

Circuit Court for Queen Anne's County  
Case No. C-17-CV-21-000115

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2427

September Term, 2023

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JOHN HINDS *et al.*

v.

KEVIN AYALA *et al.*

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Leahy,  
Kehoe, S.  
McDonald, Robert N.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by McDonald, J.

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Filed: October 21, 2025

\* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

This appeal concerns enforcement by the Circuit Court for Queen Anne's County of a 2022 settlement that had been contemporaneously set forth in that court and accepted in a court order. The litigation was between the sellers and buyers of an 18-acre parcel of improved land in a small subdivision in the County. The sellers, Appellees Kevin and Karyn Ayala, had sold the property to Appellants John and Jane Hinds in September 2020 while retaining an adjoining 20-acre parcel. Unfortunately, the deed by which the Ayalas conveyed the 18-acre property to the Hinds incorporated an outdated plat and thereby misstated the boundary between the two parcels.

In 2021, the litigation began when the Ayalas filed a declaratory judgment action against the Hinds in the Circuit Court to have the deed amended. The Hinds filed a counterclaim in contract and tort for money damages allegedly arising from representations made by the Ayalas or their agents at the time of the sale of the property. After summary judgment proceedings, only two counts of the Hinds' counterclaim remained unresolved. Those counts were scheduled for a jury trial in August 2022.

On the day of trial, the parties agreed to settle the case on terms that included the Ayalas' grant of an easement to the Hinds, based on a survey the Hinds had obtained for trial. The Hinds' lawyer stated on the record the terms of their agreement, including a limited mutual release of claims relating to the litigation. The parties were placed under oath and testified that they agreed to those terms. The Hinds' lawyer undertook to file with the court within 30 days a written settlement agreement with a survey showing the easement. The court entered an order documenting that the settlement terms had been placed on the record, declaring the case settled, and closing the case. We will refer to the

settlement attested to by the parties and accepted by the court as the “August 2022 settlement.”

The filing of a written settlement document was delayed when the parties differed on the precise contours of the easement provided by the settlement – a dispute ultimately resolved by the court in favor of the Hinds in June 2023. As a result, the promised written documentation of the August 2022 settlement had not been filed with the court during the interim.

In November 2023, the Ayalas moved to enforce the parties’ settlement and asked for an award of counsel fees against the Hinds. Attached to their motion was an unexecuted document titled “Global Settlement Agreement and Mutual Release.” We will refer to that document as the “2023 draft agreement and global release.” The Circuit Court conducted a brief hearing on the Ayalas’ motion. The Hinds, by then no longer represented by counsel, argued that the global release contained in that draft agreement was not the release to which the parties had attested in August 2022 and submitted affidavits to that effect. Nevertheless, the Circuit Court adopted the 2023 draft agreement and global release in its entirety as the operative settlement agreement and awarded attorneys’ fees in favor of the Ayalas against the Hinds.

On appeal, the Hinds present several issues that we summarize in the following two questions:

(1) Did the Circuit Court err when it enforced the August 2022 settlement by adopting the 2023 draft agreement and global release proffered by the Ayalas?

(2) Did the Circuit Court either err or abuse its discretion when it ordered the Hinds to pay the Ayalas' attorneys' fees?

As explained below, we answer "Yes" to both questions. As to the first question, the Circuit Court erred when it enforced the August 2022 settlement by adopting the 2023 draft agreement and global release because the broad release in that document differed materially from the limited release to which the parties had attested on the record at the August 2022 hearing. As to the second question, the Circuit Court erred when it awarded attorneys' fees against the Hinds without providing the Hinds the opportunity to respond within the time provided by Maryland Rule 1-341 and without making any of the findings required by that rule.

We vacate the Circuit Court's judgment adopting the 2023 draft agreement and global release and awarding attorneys' fees to the Ayalas. We remand the case to the Circuit Court for enforcement of the August 2022 settlement in accordance with the terms to which the parties attested under oath.

## I

### Background

#### *A. The Real Property Transaction and Dispute*

The litigation underlying the August 2022 settlement involved a dispute over the boundary line between two lots in a small subdivision in Queen Anne's County. The dispute arose as a result of the sale of one of those lots during 2020.<sup>1</sup>

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<sup>1</sup> The facts regarding the underlying boundary dispute are useful here only for context. We have simplified them and do not comment on the merits of the dispute.

The Ayalas originally owned both lots. One lot comprised 18 acres and included a house; the other comprised 20 acres. During the time that the Ayalas owned both lots, they built an airplane hangar on top of the boundary line and installed for that building a septic system for which no permit had been issued. When later informed that the location of the hangar did not conform to the subdivision plat, the Ayalas applied to the County to adjust the boundary to locate the hangar solely on the 18-acre lot and make other changes. The County approved their application in 2003, and they recorded an amended subdivision plat in the County's land records. However, the septic field for the hangar's septic system remained on the adjacent 20-acre lot.

In 2020, the Ayalas sold the 18-acre property to the Hinds. However, the deed by which the Ayalas conveyed the property incorporated the superseded pre-2003 subdivision plat. According to the Hinds, the marketing materials for the property had also shown the outdated boundary lines.

The Ayalas had retained the 20-acre lot. They tried to sell it in 2021, but a title search disclosed a cloud on the title resulting from the mistake on the deed. They then asked the Hinds to record a corrective deed to confirm the 2003 changes to the boundary line. The Hinds refused. Litigation ensued.

***B. Proceedings in the Circuit Court***

**1. Pre-Trial Proceedings**

In August 2021, the Ayalas filed in the Circuit Court a declaratory judgment action against the Hinds for a declaration that the deed should be corrected to reflect the 2003 amended plat. The Hinds filed a counterclaim against the Ayalas for damages. The Hinds

alleged breach of contract, intentional misrepresentation, and negligent misrepresentation regarding the location of the property line and of the condition and impermissible location of the septic field for the hangar septic system. They alleged that the proposed corrective deed would place part of the septic system off their property, where they would not be able to repair it and where the County would not approve it, and that it would deprive them of land that they believed they had bought.

The Ayalas won their declaratory judgment action on summary judgment in December 2021. The Circuit Court ordered the Hinds to execute and record the corrective deed. The Ayalas then moved for summary judgment on the Hinds' counterclaim. In June 2022, the Circuit Court granted summary judgment to the Ayalas on the Hinds' contract claim but denied it on the other counts. As a result, only the Hinds' tort claims against the Ayalas remained at issue in the case.

## 2. The August 2022 Settlement Agreement

Trial on the remaining counts of the Hinds' counterclaim was set for August 17, 2022. That day, shortly before the jury panel was to be brought into the courtroom for *voir dire*, the parties settled the case. Mr. Hinds and the Hinds' lawyer, and the Ayalas and their lawyer, appeared before the Circuit Court<sup>2</sup> to put on the record the parties' consent to an agreement that the court understood to be a "full and final settlement in this matter." The Hinds' lawyer, appearing on behalf of both Mr. and Ms. Hinds, stated that they were

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<sup>2</sup> A retired senior judge substituted for the incumbent circuit court judge of the Circuit Court at that proceeding. Later proceedings in the case that are recounted below took place before the incumbent judge.

waiving Ms. Hinds' appearance and that Mr. Hinds was qualified to accept the settlement on her behalf. The Hinds' lawyer recited the terms of the settlement, including the claims being settled or released. He stated:

Your Honor, in exchange for – just by way of background, this dispute relates to a property line boundary disagreement between the parties. So in consideration of withdrawing his complaint for damages, Mr. Hinds would agree to accept an easement to the property line extending to the natural boundaries of the property that is going to be subject to a survey that has already been performed by McCrone.

Mr. Hinds would also accept, *in settlement of all his outstanding claims he may have, pursuant to his Complaint*, the amount of \$10,000; that will be paid by Mr. Ayala to Mr. Hinds. *All other outstanding issues would be wrapped up in that agreement.* There is a mutual waiver of the parties as to attorney's fees and costs in this matter, Your Honor, with each party being expected to absorb their own attorney's fees, that would include also the previously dismissed declaratory judgment action that was filed, I believe, under this case number.

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*In exchange thereof, the parties will waive any further outstanding claims they have under these issues only that have been pled in this Complaint.*

(Emphasis added). As is evident, the Hinds' lawyer stated that the limited mutual release related to claims in the Hinds' counterclaim that remained outstanding.

The court asked the Ayalas' lawyer whether he had "[a]nything to add to that agreement." He replied that he "[thought] that that fairly and accurately represents our understanding of the agreement." Mr. Hinds, and then both Ayalas, under oath, stated for the record that they understood, and freely and voluntarily consented to, the terms that had been described and that they had been represented by counsel. The Hinds' lawyer stated that the settlement to which the parties had testified would be "memorialized in a written agreement with attached court order ... to be rendered within 30 days." The court found

that the parties had voluntarily entered into “a full and fair settlement per the terms that [the Hinds’ lawyer] put onto the record,” accepted the settlement, and discharged the assembled jurors.

The Circuit Court also issued a written order confirming the settlement. The order stated that the parties had “reached an agreement which was placed on the record,” and ordered “that the case is settled and shall be closed.”

### 3. Delays in Filing a Written Agreement and Easement

Nothing was filed with the court within 30 days. A significant delay was attributable to the parties’ inability to agree to the precise contours of the easement that the Ayalas had agreed to grant to the Hinds. In November 2022, the Ayalas moved to enforce the August 2022 settlement and asked for an award of attorneys’ fees. In February 2023, the court held a hearing at which the Ayalas’ lawyer stated that the only task that remained for the Hinds was to produce a survey that was acceptable to the Ayalas. The Hinds’ lawyer stated that the survey that he had proposed to the Ayalas as a trial exhibit in August 2022 (“McCrone survey”) showed the boundaries of the agreed-upon easement, but that the Ayalas’ lawyer had objected to using the survey as formatted for trial and would not accept a re-formatted, but unsigned, survey. The Hinds’ lawyer then asked the court to issue a consent order that he had prepared. As he described the order, it would give the Hinds 30 days in which to obtain the updated survey, and “if it’s not done, then [the Ayalas] would be free to petition the court for the attorney’s fees at that time.” The court issued the order on February 15, 2023.

The February 15, 2023 consent order required the Hinds to “tender a fully executed settlement along with the appurtenant survey of the agreed upon easement area within thirty days of this Order.” It further provided “that if [the Hinds] fail[] to comply with this Court’s order, that [the Ayalas] shall be entitled to petition the Circuit Court ... for a reasonable award of fees with the appropriate pleadings attached thereto.”

Again, nothing was filed within 30 days. The Ayalas filed another motion to enforce the August 2022 settlement agreement and sought attorneys’ fees. This time, they stated that the Hinds had provided a proposed survey to them but that the survey did not reflect the parties’ August 2022 settlement agreement. Responding with their own motion for enforcement of the settlement and for attorneys’ fees, the Hinds asserted that the settlement negotiations had been based on the property lines shown on the McCrone survey described at the August 2022 hearing and that a term of the settlement had been that “they would not own the property that they had bargained for at sale, but would instead have a right to occupy the same by means of an ingress/egress easement.”

In June 2023, the Circuit Court, indicating that it “was not pleased to rule on matters that parties had purported to be resolved,” found the McCrone survey to be controlling and awarded attorneys’ fees to the Hinds. That ruling is not at issue here.

In the months following the court’s ruling on the easement dispute, the Hinds’ lawyer sent the Ayalas’ lawyer a draft that included a release by which the Hinds would release the Ayalas from all “current or potential” claims, known or unknown. In August 2023, Mr. Hinds protested to his lawyer that he had never agreed to such a broad release.

There is no indication in the record that the Hinds had seen the global release before then.<sup>3</sup> In any event, there appears to be no dispute that the global release was significantly broader than the release described on the record at the August 2022 hearing at which the court had accepted the settlement.

4. The Ayalas Seek Enforcement of the Draft Agreement and Global Release

On November 21, 2023, the Ayalas filed a Supplemental Motion to Enforce Settlement Agreement. Attached to that motion was the unexecuted 2023 draft agreement and global release. In that motion, they alleged that the Hinds' lawyer had never disputed the global release and in fact had drafted that language, that Mr. Hinds was trying to prolong the proceedings, and that the Hinds' lawyer was no longer communicating with the Ayalas' lawyer. They asked the court to order the Hinds to execute the 2023 draft settlement agreement and global release. They also asked the court to order the Hinds to pay the Ayalas' costs and attorneys' fees that the Ayalas had incurred since June 2023. The motion did not cite a rule or statute, or other legal basis, supporting an award of attorneys' fees.

The Hinds' lawyer did not file a response to the motion on their behalf. On December 11, 2023, the Circuit Court scheduled a hearing on "pending motions" for

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<sup>3</sup> In the Circuit Court and in their brief in this Court, the Ayalas asserted as a fact that Mr. Hinds attended the hearing in February 2023, when the survey issue remained unresolved, and would have heard his lawyer state that "I think we have a settlement agreement and release and we have finalized that, basically." The clerk's hearing sheet does not bear that assertion out – it lists the Hinds and the Ayalas as "FTA," presumably for "failure to appear" – and nothing in the hearing transcript indicates that Mr. Hinds was present. In any event, there was no description or discussion of the release during that brief hearing.

January 23, 2024. Acting *pro se*, Mr. Hinds filed a motion for a continuance on the grounds that he and Ms. Hinds had dismissed their counsel for failure to communicate with them and were seeking new counsel. Mr. Hinds dated the motion December 27, 2023 and certified that he had hand-delivered it to the Ayalas' lawyer that day. On the same day, according to the Ayalas' lawyer, Mr. Hinds also delivered to the office of the Ayalas' lawyer a document titled "Answer to Motion, Additional Motions, and Support Evidence," with attachments, and a motion to strike the Hinds' counsel. Mr. Hinds filed the motion to strike counsel with the Circuit Court that day, but did not file the "answer" to the Ayalas' motion.<sup>4</sup>

Two weeks later, on January 12, 2024, the Hinds' lawyer filed a motion to withdraw his appearance. The Circuit Court granted the motion on January 16, 2024. That day, the Clerk of the Circuit Court issued to the Hinds a notice to employ new counsel. The notice stated: "You are hereby notified that unless new counsel enters his/her appearance in this case within fifteen (15) days after service upon you of this notice, your lack of counsel shall not be grounds for postponing any further proceedings concerning the case."

Also on January 16, 2024, the clerk docketed three papers filed by Mr. Hinds and one filed on behalf of the Ayalas. From the Hinds, the clerk docketed the Hinds' "Answer to Motion, Additional Motions, and Support Evidence" that Mr. Hinds had hand-delivered to the Ayalas' lawyer three weeks earlier. That day, the Hinds also filed an answer to the motion on the Circuit Court's form for answers to motions. On that form, Mr. Hinds stated

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<sup>4</sup> Although the Hinds' response to the motion was served on the Ayalas' counsel in December, it was not filed with the court until January 16, 2024.

that “I am unaware of any narrative draft settlement agreement exchanged between any party before August 2023,” that “I received and responded to written settlement documents for the first time August 14, 2023,” and that the “only revision I requested in August on the settlement agreement was removal of blanket waiver of liability.” He attested to those facts by signing the affidavit provided on the form. Mr. Hinds also filed, on a court-provided form, a motion for a continuance in which he referred to the answers that he had filed “showing that [the Hinds’] legal representation in this matter failed to respond” and that the Hinds were seeking new counsel.

Later that day, the Ayalas filed an opposition to the Hinds’ request for a continuance, arguing that “[t]his matter has dragged on for years .... [The Hinds], whether by their own conduct or the conduct of their counsel, have frustrated this process and prevented the conclusion of this case.” The Ayalas also argued that the Hinds’ papers had not been signed by Ms. Hinds.

The next day, on January 17, 2024, the Hinds filed Ms. Hinds’ affidavit as to the truth of the facts that had been stated in the answers that they had filed. The Circuit Court denied the Hinds’ motion for a continuance that day.<sup>5</sup> On January 22, 2024, the Hinds

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<sup>5</sup> It appears that the Circuit Court sent mixed messages to the Hinds on this score. On January 16, it sent them a notice that their attorney’s appearance had been stricken and that they had 15 days from service of that notice in which to find a new attorney, after which the lack of counsel would not be grounds for seeking a postponement. A recipient of that notice might have read it to set a deadline at least 15 days after January 16 (*i.e.* January 31) for new counsel to appear on their behalf. Nevertheless, the next day (January 17), the court denied the Hinds’ request for a continuance of the January 23 hearing. The court thus required them to appear at a hearing a week before the deadline it had established for them to obtain new counsel.

filed a supplemental response. It included Mr. Hinds' affidavit to the effect that he had neither agreed to the broad release included in the 2023 draft agreement and global release that the Ayalas had presented to the court nor authorized the Hinds' lawyer to represent that he had agreed to it.

5. The Hearing on the Ayalas' Motion and the Circuit Court's Order

The Circuit Court heard argument on the Ayalas' motion on January 23, 2024. The Ayalas' lawyer argued that the Hinds had delayed memorializing the August 2022 settlement in written form and had waited too long to oppose the global release. On the latter point, he stated, "Mr. Hinds was at the February [2023] hearing on my first motion to enforce the settlement agreement and they said, we have the agreement; that was not the issue. ... For Mr. Hinds to wait until December of 2023 ... to fire his lawyers and to wait beginning to look for another lawyer is just unacceptable. There was no issue about the language of the agreement." The Ayalas' lawyer further argued, "I want to touch briefly on the issue of – the language of the settlement that was placed on the record in August [2022] versus the global settlement agreement that was distributed between the parties. Your Honor, the time to raise that issue would have been at the February [2023] hearing. They should have come in, and they should have said, no, substantively, we don't agree to how expansive, or narrow, ... the language of this document is. Mr. Hinds himself was here."<sup>6</sup>

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<sup>6</sup> As noted above, there was no actual description or discussion of the substance of the release at the February 2023 hearing that would have put an observer on notice as to its scope. See footnote 3 above.

At the January 23, 2024 hearing, the Ayalas' lawyer also addressed the Ayalas' request for an award of attorneys' fees and referred to invoices that he had filed that day as a pre-filed exhibit. He stated that some entries on the invoices did not pertain to time spent on the litigation at hand, and he proposed an award of \$5,000 as "knock[ing] about two grand off for the other stuff." Neither the hearing transcript nor the courtroom clerk's hearing worksheet indicates that the invoices were admitted into evidence,<sup>7</sup> and no one gave sworn testimony about them.

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<sup>7</sup> At the hearing, the Ayalas' attorney stated with respect to their request for attorneys' fees:

Your Honor, I think the attorney's fees claim is reasonable and it's clear in this case. I did file invoices from June of 2023 when – June 8th is when we lost the second hearing, through the present and they were filed today because I needed to get as much time on there as possible. I think they go through yesterday. I have incurred roughly – my client has incurred roughly \$7,000 in legal fees during that time.

Now, I will concede and I gave a detailed statement of the account. Some of those legal fees were incurred in June around the time of the first hearing and I don't think that my client is necessarily entitled to fees for that. There were a number of fees that were incurred because Mr. Hinds kept filing or trying to get the state's attorney's office to prosecute my client for fraud related to this case and then when they wouldn't do it, he went and filed the charges. ... I had to deal with all of that. I don't – that's not directly related to what we're talking about here today. So I would ask the Court to take a look at those invoices. If the Court is inclined to award attorney's fees and award \$5,000 in attorney's fees. I think it knocks about two grand off for the other stuff, but I defer to the Court's judgment on that.

The invoices itemized the services for which the law firm charged the Ayalas. As their attorney stated, not all of the time charged pertained to the negotiation, preparation, and enforcement of the August 2022 settlement. The Ayalas did not file a verified statement as to the reasonableness of the rates and charges shown on the invoices.

The Hinds appeared at the hearing *pro se*. Mr. Hinds stated that of the 17 months of delay since the August 2022 settlement, the first 10 months were spent “bickering back and forth in the easement.” He further stated that he had not seen the 2023 draft agreement and global release until August 2023, and that when he saw the global release that it contained, he asked his lawyer to re-do it to “address[] only the complaint in the pleadings in this court.”

The court asked Mr. Hinds, “So what are you asking me to do?” The following colloquy ensued:

MR HINDS: I’m fine to move forward with the settlement, ma’am. It’s just I want the settlement agreement to only incorporate our verbal settlement terms from the August ’22 verbal agreement, which it only incorporated the pleadings in this court on the complaint, not everything globally. I’ve already talked to another business that will execute that easement; that we agreed upon in June of ’23 and if [the Ayalas’ counsel] and Mr. Ayala agree to the terms of that settlement agreement that we had –

THE COURT: Well, Mr. Hinds, the terms of the settlement were accepted way long ago; that’s what we’re back here now still; that that settlement agreement hasn’t been signed.

MR. HINDS: That written settlement agreement?

THE COURT: Yes.

MR. HINDS: My prior attorney had that with [the Ayalas’ counsel], ma’am, I didn't have it.

THE COURT: Well, but your prior attorney represented you, Mr. Hinds. You hired him. ... It was your obligation to know what’s going on in your own case.

MR. HINDS: Correct. Again, ma’am, I didn't have that document in hand until August of ’23. That was the first time I even submitted emails to myself and my former counsel where he gave me that document for the first time and I responded to him saying that that’s the first time I seen it and we need

to re-work that language. I believe he and [the Ayalas' counsel] were going back and forth on that wording themselves. It was of my impression they were going to do so.

THE COURT: [Ayalas' counsel], you want to –

[THE AYALAS' COUNSEL]: I don't want to cut him off, if he's not done. But we came to court after that document was drafted in February and talked about it on the record and Mr. Hinds was here. So we had this discussion about how everything is done except for the survey. That was a representation that he allowed his counsel to make and lead the Court to believe that we were all on the same page. If we were not all on the same page, they shouldn't have said that and they should have brought it up and they didn't. For that reason –

THE COURT: My notes indicate that the dispute was over the easement. There wasn't any dispute over the settlement.

After the Ayalas' attorney responded to that statement, the court stated, "I got it, [Counsel]. So give me your copy of your final order."

The Court then asked Mr. Hinds, "Anything else [?]" He responded that he had submitted to the Ayalas' counsel "a settlement agreement that simply reflects the August '22 settlement," and that his own counsel had not informed him "of any written agreement." The court stated that it would instead enforce the 2023 draft agreement and global release:

Well, that may be an issue that you'll have to take up with your counsel. The Court has to close this case. I am done with hearing about this matter. The Court is going to issue an order that this Global Settlement Agreement and Mutual Release will be adopted by court order.

The Ayalas' counsel then asked about their claim for attorneys' fees. The court stated, "I will look at that and I will issue an order related to that."

The court issued a written order and memorandum on the next day. Attached to the order was the 2023 draft agreement and global release, as well as the easement survey. The court summarized the matter as follows:

This matter came before the Court on January 23, 2024, for a hearing on a Supplemental Motion to Enforce Settlement Agreement. ...

Although the case settled the day of trial August 17, 2022, the parties [have] been unable to first agree upon the easement line for the survey, and now the actual written settlement agreement appears to be in dispute. The Hinds represented to the Court that they had never seen the written Settlement Agreement until sometime in August 2023 and they do not agree with the language contained therein. They blame their Counsel for the terms of the Settlement Agreement for being not precisely what they had agreed to. Counsel for the Ayalas represented to the Court that the Settlement Agreement has been agreed to by counsel for some period of time while the main issue in dispute was the survey. The document entitled “Global Settlement Agreement and Mutual Release” was filed [as] an Exhibit to the Supplemental Motion to Enforce Settlement Agreement on November 11, 2023. Counsel for the Hinds petitioned the Court to strike his appearance on January 12, 2024.

The court then ruled:

The Court finds that the Hinds’ lack of action to address their concerns and delay again this matter from being finally resolved can no longer continue. The Court adopts the terms of the “Global Settlement Agreement and Mutual Release” and the survey attached as Exhibit A as the full and final Settlement.

The court awarded attorneys’ fees to the Ayalas:

The Court shall find further that, although the Settlement Agreement includes a term for waiver of attorneys’ fees, given the significant expense incurred by the Ayalas to enforce the Settlement Agreement over the last 18 months, the Court shall find that the Ayalas are entitled to attorneys’ fees in the amount of Five Thousand Dollars (\$5,000.00) which represents the fees occurred after the June 8, 2023 hearing for the enforcement thereof.

6. The 2023 Global Release Adopted by the Court

The 2023 draft agreement and global release document adopted by the Circuit Court contained the following release:

3. Mutual Release. In return and exchange for the promises contained in Section 2 of this Settlement Agreement, Hinds, for themselves and all of their respective agents, successors and assigns, heirs, and personal representatives, hereby release and forever discharge Ayala, and its members, agents, successors and assigns, heirs, and personal representatives *from any and all representations, suits, actions, debts, contracts, agreements, claims and demands whatsoever, administratively, at law or in equity, whether known or unknown, whether or not previously asserted, in whatever capacity based upon, by reason of or arising from any agreement, contract, interactions, understandings, representations, matters or things whatsoever from the beginning of the world up to and including the date of execution of this Settlement Agreement and those in any way related to the Case.*

(emphasis added).<sup>8</sup> The draft document adopted by the Circuit Court at the January 2024 hearing further provided that the parties “represent[ed] and warranted to each other” that they “[had] received independent legal advice from their attorneys concerning the advisability of making the settlement provided for herein and the advisability of executing this Agreement.”

7. Post-Judgment Proceedings

Within 30 days of the court’s issuance of its order, the Hinds, who had by then obtained new counsel, filed a motion under Maryland Rule 2-535 to revise and vacate the court’s January 24, 2024 order. The court summarily denied the motion.

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<sup>8</sup> An additional paragraph stated the same global release by the Ayalas.

## II

### Discussion

The issues that the Hinds present in this appeal can be resolved by answering two questions<sup>9</sup>:

(1) Did the Circuit Court err when it enforced the August 2022 settlement by adopting the 2023 draft agreement and global release proffered by the Ayalas?

(2) Did the Circuit Court either err or abuse its discretion when it ordered the Hinds to pay the Ayalas' attorneys' fees?

#### ***A. Whether the Circuit Court Erred by Adopting the 2023 Draft Document***

##### **1. Standard of Review**

A circuit court's denial of a motion under Maryland Rule 2-535 that has been filed within 30 days of the entry of judgment is subject to appellate review for abuse of discretion. *See* Maryland Rule 2-535(a) ("On motion of any party filed within 30 days after entry of judgment, the court *may* exercise revisory power and control over the judgment[.]") (emphasis added)); *see also Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997) (describing a circuit court's discretion to revise a judgment under

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<sup>9</sup> In their opening brief, the Hinds state five questions, four of which present specific arguments why the Circuit Court erred in adopting the 2023 draft agreement and global release to enforce the August 2022 settlement. The Ayalas assert that several of those questions are unpreserved, citing Rules 2-517 (concerning objections to evidence) and 8-131 (concerning issues "[o]rdinarily" considered by an appellate court). Neither the rules nor the record supports their argument. Rule 2-517 does not apply for the simple reason, as outlined in the text, that the Ayalas never sought to admit evidence in the Circuit Court to which the Hinds could have objected under that rule. With respect to Rule 8-131, all of the issues raised by the Hinds in this Court were briefed on the merits by both parties with respect to the Hinds' motion in the Circuit Court under Rule 2-535.

Maryland Rule 2-535 and Maryland Code, Courts & Judicial Proceedings Article, §6-408). An abuse of discretion occurs when, among other things, a court has “fail[ed] to consider the proper legal standard in reaching a decision[.]” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 433 (2007); *see also Arrington v. State*, 411 Md. 524, 552 (2009).

The Circuit Court’s adoption and enforcement of the 2023 draft agreement and global release raises the legal question of whether that court correctly applied the law on the enforcement of a settlement formally accepted by the court. That question leads to whether the Circuit Court correctly interpreted the August 2022 settlement, as set forth on the record at that time and agreed to by the parties under oath. That, too, is a legal question. *See 4900 Park Heights Ave. LLC v. Cromwell Retail I, LLC*, 246 Md. App. 1, 19, *cert. denied*, 469 Md. 655 (2020) (explaining that the interpretation of the terms of a settlement, including the determination of whether the terms are ambiguous, presents a question of law, subject to *de novo* review on appeal).

The scope of an attorney’s authority to consent to a settlement on the client’s behalf presents a mixed question of law and fact. A trial court’s finding that the client has expressly authorized the attorney to consent to the particular settlement is a finding of fact, subject to review for clear error. *See, e.g., 4900 Park Heights*, 246 Md. App. at 18. As explained further below, Maryland law does not recognize a client’s consent by implication. *Accrocco v. Splawn*, 264 Md. 527, 533 (1972). The question of whether a trial court has applied that law correctly presents a legal question, subject to *de novo* review.

2. Applicable Law

a. Construction and Enforcement of a Settlement Agreement

A settlement agreement is essentially a contract between the parties. *Calabi v. Gov't Emps. Ins. Co.*, 353 Md. 649, 653 (1999); *see also, e.g., 4900 Park Heights*, 246 Md. App. at 18 (2020) (noting that “Settlement agreements are enforceable as independent contracts.”) (internal quotation marks and citation omitted). When the language used in a contract is 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.” *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 507 (2021) (quoting *Dennis v. Fire & Police Employees' Ret. Sys.*, 390 Md. 639, 656-57 (2006)). When instead the contract’s meaning is ambiguous – that is, susceptible of more than one meaning – the court may admit extrinsic evidence to ascertain the parties’ mutual intent at the time the contract was formed. *Impac*, 474 Md. at 506.

Although a court may issue an order that “effectuate[s] the parties’ intent consistent with the terms of the settlement agreement,” the court may not change the terms of the agreement. *Mills v. Mills*, 178 Md. App. 728, 739 (2008); *see also 4900 Park Heights*, 246 Md. App. at 18 (“[A] court abuses its discretion if it enters an order containing terms that vary from, or otherwise fail to reflect, those to which the parties have agreed”); *Smith v. Luber*, 165 Md. App. 458, 479 (2005) (trial court abused its discretion when it entered an order that modified the parties’ agreement “as entered on the record”). However, an order that amends a settlement is enforceable if the order contains “only minor amendments that

[neither] improperly modify the parties' agreement nor alter [their] rights," *Mills*, 178 Md. App. at 740.

b. An Attorney's Authority to Consent to a Settlement

Under Maryland law, "an attorney has no implied authority to compromise his client's claim. ... Express authority is required." *Kinkaid v. Cessna*, 49 Md. App. 18, 22 (1981) (internal citations omitted). When an attorney has settled a case on a client's behalf, the party that moves for enforcement of a settlement bears the burden of proving: "(1) that the other party's counsel acted with the authority of his client; and (2) that such authority expressly extended to the settlement of the claim." *4900 Park Heights*, 246 Md. App. at 20–21 (internal quotation marks and citation omitted); *see also Kinkaid*, 49 Md. App. at 23 ("[T]he burden of proof of express authority of an attorney to compromise a claim rests upon the party asserting such authority.")

3. The Release of Claims in the August 2022 Settlement

The initial question is to determine whether the terms of the Hinds' and Ayalas' August 2022 settlement, as set forth on the record, were ambiguous as to the scope of the release of claims by the parties. The terms of the August 2022 settlement are contained in the transcript of the hearing during which the Hinds' counsel described the settlement and the parties testified that they agreed to it. The Hinds' lawyer stated that the Hinds would accept an easement in accordance with the McCrone survey and \$10,000 "in consideration of withdrawing his complaint for damages," and "in settlement of all his outstanding claims he may have, pursuant to his Complaint[.]" He stated further that "In exchange thereof,

the parties will waive any further outstanding claims they have under these issues only that have been pled in this Complaint.”

As is apparent from those words, the release contemplated in the settlement applied only to the claims that the Hinds had alleged in the complaint they had filed against the Ayalas as a counterclaim. Thus, Mr. Hinds, for himself and on behalf of Ms. Hinds, consented on the record in August 2022 only to that release as a term that counsel had explained to him and that he understood.

#### 4. Comparison of Releases

The next task is to compare the limited release in the August 2022 settlement with the one in the 2023 draft agreement and global release.

As noted above, the release described on the record as part of the August 2022 settlement applied only to the claims that the Hinds had already pled in their counterclaim. By contrast, the global release in the 2023 draft “settlement agreement” that the Circuit Court enforced “release[d] and forever discharge[d]” the Ayalas “from any and all ... claims and demands whatsoever ... whether known or unknown, *whether or not previously asserted* ... arising from any agreement, contract, ... matters or things whatsoever *from the beginning of the world up to and including the date of execution of this Settlement Agreement*,” as well as claims “in any way related to the [Ayalas’ complaint and the Hinds’ counter-claim].” (emphasis added). The 2023 draft settlement and global release thus not only materially expanded the scope of the release to which the Hinds had agreed but also

attributed to them, without their consent, a certification that a lawyer had explained it to them and that they understood its terms and agreed to them.<sup>10</sup>

In sum, the terms of the release in the 2023 draft agreement and global release document materially varied from the release described on the record, attested to by the parties, and accepted by the Circuit Court as the resolution of the case in August 2022. Further, there is no indication in the record that the Hinds ever agreed to a global release of all claims against the Ayalas, let alone on the record or by stipulation.

5. Whether the Hinds Waived Objection to the Global Release

The Ayalas have not claimed that the global release in the 2023 draft agreement enforced by the Circuit Court simply reflects the terms of the August 2022 settlement. Instead, the Ayalas have asserted, variously in the Circuit Court and in their brief in this Court, that the Hinds are bound by the 2023 draft agreement because the Hinds' lawyer had proposed it to their attorney, that the Hinds should be bound by their lawyer's negotiations, and, in any event, that Mr. Hinds had impliedly agreed to the 2023 draft release by attending a hearing in February 2023 in which his lawyer had stated that the survey was the only issue that remained for implementing the August 2022 settlement. The Circuit Court implicitly concurred with those assertions when it adopted the 2023 draft

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<sup>10</sup> The certification that the Hinds had agreed to the draft settlement was directly contradicted by the affidavits submitted by both Hinds in connection with the January 2024 hearing on the Ayalas' motion. Those affidavits, together with the transcript of the August 2022 hearing at which the parties attested to the terms of the settlement, comprised the only sworn evidence before the court relevant to the Ayalas' motion.

agreement and global release proffered by the Ayalas.<sup>11</sup> That conclusion was mistaken for several reasons.

First, the Circuit Court erred legally by binding the Hinds to their lawyer's negotiations with the Ayalas' counsel and to his statements at the February 2023 hearing to the effect that he and the Ayalas' attorney had agreed on every issue except the survey. As explained above, an attorney must have the client's express authority to enter into a settlement on the client's behalf. That authority must be proven by competent evidence. *See, e.g., 4900 Park Heights*, 246 Md. App. at 21. The record in this case lacks such evidence with respect to a global release of claims.<sup>12</sup> Specifically, there was no evidence

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<sup>11</sup> During the January 23, 2024 hearing, the Circuit Court, referring to its notes of the February 2023 hearing, stated: "My notes indicate that the dispute [in February 2023] was over the easement. There wasn't any dispute over the settlement." In response to Mr. Hinds' statement that he did not see the global release until August 2023, the court stated: "Well, but your prior attorney represented you, Mr. Hinds. You hired him. You were paying him. It was your obligation to know what was going on in your case."

<sup>12</sup> The evidence that sufficed in *4900 Park Heights* to establish the attorney's authority to settle was the attorney's testimony that: "(1) he was in communication with his client throughout the settlement negotiations; (2) he informed his client that, in exchange for dropping its demand for attorney's fees, [the opposing party] requested that 4900 Park Heights agree to amend the 2014 Declaration to provide [the opposing party] with sole and absolute discretion to approve all future improvements; (3) in response, [the client] told [the attorney] that he "d[id]n't care about the covenants" and authorized him to settle the case; (4) [the attorney] conveyed to [opposing counsel] that the parties had an agreement on that term; and (5) the parties placed on the record the terms of the agreement [the attorney] understood his client to have authorized." *4900 Park Heights*, 246 Md. App. at 21.

No comparable facts were introduced in this case; no testimony was taken and no exhibits were admitted. The only sworn evidence before the court on whether the Hinds had authorized their then-attorney to enter into a global release on their behalf was contained in their January 16 and 17, 2024 papers, to which they had attached their affidavits to the effect that they had *not* consented to a global release and that their attorney

that the Hinds' attorney had informed them of the terms of the global release before August 2023, no evidence that their attorney had explained to them either the global release or any other terms in the 2023 draft agreement, and no evidence that they had agreed to such a release through their words or conduct. The burden of proving that the Hinds had expressly authorized their attorney to enter into the 2023 draft agreement and global release – to the extent it went beyond what the Hinds had already attested to on the record in August 2022 – rested with the Ayalas. The Ayalas did not meet that burden.

Second, to the extent that the Circuit Court relied on the argument of the Ayalas' attorney that Mr. Hinds had attended the February 2023 hearing, it erred factually, because the only evidence in the record on that point is the clerk's notation on the hearing sheet that Mr. Hinds was *not* present. In any event, the mere fact of Mr. Hinds' presence at the hearing, even had it been proven through competent evidence, would not by itself have established that he had expressly authorized the Hinds' lawyer to agree to the global release – the terms of which were not discussed at that hearing. *See* footnotes 3, 6 above.<sup>13</sup>

A third reason, which the parties did not brief but which we raise as guidance on remand, was the absence of any evidence whatsoever from which the court could infer that *Ms. Hinds*, a party to the settlement, knew the terms of the 2023 draft agreement and global release, let alone agreed to them. Nor was there evidence that Mr. Hinds had her authority

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had not sent them the draft release until August 2023, which was well after the February 2023 hearing. The Circuit Court did not address that evidence.

<sup>13</sup> At oral argument, the Ayalas' counsel acknowledged that Mr. Hinds' presence (or not) at the February 2023 hearing is not dispositive of whether the Circuit Court erred in its adoption of the 2023 draft agreement.

to contract away any causes of action that she might have against the Ayalas for matters not covered by the settlement that she had authorized Mr. Hinds to accept in August 2022.<sup>14</sup> *See Twilley v. Bromley*, 192 Md. 465, 470 (1949) (“[T]he mere relation of husband and wife does not create the one an agent of the other or confer inherent power to bind the other as agent, or, unaccompanied by other facts or circumstances, justify an inference of agency.”); *Matter of Collins*, 242 Md. App. 188, 208 (2019) (husband “could not unilaterally contract away [his wife’s] independent statutory right to pursue a potential claim for death benefits”), *aff’d*, 468 Md. 672, 699 (2020); *Kinkaid*, 49 Md. App. at 24 (husband not bound by wife’s statement to counsel that husband wished to settle his case when the evidence was that the attorney had not asked husband to confirm that wish).

The 2023 draft agreement and global release that the Circuit Court adopted in January 2024 as binding on the Hinds explicitly attributed to Ms. Hinds not only her acceptance of the “global release” contained in that draft but also a certification that counsel had explained the release to her, that she understood it, and that she had accepted it. Nothing before the Circuit Court established those facts. For that reason, too, the court erred in adopting the 2023 draft agreement and global release as a settlement of Ms. Hinds’ claims without making a finding that she had either agreed to it or had authorized Mr.

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<sup>14</sup> Ms. Hinds was not in the courtroom when the Hinds’ attorney put the terms of their settlement on the record in August 2022. The substitute senior judge who presided over that hearing asked the Hinds’ attorney about proceeding without Ms. Hinds’ acceptance on the record. In Mr. Hinds’ presence, the attorney stated that he had accepted Mr. Hinds’ representations and that Mr. Hinds was “qualified as the plaintiff to accept the deal on behalf of his wife.” The record of the January 2024 hearing lacks any similar information; both Hinds had signed affidavits in which they stated that Mr. Hinds had asked their former attorney to remove the global release from the 2023 draft agreement.

Hinds, and by extension, their attorney, to adopt it on her behalf. *Compare Carroccio v. Thorpe*, 230 Md. 457, 466 (1963) (holding that the trial court did not err in finding from the circumstances that wife had authorized husband to act on her behalf in settling a case).

**B. Attorneys' Fees**

1. Applicable Law and Standard of Review

A court may award attorneys' fees when a contract or a statute provides for such an award or, as provided by Maryland Rule 1-341, when a party has acted in bad faith or without substantial justification. *Nova Rsch., Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 445-46 (2008).<sup>15</sup> No applicable statute allows for an award of attorneys' fees when a court enforces a settlement. Thus, absent such a statute or rule, a court may not award attorneys' fees when it enforces a settlement unless either the parties' settlement agreement provides for that remedy or the court has followed the process and made the findings required by Maryland Rule 1-341. *See Smith v. Luber*, 165 Md. App. at 471-72, 479

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<sup>15</sup> Maryland Rule 1-341(a) provides:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Sections (b) and (c) of the rule set forth the process the court is to follow when asked to make such an award.

(concluding that the trial court erred by including in its consent order an attorneys' fee provision to which the parties had not agreed).

In this case, a discussion of a possible future attorneys' fee award at the February 2023 hearing focused on the circumstances under which Rule 1-341 would authorize such an award – *i.e.*, circumstances in which a party acts in bad faith or without substantial justification.<sup>16</sup> The Circuit Court's oral ruling suggests (but does not state explicitly) that it awarded fees under Rule 1-341 on the basis of bad faith on the part of the Hinds.

The rule specifies the procedures that a circuit court must follow, and the findings that the court must reach, before it awards attorneys' fees against a party.

First, the court must explicitly find that the party's conduct during the proceeding "was in bad faith or without substantial justification." Maryland Rule 1-341(a); *Zdravkovich v. Bell Atl.-Tricon Leasing, Corp.*, 323 Md. 200, 210 (1991). To enable appellate review of a finding of bad faith, the court must "include some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved[.]" *Talley v. Talley*, 317 Md. 428, 436 (1989). A finding of bad faith or lack of substantial justification is a finding of fact, subject to review for clear error or an erroneous application of law. *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017) (citing *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991)).

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<sup>16</sup> The August 2022 settlement provided that each side would bear its own attorneys' fees. A February 2023 consent order that followed the hearing referenced in the text modified that provision to allow the Ayalas to "petition the Circuit Court ... for a reasonable award of fees with the appropriate pleadings attached thereto." Neither the August 2022 settlement nor the February 2023 consent order could be construed to entitle the Ayalas to attorneys' fees without the showing required by Rule 1-341.

Second, the court must separately find that the bad faith or lack of justification warrants the assessment of attorneys' fees. *URS Corp., supra*. That finding is subject to review for abuse of discretion. *Id.*

Third, the court must find that the fees claimed are "reasonable." Maryland Rule 1-341(b). The moving party must include with its motion a verified statement containing five items of information, including "a detailed description of the work performed broken down by hours or fractions thereof expended on each task," "the attorney's customary fee for similar legal services," "the customary fee prevailing in the attorney's legal community for similar legal services," and "the fee customarily charged for similar legal services in the county where the action is pending." Maryland Rule 1-341(b)(3)(A)(i), (iii), (iv), (v).

Finally, the court must give the alleged "offending party" the opportunity to file a response "[w]ithin 15 days after the filing of the statement." Maryland Rule 1-341(c).

## 2. Application of Maryland Rule 1-341

None of the requirements of the rule described above was satisfied in this case.

First, the Circuit Court did not make the requisite finding as to the Hinds' conduct and articulate facts to support that finding. *See, e.g., Inlet Assocs.*, 324 Md. at 269 (absent an "an express finding of either bad faith or lack of substantial justification, the [movants] were not entitled to an award of costs and counsel fees under Rule 1-341.").

At the January 2024 hearing, after the Ayalas' counsel reminded the court of their request for a fee award, the court stated, "I will look at that and I will issue an order related to that." On the next day, the court included an award of attorneys' fees in its order adopting the 2023 draft agreement and global release: "Defendants shall pay to Plaintiffs attorney's

fees in the amount of \$5,000 within Thirty (30) days of this order.” In the memorandum opinion accompanying the order, the court stated: “The Court shall further find that, although the Settlement Agreement includes a term for waiver of attorney’s fees, given the significant expense incurred by the Ayalas to enforce the Settlement Agreement over the last 18 months, the Court shall find that the [Ayalas] are entitled to attorneys’ fees in the amount of ... \$5,000 ..., which represents the fees occurred after the June 8, 2023 hearing for the enforcement thereof.”

The court’s finding that the Ayalas had incurred “significant expense,” while not clearly erroneous (*if* we were to assume that the invoices had been properly admitted into evidence), does not address whether the Hinds acted in bad faith or without justification.

Next, if there had been an explicit finding that the Hinds had acted with such bad faith or lack of substantial justification as to justify an award of attorneys’ fees, such a finding would have been reviewable for abuse of discretion. *URS Corp.*, 452 Md. at 72. The Circuit Court did not make that finding; it had not found the predicate conduct of bad faith or a lack of substantial justification. Its failure to exercise its discretion on whether the imposition of attorneys’ fees was warranted was itself an abuse of discretion.

Further, the invoices that the Ayalas’ attorney submitted were unverified and did not contain verified information concerning the reasonableness of the fees, as required by Maryland Rule 1-341(b)(3)(A). The attorney submitted the invoices on the day of the January 23, 2024 hearing. During the hearing, he explained to the court that the invoices listed some charges that did not pertain to the motion to enforce the settlement. He stated: “If the Court is inclined to award attorney’s fees and award \$5,000 in attorney’s fees [,] I

think it knocks about two grand off for the other stuff, but I defer to the Court's judgment on that." To the extent that the Circuit Court relied on the attorney's argument (as seems likely from its issuance of an order the next day awarding \$5,000 in fees), it erred. Rule 1-341 requires a party that seeks attorneys' fees to file a motion, which is to include a verified statement to which the opposing party may respond.

Regarding the procedural safeguard of Rule 1-341(c) – that the alleged offending party be given an opportunity to respond – the Ayalas filed the invoices on the day of the hearing. The court issued its order the next day, without giving the Hinds the 15 days that the rule provided them to respond to the Ayalas' claims. Under those circumstances, the attorneys' fee award contravened Rule 1-341(c), which assures due process for the party from whom the fees are sought. *See Zdravkovich*, 323 Md. at 209 ("The constitutional guarantee of due process is applicable to an assessment of attorney's fees pursuant to Rule 1-341. ... Due process requires, at a minimum, that before sanctions are imposed pursuant to Rule 1-341, there must be notice and an opportunity to respond.")

To summarize, the Ayalas' request for attorneys' fees was unsupported by the verified petition and evidence required by Maryland Rule 1-341, and the Circuit Court granted it without that information, without making the findings required by the Rule, and without giving the Hinds the opportunity to respond.

### **III**

#### **Conclusion**

For the reasons set forth above, the judgment of the Circuit Court adopting the 2023 draft agreement and global release and awarding attorneys' fees to the Ayalas is vacated.

- Unreported Opinion -

The case will be remanded to that court to enforce the parties' August 2022 settlement according to the terms articulated on the record at the August 17, 2022 hearing.

**JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY  
VACATED. CASE IS REMANDED TO THAT COURT FOR PROCEEDINGS ON  
THE ENFORCEMENT OF THE AUGUST 2022 SETTLEMENT CONSISTENT  
WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.**