It would defeat the remedial purpose of the MCHPA to construe it narrowly to permit the misidentification of the "Buyer" in a contract to eliminate protections under the Act. This is especially so because a limited liability company may be a Buyer under the MCHPA. *See* RP § 10-501(b) & (h) (permitting any "legal entity" to be a "person who . . . enters into a contract for the construction of a custom home").

Here, the Contract was for a "Custom home" to be constructed "for the buyer's residence *on land currently or previously owned by the buyer*." RP § 10-501(c). The Hollands are the sole members of Chesapeake, and the construction loan from which WPS took its draws was secured by a deed of trust on the Property naming Chesapeake on the title. For all of the foregoing reasons, we conclude that the Contract was required to comply with the MCHPA. Because the circuit court ruled that the Hollands could not seek relief under the MCHPA, it did not consider their request for attorneys' fees under the Act. Thus, we shall vacate the denial of the Holland's request for attorneys' fees

under Count III of the amended complaint and remand for the circuit court to hold additional proceedings not inconsistent with this opinion to determine whether the Contract violated the MCHPA, and if so, whether attorneys' fees are justified.[12]

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED, IN PART, AND VACATED, IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLANT/CROSS-APPELLEE.

[12] We note that the Hollands, in their cross-appeal, have limited their request for remand to consider an award of attorneys' fees and not any other potential damages that may be available under the MCHPA. An issue not raised by an appellant or cross-appellant in its opening brief in this Court is deemed waived or abandoned. *Md. Auto Ins. Fund v. Baxter*, 186 Md. App. 147, 154 (2009); *Remsburg v. Montgomery*, 376 Md. 568, 585 n.8 (2003) (collecting cases)). Consequently, only the Hollands' claim for attorneys' fees under the MCHPA is before the circuit court on remand.