

Circuit Court for Montgomery County  
Case No. 482864V

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 0996

September Term, 2023

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SYED ASIF RAHMAN, *ET AL.*

v.

DAVID ROTH, *ET AL.*

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Nazarian,  
Leahy,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: May 10, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In 2019, Syed Asif Rahman and Sabrina Islam-Rahman (“Buyers”) offered to buy a home from David Roth and Cassi Fields, Ph.D. (“Sellers”). They signed a sales contract and the Buyers planned to use a future monetary gift as the down payment. When the gift fell through, the Buyers were unable to finance the purchase, and after the deal fell through, the Sellers sued the Buyers for breach of contract in the Circuit Court for Montgomery County. The parties filed a variety of motions, the court held a hearing, and the court found that the Buyers hadn’t breached the contract and denied all requests for attorneys’ fees. Both parties then sought in banc review and the in banc panel reversed the circuit court’s decision as to the breach of contract claim, but not the Buyers’ attorneys’ fees claim. The Buyers now seek to appeal that decision, arguing that there was no breach and that they should have received attorneys’ fees under the contract. But because the Buyers sought and obtained appellate review from the in banc panel, their claims are non-appealable and unreviewable and we dismiss the appeal.

## **I. BACKGROUND**

The Buyers are a married couple from Montgomery County. In the fall of 2018, they began looking for a larger home to accommodate their family. The Buyers expected that Mr. Rahman’s father, Syed Rahman, Sr., would gift them the proceeds from the sale of his home (“Bartram Home”), estimated to be \$350,000, for a down payment. The Bartram Home was listed for sale on April 12, 2019. After finding a buyer for the Bartram Home, a settlement date of June 24, 2019 was set and proceeds were expected to be available then.

On April 30, 2019, the Buyers offered to buy the Sellers' Rockville home for \$1,000,000. The Buyers and Sellers signed a GCAAR<sup>1</sup> sales contract ("Contract") on May 16, 2019 and ratified it on May 18, 2019. Under the terms of the Contract, the Buyers were to provide a thirty-three percent down payment and pay the rest of the price with conventional loans. The Contract also contained a Conventional Financing Addendum ("CFA") under which the Buyers would be in default if they failed to close on the agreed settlement date:

1. **SPECIFIED FINANCING:** The following loan(s) shall be the "Specified Financing":

**FIRST DEED OF TRUST:** Buyer will obtain . . . a First Deed of Trust loan . . . .

2. **FINANCING CONTINGENCY:** This Contract is contingent . . . on Buyer's ability to obtain Specified Financing.

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5. **REMOVAL OF CONTINGENCY:** At any time prior to Seller Delivering Notice declaring the Contract Void, Buyer may remove this contingency: 1) By delivering to Seller evidence of Buyer's ability to complete settlement without obtaining the Specified Financing; OR 2) delivering notice to Seller, Buyer has made application for alternate financing . . . . **If Buyer removes the Financing Contingency but fails to complete Settlement by the Settlement Date for any reason not permitted by this Contract or as a result of any Default by Seller, then the provisions of the DEFAULT paragraph shall apply.**

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8. **BUYER DEFAULT PROVISIONS:** Buyer will be in Default if Settlement does not occur on the Settlement Date as a result of any of the following actions by Buyer . . . .

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<sup>1</sup> Greater Capital Area Association of Realtors.

**D.** Does not have the down payment, closing fees and any other required funds . . .

As part of the Contract, the parties agreed on a settlement date of June 18, 2019, which later was pushed back to July 17, 2019 by agreement.

Mr. Ahmad, Sr. became severely ill and decided that he would no longer gift the Buyers the proceeds from the sale of the Bartram Home for their down payment. On July 12, 2019, the Buyers informed Quicken Loans, their loan provider, that they would not be receiving the monetary gift. Soon after, on July 18, 2019, Quicken Loans informed the Buyers that their loan application had been denied because of “[i]nsufficient funds to close.”

That same day, the Buyers informed the Sellers that they were not going to be able to purchase the Rockville home. The Buyers also sent the Sellers a signed GCAAR release form, but the Sellers never signed it. Instead, the Sellers sued the Buyers for breach of contract on July 20, 2020.

The parties filed several motions and oppositions and the court scheduled a hearing. After the hearing concluded, the circuit court decided that because the Buyers had not obtained the financing required by the Contract, the Contract became void because the financing contingency wasn’t satisfied. In addition, because the Contract was void, the Buyers were not entitled to the attorneys’ fees they claimed they were owed under a provision of the Contract that awarded attorneys’ fees to the prevailing party in a breach of contract action.

Because both parties received adverse outcomes, each sought in banc review of the judgment. An in banc hearing was held on April 8, 2022, and it focused almost exclusively on whether the Buyers had breached the Contract. On May 5, 2022, the in banc panel reversed the circuit court’s determination that there was no breach of contract. The panel reasoned that the Buyers’ inability to provide the down payment breached the Contract. The panel explained that “[a] party to a contract cannot prevent the fulfillment of a contractual condition, refuse to perform under the contract, and then argue the failure of that condition as a defense to a claim the party breached.” The panel also upheld the circuit court’s denial of the Buyers’ attorneys’ fee request. The Buyers appealed the in banc judgment on July 18, 2023; the Sellers have not appealed. Additional facts will be provided below as necessary.

## II. DISCUSSION

The Buyers present one issue<sup>2</sup> for review, but we cannot reach it because the Buyers

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<sup>2</sup> The Buyers’ brief lists their Question Presented as:

1. Did the trial court err in granting Buyers’ Motion for Summary Judgment as to Count I of the Amended Complaint, Breach of Contract?

The Sellers’ brief lists their Questions Presented as:

- I. SHOULD THIS APPEAL BE DISMISSED BECAUSE ALL ISSUES HAVE BEEN ADDRESSED BY THE *IN BANC* PANEL?
- II. DID THE *IN BANC* COURT CORRECTLY RULE THAT THE BUYERS DEFAULTED ON THE CONTRACT BECAUSE THEY DID NOT HAVE THE DOWN PAYMENT.

cannot appeal the in banc decision to this Court.

**A. The In Banc Decision Is Unreviewable.**

On appeal, the Buyers assert that the in banc panel erred in finding that they breached the Contract. But because both parties sought in banc review and all of the issues raised by the Buyers were resolved by the in banc panel, the panel's decision isn't reviewable in this Court and we must dismiss the appeal.

The Maryland Constitution gives individuals the right to appeal certain cases to in banc panels comprised of three circuit court judges. Md. Const. art. 4, § 22. In banc panel review is a faster and more affordable option than traditional appeals. *Remson v. Krausen*, 206 Md. App. 53, 60 (2012). But once the in banc panel hears and resolves the issues raised by the party who requested the panel, that party may not appeal the decision to our appellate courts. Md. Rule 2-551(h); Md. Code (1974, 2020 Repl. Vol.), § 12-302(d) of the Courts and Judicial Proceedings Article. That is the end of the appellate road, as it were, save for the possibility of *certiorari* review in the Supreme Court of Maryland. *See Montgomery County v. McNeese*, 311 Md. 194, 196–97 (1987).

The Buyers sought in banc review of the circuit court's denial of their Motion for Reconsideration. Their Motion for Reconsideration had argued that the Contract should be interpreted to mean that there was no breach on their part and that they were entitled to attorneys' fees. At the in banc hearing, most of the time was spent assessing whether the Buyers had, in fact, breach of contract. The in banc's opinion reflects this as well:

[I]t is undisputed that the Buyers intended to have the funds for the down payment. It is undisputed that Mr. Rahman, Sr.

expected to gift the funds to the Buyers. It is undisputed the Buyers failed to have the down payment and this failure precluded financing . . . . By their failure to secure the down payment—for whatever reason, and failure to complete the settlement, the Buyers defaulted on the release . . . .

After the in banc panel found that the Buyers had breached the Contract, it reversed that part of the circuit court’s decision, then affirmed the court’s decision to deny the Buyers’ request for attorneys’ fees under the Contract (which makes sense because, in light of that holding, the Buyers couldn’t possibly be viewed as having prevailed). Most importantly for our purposes, the panel addressed and resolved all of the substantive issues raised by the Buyers as well as the Sellers’ issues, which renders this appeal unreviewable in this Court. *Remson*, 206 Md. App. at 60 (the decision of an in banc panel ““is conclusive, final, and non-appealable by the party who sought the in banc review, and as to that party a reservation of points and questions for consideration by a court in banc is a substitute for an appeal to the [Appellate Court of Maryland].”” (quoting *McNeece*, 311 Md. at 198)).

**APPEAL DISMISSED. APPELLANT TO PAY COSTS.**