UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2449

September Term, 2015

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NATHANIEL D. JOHNSON

v.

LANELL LIGHTFOOT and
SOUL WORLD ENTERTAINMENT, LLC.,
ET AL.

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Eyler, Deborah S.,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, Deborah S., J.

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Filed: March 31, 2017

This is an appeal from a judgment for $11,756.25 in attorneys' fees entered by the Circuit Court for Prince George's County in favor Charles Thomas, Esquire, the appellee, as a discovery sanction against Nathaniel D. Johnson, Esquire, the appellant.

## FACTS AND PROCEEDINGS

On August 12, 2013, Mr. Thomas filed a nineteen count complaint for breach of contract and other causes of action on behalf of his clients, Lanell Lightfoot and Derrick Stewart ("the Plaintiffs"). The named defendants were Blackstone Management LLC ("Blackstone"), Bobby Burwell, Cliff Jones, Tina Jones, David Lindsey, Tiffany Paige, Tommy Reed, and Soul World Entertainment LLC ("Soul World") ("the Defendants"). After many problems with service of process, resulting in motions to dismiss for insufficiency of process, default orders, and motions to vacate default orders, the case became at issue against the Defendants, all of whom were represented by Mr. Johnson. On August 6, 2014, an answer was filed. The court issued a scheduling order setting a pretrial conference date of December 16, 2014, with motions deadlines specified and preceding that date.

Mr. Thomas prepared interrogatories and requests for production of documents from Plaintiff Lightfoot to seven Defendants (Blackstone was omitted). According to Mr. Thomas, Mr. Johnson received those discovery requests on September 22, 2014. On October 10, 2014, Mr. Johnson took Plaintiff Lightfoot's deposition.

On October 27, 2014, Mr. Thomas emailed Mr. Johnson complaining that he had not received discovery responses in the 30 day period required by Rules 2-421(b) and 2-422(c) and demanding that the responses be received in his office no later than midnight,

otherwise he would file a motion to compel. Mr. Johnson responded that he had received the discovery on September 27, 2014, not September 22, 2014, so the deadline as calculated by Mr. Thomas was wrong and that he would provide responses in two weeks.

Not satisfied, on October 29, 2014, Mr. Thomas filed a motion to compel discovery.[1] The court scheduled a hearing for December 16, 2014, on all outstanding motions, including the motion to compel. Before the hearing took place, Mr. Johnson provided Mr. Thomas with answers to interrogatories and responses to requests for production of documents from six of the Defendants to whom discovery had been propounded. The discovery responses furnished by Defendants Soul World, Cliff Jones, and David Lindsey were dated November 18, 2014. The discovery responses by Defendants Tommie Reed, Tina Jones, and Tiffany Paige were dated December 9, 2014. No responses were provided by Defendant Bobby Burwell. Each set of interrogatory answers was signed by Mr. Johnson and had attached to it a "Verification" page signed by the particular Defendant to whom the interrogatories were addressed and attesting to the accuracy of the answers.

**December 16, 2014 Hearing and December 18, 2014 Order to Compel**

At the December 16, 2014 hearing, Mr. Thomas argued that the interrogatory answers and responses to requests for production of documents were inadequate because they were not signed by the Defendants on the last page of their responses (as opposed to

[1] The motion to compel was filed on behalf of both Plaintiffs, even though no discovery was propounded by Plaintiff Stewart.

on the attached "verification" pages); because Defendant Burwell had not provided any discovery responses at all; and because the discovery responses, in particular the interrogatory answers, merely were objections to the discovery requests on the ground that the information sought was not relevant and therefore gave little actual information. For quite some time, Mr. Thomas detoured into an unavailing argument that, in his view, Mr. Johnson really only was representing two of the Defendants.

Mr. Johnson responded that the interrogatory answers in fact had been signed by the Defendants who furnished them, although on a "verification" sheet attached to each set of answers; that the objections to the questions posed in discovery were justified because Ms. Lightfoot had testified in deposition that she only considered Defendants David Lindsay and Cliff Jones to have had anything to do with her claimed injury; and that there was no basis for Mr. Thomas's assertion that he (Mr. Johnson) did not represent all the Defendants.

Instead of ruling from the bench, the court took the matter under advisement. On December 18, 2014, it issued an order that reads, as it pertains to the motion to compel:

> **ORDERED**, that Plaintiffs' Motion to Compel Discovery is **GRANTED** in part; and it is further
>
> **ORDERED,** that *Defendant shall produce executed responses to Plaintiff's interrogatories and request for production of documents within fifteen (15) days of the date of this Court's Order*; and it is further
>
> **ORDERED**, that *the Defendant* will be precluded from entering evidence at trial *if he fails to file his responses as provided herein*; and it is further
>
> **ORDERED**, that all other requested relief is **DENIED**.

(Emphasis added.)

On January 7, 2015, Mr. Thomas filed a "Motion & Request for Emergency Consideration To Preclude Discovery/Evidence & Sanctions," asserting that the Defendants had not complied with the December 18, 2014 Order, to the Plaintiffs' prejudice; seeking a decision as to what evidence would be precluded from admission at trial, in enforcement of that order; and seeking an award of "costs related to discovery and lack of due diligence *by Defendants and their counsels*." (Emphasis added.)

There is no response to that motion in the record.[2]

[2] Mr. Johnson has filed a motion to supplement the "record extract" to include an opposition to the motion for sanctions that he claims he prepared on January 13, 2015, and furnished that day to the judge who had heard and granted the motion to compel. He did so because he expected that the same judge would preside over the hearing on the motion for sanctions, which is what happened on February 5, 2015. The opposition was not filed in the clerk's office, however, and therefore is not part of the record. *See* Md. Rule 8-502(c); *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 661–63 (2010). A record extract only may include materials that are in the record. We note that there was no mention of the opposition by either lawyer or by the judge at the February 5, 2015 hearing, and there is no reason to think that the judge had it before him at the hearing.

The opposition states that Ms. Jones had suffered a medical emergency and Mr. Jones had to spend time assisting her, so that neither of them had been able to complete supplements to their discovery responses. It further states that Soul World is "the only entity required by law to comply with its discovery obligations by answering written discovery propounded by Plaintiffs." The basis for this statement is unclear. It goes on to state that any forfeiture of Soul World's right to do business in Maryland has been corrected and that the contract between the parties requires arbitration. (A previously filed motion to compel arbitration had been denied.) It requests an extension until January 20, 2015, to file responses. Responses were not filed by then.

Because the opposition is not in the record, we shall deny the motion to supplement the record extract.

**February 5, 2015 Hearing and Later Docket Entry Granting Motion for Sanctions**

On February 5, 2015, the court held a hearing on several open motions, including the motion for sanctions. One was a motion for protective order that Mr. Johnson had filed on behalf of his clients and that the court granted.

When the motion to compel was taken up, the court asked Mr. Johnson, "[W]hat is the problem with the discovery?" He responded that the previous day he had received word from his client (Mr. Jones) that he had learned from his accountant that it was going to take "a few weeks" to obtain the tax returns for Soul World.

Mr. Thomas responded that he had heard nothing about this and there were several discovery requests that had nothing to do with tax returns and Mr. Johnson had not provided responses to any of them. When asked by the court, "So—you haven't done anything?" Mr. Johnson replied that he was waiting for his protective order motion to be granted and then he would supplement discovery. The court, which, as noted, had just granted the motion for protective order, responded, "So if I sign that today, [Mr. Thomas] is going to have some documents in his office when?" Mr. Johnson responded, "By Monday [February 9]." Mr. Thomas complained that depositions were to take place before then and not having the discovery responses until after the depositions were taken would be a hardship.

At that point the court, addressing Mr. Johnson, said:

> Counsel, you know, I find it hard to believe that this case had been going on this long and you have been reasonably incapable of providing a scintilla of discovery. That just doesn't make sense, really. Are you seriously arguing that to me right now?

Mr. Johnson responded that he had provided discovery, but Mr. Thomas apparently wanted the discovery supplemented. He repeated that Ms. Lightfoot only had identified two of the Defendants as having anything to do with her claimed injury and therefore discovery to the other Defendants was not relevant. This colloquy followed:

> THE COURT: Okay, well let me ask you this, this letter [to Mr. Thomas] is dated February 3, if your discovery deadline was January 2, why is it taking you a month to tell us that it is going to take another 2 to 3 weeks?
>
> MR. JOHNSON: Your honor, I received that [the news about Soul World's tax information] yesterday from Mr. Jones, that is my first learning of it.
>
> THE COURT: *Motion for sanctions is granted*. I am going to reserve on the actual penalty that is going to be imposed. I want a submission by plaintiff's counsel as to the fees and expenditures that have resulted—that he has incurred or his client has incurred as a result of the delays and then I will make a decision as to what penalty.

(Emphasis added.) Mr. Thomas asked the court to impose another discovery deadline in place of the January 2, 2015 deadline, and Mr. Johnson agreed to the close of business on Monday, February 9, 2015.

On February 9, 2015, Mr. Johnson provided Mr. Thomas with interrogatory answers and responses to requests for production of documents from all seven Defendants to whom discovery had been propounded (Reed, Cliff Jones, Tina Jones, Paige, Burwell, Lindsey, and Soul World). The interrogatory answers included more information than the ones originally provided. The discovery responses were filed in court the following morning.

The clerk prepared a "daily sheet" titled "Docket Entries," which was signed by the judge and lists rulings made on various motions in the case at the February 5, 2015

hearing, including "Plaintiff's Motion for Sanctions—Granted" and "Court orders Defendants to respond to Discovery requests by close of business Monday, February 9, 2015." It also states that the motions hearing would be resumed on February 12, 2015. The daily sheet was not docketed until May 12, 2015.

**February 12, 2015 Hearing**[3]

At the resumed hearing on February 12, 2015, Mr. Thomas renewed the Plaintiffs' motion to compel, arguing among other things that the signatures on the discovery from Defendants Lindsey, Paige, Cliff Jones, Reed, and Bobby Burwell still were not in accordance with Mr. Thomas's view of the rules, *i.e.*, that they had not signed the interrogatory answers on the last pages, but once again had attached separate "Verifications," and had not signed the responses to requests for production of documents at all. The court ruled,

> All right. I will compel that defendants supplement the verifications on the interrogatories and request for production of documents by close of business on Friday of this week. All other aspects of the renewed motion to compel by the plaintiffs is denied.

This ruling was recorded on a "daily sheet," signed by the judge, stating that the Defendants were ordered to submit supplemental verifications for their interrogatory answers by Friday, February 13, 2015. That daily sheet also was not entered on the docket until May 12, 2015.

[3] The transcript for the February 12, 2015 hearing appears in the Record Extract but, for reasons we cannot determine, does not appear in the record transmitted to this Court.

**Proceedings Leading Up to and Including Trial**

A pending trial date in late February was continued by agreement of counsel, and subsequently the case was specially assigned to a judge other than the judge who had issued the order to compel and the sanctions order. Ultimately, it was set in for trial beginning on June 1, 2015.

On March 13, 2015, Mr. Thomas filed a submission to the court seeking $23,625 in attorneys' fees as the penalty under the February 5, 2015 sanctions order. An invoice for that amount, dated "August 2014 – January 2015," was attached.

On May 15, 2015, Mr. Johnson struck his appearance for all the Defendants except Bobby Burwell. That same day attorney Antoini M. Jones entered his appearance for all the other Defendants.

On May 29, 2015, the court held a hearing on outstanding motions. Mr. Thomas asked the court to award the $23,625 in fees he had submitted as the penalty for the February 5, 2015 sanction finding. The court reserved on that issue.

Trial commenced as scheduled on June 1, 2015. Between rulings on dismissal motions, motions for judgments of acquittal, and the jury's verdict, which was returned on June 3, all counts were decided in favor of all the Defendants and against the Plaintiffs. The court set a hearing for the next day, June 4, to address the reserved motion on the amount of Mr. Thomas's attorneys' fees that would be awarded as sanctions under the February 5, 2015 order.

**June 4, 2015 Sanctions Penalty Hearing**

The June 4, 2015 hearing was attended by Mr. Thomas and Mr. Jones but not Mr. Johnson. Mr. Johnson had informed the court and counsel that he could not attend a hearing that day due to a death in his family that required him to attend a funeral out of state. Without his agreement, the hearing went forward anyway.

The contract at issue in the case contained a prevailing party attorneys' fee provision, and, before the June 4 hearing, the Defendants made it known that they intended to seek attorneys' fees under it. At the outset of the June 4 hearing, however, Mr. Jones said that his clients (*i.e.*, all the Defendants except Mr. Burrell) had agreed to waive their claim for fees in exchange for the Plaintiffs' agreeing not to take an appeal. In addition, they had reached an agreement regarding the February 5, 2015 sanction. Specifically, Mr. Thomas, on behalf of the Plaintiffs, moved to waive his clients' right to collect any judgment entered as a penalty for the February 5, 2015 sanction order against all the Defendant parties, leaving Mr. Johnson as the sole "Defendant" against whom a monetary sanction could be awarded and collected. Mr. Thomas further moved to amend the attorneys' fees invoice he had submitted from $23,625 to $6,000. With the agreement of the Plaintiffs and the Defendants except Mr. Burrell, but not of Mr. Johnson, the court granted these motions. The result was a $6,000 judgment against Mr. Johnson only, which was entered on June 22, 2015.

**Motion to Alter or Amend and October 5, 2015 Evidentiary Hearing**

Within ten days of the entry of the June 22, 2015 Judgment, Mr. Johnson filed a motion to alter or amend. He argued that the order imposing the sanctions solely against

him was entered in violation of his due process rights, as he was not present and did not have the opportunity to be present due to the death in his family. He further argued that the February 5, 2015 sanctions decision should be vacated because it was not supported by the evidence. The court scheduled the motion for an evidentiary hearing on October 5, 2015.

At the beginning of the evidentiary hearing, the court announced that it was not going to revisit the February 5, 2015 sanctions decision, as it had been made by another judge. The court began by taking up Mr. Johnson's request to vacate the June 22, 2015 Judgment imposing $6,000 in sanctions on him. The court granted the motion, although it did not specifically address part of Mr. Johnson's argument, which was that vacating that judgment not only should put the matter back to square one as to the amount of fees, if any, the court would award on the February 5, 2015 sanctions determination but also should put the matter back to square one as to the sanctions being imposed against all the Defendants and him, not him alone. The court proceeded on the assumption that any award of fees as sanctions would be imposed against Mr. Johnson only.

After Mr. Thomas and Mr. Johnson gave opening remarks, Mr. Thomas proceeded with his request for fees. He was the only witness to testify at the hearing. He summarized the discovery disputes and hearings that took place in the fall of 2014 and winter of 2015, although not entirely accurately. For instance, he testified that there were four hearings between October 2014 and February 5, 2015, on the discovery dispute over the Defendants' interrogatory answers and responses to requests for production of documents, when there were only two. (He stated that there were hearings in December

2014 and January 2015, when there were not). He did not offer his motion to compel, the court's December 18, 2014 order to compel, his January 7, 2015 motion for sanctions, or the court's February 5, 2015 daily sheet memorializing the court's ruling of that day as exhibits. They would have clarified the discovery history of the case. In any event, Mr. Thomas maintained that, although he had been willing to accept $6,000 as a monetary sanction, he believed the full sum documented in his invoice was a fair and reasonable amount to award as sanctions.

Mr. Thomas reviewed many of the entries on his invoice, which, as noted, totaled $23,625. The invoice entries were undated, but started with the time he had spent drafting the interrogatories and requests for production of documents to the Defendants, in August 2014, and ended with the time he spent at the hearing on the motion for sanctions on February 5, 2015. He testified that the $350 hourly fee he charged was fair and reasonable for an attorney with five to six years of experience. (He could not recall whether he passed the bar in 2009 or 2010.)

The court found that $275 per hour was a reasonable fee for an attorney with Mr. Thomas's experience and that the 67.5 hours of time covered by the invoice should be reduced because a significant amount of the work was duplicative.

On November 4, 2015, the court entered an order finding that Mr. Johnson did not submit evidence sufficient to reduce or remove the sanctions determination made on February 5, 2015, and that Mr. Thomas's "modified invoice" of $11,756.25 for discovery costs was fair and reasonable. The court awarded attorneys' fees in that amount against

Mr. Johnson and in favor of Mr. Thomas. A final judgment was entered on November 4, 2015. Mr. Johnson filed a timely notice of appeal on December 4, 2015.

We have combined and rephrased the questions Mr. Johnson presents for review as follows:

> I. Did the circuit court abuse its discretion by awarding sanctions on February 5, 2015, because the record did not support the discovery failure the court found and because the court failed to make necessary findings of fact and conclusions of law?
>
> II. Did the trial court err by entering the judgment for sanctions for $6,000 against Mr. Johnson only?
>
> III. Did the trial court abuse its discretion by not setting aside the sanctions order of February 5, 2015, and awarding sanctions of $11,756.25 when that sum was not supported by competent evidence and was far in excess of the fees reasonably expended in prosecuting the Plaintiffs' motions to compel and for sanctions?

For the reasons we shall explain, we answer the first question in the affirmative, and shall reverse the judgment. Our disposition of the first question makes it unnecessary to address the other questions.

## MOTION TO DISMISS

In his brief, Mr. Thomas has filed a motion to dismiss this appeal on numerous grounds. None of them have merit.

First, Mr. Thomas argues that we lack jurisdiction because Mr. Johnson did not file a supersedeas bond or other form of security. A supersedeas bond or other form of security is in most situations the only means to obtain a stay of enforcement of the judgment from which an appeal is being taken. *See* Md. Rule 8-422(a). The fact that such a bond or security is not obtained by an appellant simply means that the judgment

can be enforced even though the appeal is pending. It does not mean that the appellate court lacks jurisdiction. In some cases, the failure to obtain a supersedeas bond or other form of security pending appeal from the ratification of a foreclosure sale of real property will render the appeal moot, when the property subsequently has been sold to a bona fide purchaser for value. *See, e.g.*, *Baltrotsky v. Kugler*, 395 Md. 468 (2006). That is not the situation here. There is no issue of mootness and the Court has jurisdiction over this appeal, which is from a final judgment, notwithstanding Mr. Johnson's failure to obtain a supersedeas bond or other form of security.

Second, Mr. Thomas argues that this appeal should be dismissed because Mr. Johnson's opening brief was not actually filed, as it lacked an appropriate certificate of service and therefore should not have been accepted for filing by the Clerk's Office, under Rule 1-323. He does not explain how the certificate of service that is on the last page of Mr. Johnson's opening brief is defective or lacking, and it does not appear to us that it is defective or lacking.

Third, Mr. Thomas argues that Mr. Johnson's opening brief was filed one day late (on June 1, 2016, instead of on May 31, 2016) and therefore should have been rejected by the Clerk's Office; and hence, there was no brief filed and the appeal should be dismissed. This argument is spurious. The date stamp on Mr. Johnson's opening brief shows that it was received by the Clerk's Office on May 31, 2016.

Fourth, Mr. Thomas argues that the appeal should be dismissed for failure "to transmit to the Appellee a complete copy of the record as listed within his brief." Apparently, he is referring to the Record Extract, not the record. The complete record of

this case was received from the Circuit Court for Prince George's County as required by Rule 8-412. He complains that not all of the documents listed in the table of contents of the Record Extract were furnished to him. It is not clear what he is claiming was not furnished to him, however, and whether he is claiming that he received a version of the Record Extract that differs from what was filed in this Court. The Record Extract as filed contains the documents listed in the table of contents. To the extent that several of them are "excerpts" from various hearings, the excerpts cover the portions of the hearings that are relevant to this appeal. Accordingly, we have nothing before us to show that the Record Extract is inadequate or that the Record Extract as provided to Mr. Thomas was any different than the Record Extract as filed.

Fifth, Mr. Thomas argues that the appeal should be dismissed because Mr. Johnson has not cited to the Record Extract to support assertions made in his opening brief and because he has not made any supporting argument to support his positions. He also suggests that the appeal should be dismissed because the arguments now being made were not raised or decided below. These arguments lack merit as well. Generally, Mr. Johnson's opening brief includes citations to the Record Extract to support the factual assertions he makes. His questions presented are supported by legal arguments. And to the extent that Mr. Thomas is arguing non-preservation, that is not a basis to dismiss an appeal, *see* Md. Rule 8-131(a) (noting the Court of Special Appeals has the discretion to decided issues not raised in or decided by the trial court), and also he has not specified which arguments he maintains were not raised or decided below.

Finally, Mr. Thomas argues that the appeal should be dismissed because Mr. Johnson did not file an application for leave to appeal. This argument is baseless. The appeal in this case is a direct appeal as of right for which an application for leave to appeal is not required. *See* CJP 12-301; Md. Rule 8-204.

For all these reasons, we shall deny Mr. Thomas's motion to dismiss this appeal.

**DISCUSSION**

The ultimate decision to impose a sanction for a discovery failure or violation of an order compelling discovery is reviewed for abuse of discretion. *Klupt v. Krongard*, 126 Md. App. 179, 97–98 (1999). However, as we explained in *City Homes, Inc. v. Hazelwood*, 210 Md. App. 615 (2013), our standard of review necessarily requires that we consider the factual underpinnings of the discovery violation that gave rise to the sanctions decision:

> "We review a trial court's finding of a discovery violation under the clearly erroneous standard. 'When reviewing the circuit court's imposition of sanctions for discovery abuse, we are bound to the court's factual findings unless we find them to be clearly erroneous.' *Klupt* [126 Md. App. at 193]. 'Our scope of review is narrow and our function is not to substitute our judgment for that of the fact finder, even if we might have reached a different standard.' *Id*. Instead, we must 'decide only whether there was sufficient evidence to support the trial court's findings. In making that decision, we must assume the truth of all the evidence, and all of the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court.' *Id*."

*Id*. at 695–96 (quoting *Schneider v. Little*, 206 Md. App. 414, 432–33 (2012), *rev'd on other grounds, Little v. Schneider*, 434 Md. 150 (2013)).

Aspects of Rules 2-432 and 2-433 are implicated in this appeal. Under Rule 2-432(b), a party may file a motion for order compelling discovery when, as applicable

here, a party fails to answer an interrogatory under Rule 2-421, fails to comply with a request for production of documents under Rule 2-422, or fails to supplement a response under Rule 2-401(e). Md. Rule 2-432(b)(1)(D), (E), and (F). A motion to compel was filed in this case, and an order to compel was issued on December 18, 2014.

Rule 2-433 governs discovery sanctions. Under subsection (a), when a motion is filed under Rule 2-432(a), for certain failures of discovery, sanctions as described in subsection (a) of the sanctions rule may be imposed. That is not what happened here, as there was no motion filed under Rule 2-432(a). Under subsection (c) of Rule 2-433, sanctions may be imposed for failure to comply with an order compelling discovery. That was the basis for the motion for sanctions filed in this case on January 5, 2015. The court may enter any order regarding the failure that is "just," including an order imposing any of the sanctions permitted by Rule 2-433(a). Md. Rule 2-433(c). Under that rule, instead of or in addition to those sanctions, the court may order the party who failed to act or his attorney or both "to pay the reasonable costs and expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust." Md. Rule 2-433(a).

When a motion is filed and granted under Rule 2-432, including a motion to compel discovery, and after an opportunity for a hearing, the court shall award costs and expenses, including attorney's fees, against the party or the attorney advising the conduct, or both, unless the court finds "that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust." Md. Rule 2-433(d).

Likewise, if the motion is denied, and after an opportunity for a hearing, the court shall require the moving party or his attorney or both to pay reasonable costs and expenses, including attorney's fees, to the party who opposed the motion, unless the court finds "that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust." *Id*. Finally, if the motion "is granted in part and denied in part, the court may apportion the reasonable costs and expenses incurred in relation to the motion among the parties and persons in a just manner." *Id*.

In this appeal, Mr. Johnson contends the court abused its discretion by imposing sanctions on February 5, 2015. He argues that the evidence before the court on February 5, 2015, was insufficient to support a finding of a discovery failure. He asserts that in November and December 2014, he produced answers to interrogatories and responses to requests for production of documents on behalf of all the Defendants to whom those discovery requests had been propounded; that in those responses his clients legitimately objected to questions that were overly broad or designed to elicit personal information before a protective order was entered; and that the interrogatory answers were properly signed on an attached page by his clients and the responses to requests for production of documents did not need to be signed under the pertinent rule. Mr. Johnson further argues that the court failed to make the necessary findings of fact and conclusions of law to support its sanction decision on February 5, 2015. Specifically, he maintains that the court did not review any of the factors relevant to whether to impose sanctions, make findings on them, and then exercise discretion as to whether to enter a sanction order on that basis.

Mr. Thomas responds that he filed the motion to compel on behalf of his clients because only three Defendants provided responses to the propounded discovery and the discovery responses were deficient because they were not signed by the Defendants and mainly contained objections. He asserts that the court's December 18, 2014 order compelling discovery meant that Mr. Johnson was supposed to produce executed responses to discovery on behalf of all his clients within 15 days, and if not he would be precluded from entering evidence (to be determined later) at trial; and all other relief was denied. He further argues that Mr. Johnson failed to comply with the order to compel, and therefore was in civil contempt, and that the Defendants further failed to comply with deposition notices that were issued. He argues that at the February 5, 2015 hearing, the court found that Mr. Johnson had not produced a scintilla of discovery since the last hearing, and that he had acted in bad faith, was interfering with the Plaintiffs' ability to put on their case, and had failed to communicate with counsel.

With respect to the factors that should be considered before imposing sanctions, Mr. Thomas's response states that the factors need not be enunciated when a ruling is made under Rule 1-341 and that in addition to showing noncompliance with the order to compel, the record shows bad faith and contempt of court. Mr. Thomas states:

> In this case, there is no requirement that the trail [sic] court articulate the basis for sanctions. This is especially true since there is no dispute that the Appellant completely failed to comply with an order of the court compelling discovery. Based on that bad faith and contempt of court, it is fair to say to [sic] a reasonable person could come to the same conclusion as the trial court. Appropriately, with no requirement upon the trial court to articulate precisely the basis of its award for sanctions, there can be no abuse of discretion from said court.

In *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725–26 (2002) (citing *Taliaferro v. State*, 295 Md. 375, 390–91(1983)), we explained that the following factors "are used to guide a trial court's decision to impose sanctions":

> (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing evidence; and (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

We explained that the court is "not required to discuss each factor considered" in exercising its discretion. *Id.* at 725.

In our view, there are two major problems with the court's February 5, 2015 sanctions ruling. First, it is impossible to tell from the December 18, 2014 order what the Defendants were being compelled to do. Indeed, Mr. Thomas's brief does not shed any light on that problem. The order grants the motion to compel *in part*, which means, necessarily, that the motion was denied in part. Although Mr. Thomas claims that only three of the eight Defendants responded to discovery before the December 16, 2014 hearing on the motion to compel, and Mr. Johnson claims that all of the Defendants had responded by then, the records shows that, of the eight Defendants, seven were served with discovery requests and by December 16, 2014, six had provided responses. Mr. Burrell is the only one who had not.

There were no findings made by the court at the December 16, 2014 hearing; nor did the December 18, 2014 order include any findings. It could be that the December 18 order, which used the term "executed," was directing the Defendants to file signed

discovery responses, in conformity with the main argument Mr. Thomas had advanced, that the discovery responses were deficient because they were not properly signed. If so, the order was without basis, because Mr. Thomas's argument was without merit. Responses to requests for production of documents are not required to be signed by the responding party, *see* Rule 2-422, and answers to interrogatories must be signed but there is no requirement that they be signed on the same page as the last interrogatory answer. *See* Md. Rule 2-421(b). The interrogatory answers furnished before the December 16, 2014 hearing were properly executed and the responses to requests for production of documents furnished then did not need to be executed.

To make matters more confusing, the order to compel refers to the "Defendant," singular, but does not identify any particular Defendant. If the order only was directed to Mr. Burrell, it does not say so, and there was nothing said at the February 5, 2015 sanctions hearing to suggest that the order to compel was directed at him. And if the order was directing the Defendants who had provided discovery responses to supplement them, it did not say that either. Moreover, nothing that transpired at the February 5, 2015 sanctions hearing clarifies what the order to compel was directing Mr. Johnson and his clients to do. There was no colloquy to suggest that the court had found that the interrogatory answers that had been furnished were insufficient. There was no discussion about any documents other than the tax return for Defendant Soul World, which was not mentioned in the order to compel (and turned out not to exist at all).

Contrary to the argument Mr. Thomas makes, there was no allegation that Mr. Johnson violated Rule 1-341 and no allegation that he was in contempt of court. Nor did

the court hold a hearing pursuant to Rule 1-341 or the contempt rules or make any finding that Mr. Johnson had violated Rule 1-341 (including that he had acted in bad faith) or that he was in contempt of court. Mr. Thomas's assertion that the court was not required to provide any factual basis for its finding of sanctions against the Defendants and Mr. Johnson because this was a Rule 1-341 proceeding is wrong, as it was not such a proceeding. (It also is wrong in that courts that impose sanctions under Rule 1-341 are in fact required to provide factual support for their findings. *See Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999) (noting that "the court must make specific findings on whether a party or attorney pursued an action in bad faith or without substantial justification" in issuing sanctions under Rule 1-341).

Although, as we explained in *Hossainkhail*, a circuit court deciding whether to impose a discovery sanction need not discuss each factor it has considered in doing so, it is obvious that we cannot adequately review a decision to impose sanctions if we cannot discern from the record the nature of the discovery violation that is the predicate for the sanctions ruling and the facts supporting the discovery violation. That is the circumstance we find ourselves in here. The circuit court issued an order granting Mr. Thomas's motion to compel discovery in part, without specifying what discovery was being compelled (and what was not) and by whom. At least one possible basis for the order, the failure to properly execute interrogatory answers and responses to requests for production of documents, is not grounded in the law; and the other possible bases are not delineated. At the sanctions hearing, the judge made no factual findings about what discovery the Defendants and Mr. Johnson were supposed to produce by virtue of the

motion to compel. The court merely imposed sanctions after stating that Mr. Johnson had done nothing since the time that the order to compel was entered.

In the factual vacuum in which we find ourselves we cannot assess for purposes of review which of the *Hossainkhail* factors were relevant to a decision to impose sanctions and whether they would support the imposition of sanctions. Accordingly, we must reverse the order of February 5, 2015, determining that sanctions should be imposed against the Defendants and Mr. Johnson, and the subsequent order of November 4, 2015, awarding a judgment of $11,756.25 against Mr. Johnson as the actual penalty for the February 5, 2015 sanction order.

As noted, our decision on this issue makes it unnecessary to consider the second and third issues raised by Mr. Johnson.

**ORDER OF FEBRUARY 5, 2015, IMPOSING SANCTIONS ON THE DEFENDANTS AND THE APPELLANT REVERSED. ORDER OF NOVEMBER 5, 2015, ENTERING JUDGMENT AGAINST THE APPELLANT FOR $11,756.25 VACATED. COSTS TO BE PAID BY THE APPELLEE.**