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Court of Special Appeals
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Circuit Court for Baltimore County
Case No. 03-C-16-008420

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3061

September Term, 2018

FRIENDS OF LUBAVITCH, INC.

v.

ROBIN ZOLL, ET AL.

Graeff,
Leahy,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 5, 2021

This appeal concerns the enforcement of an order of the Circuit Court for Baltimore County requiring appellants, Friends of Lubavitch, Inc.[1] ("FOL"), to "remove" a 6,614 square foot structure (the "Addition"), attached to the front of the existing home owned by FOL on 14 Aigburth Road. FOL erected the Addition for Rabbi Rivkin, to accommodate his growing family, and for the Chabad-Lubavitch of Towson.

Robin Zoll resides with her family at 16 Aigburth Road, adjacent to 14 Aigburth. Ms. Zoll is the trustee of two revocable trusts, bearing her parents' names, that jointly own 16 Aigburth for the benefit of Ms. Zoll and her children. Aigburth Manor Association of Towson, Inc. (the "Association") is a community association that represents the interests of residents in the Aigburth Manor neighborhood of Towson. Ms. Zoll and the Association (collectively, "Appellees," "Cross-Appellants," or "Plaintiffs") opposed FOL's expansion of the existing single-family home on 14 Aigburth and filed a complaint seeking a declaratory judgment that the Addition violated a restrictive covenant that prohibits dwellings within a certain distance of Aigburth Road (the "Setback Covenant"). Appellees also sought injunctive relief to require FOL to remove any construction and prohibit further construction within the Setback area, as well as attorneys' fees.

[1] FOL is a charitable organization, headquartered in Potomac, Maryland, with a mission to "aid and support [] activities of the the Lubavitch movement in Maryland." Lubavitch is a 230-year-old Hasidic religious movement that began in Russia. FOL has 27 centers in Maryland known as Chabads (which literally translates to "wisdom, understanding, and knowledge"), including Chabad-Lubavitch of Towson.

By the time the case was tried to the court, FOL had completed construction of the Addition. At the conclusion of the trial, the circuit court ordered FOL to "remove the [Addition] and all other improvements that violate the Setback Covenant no later than March 1, 2018."

FOL appealed the circuit court's order to this Court. Various requests filed in the circuit court and in this Court to stay the order to "remove" the building were denied. We affirmed the judgment of the circuit court in an unreported opinion issued on October 23, 2018.

While the prior appeal was pending, Appellees moved for appointment of a receiver to execute the circuit court's order. FOL followed-up by filing a motion for clarification, requesting the court "clarify its April 13, 2017 Order to reflect that FOL is permitted to demolish the original structure on FOL's property and relocate the Addition behind the Setback line[.]" FOL explained that it had learned "that it is feasible to move the Addition, and position it on FOL's property such that the Addition would become a stand-alone structure[.]"

The receiver submitted a report that included proposals to raze the Addition, as well as a proposal to relocate the Addition elsewhere on the property. After a hearing, the circuit court determined that, although removal could be accomplished in a number of ways, to allow FOL to relocate the Addition on the property would "tacitly endorse that which has been repeatedly found to be a violation of existing restrictions" and allow "a community center that is not in compliance with necessary approvals and regulations" to

remain on the property.[2] The circuit court authorized the receiver to enter into a contract with a contractor to raze the Addition. The court also denied Appellees' request for attorneys' fees.

FOL filed a timely appeal and presents two issues for our review,[3] which we have recast:

1. Did the circuit court err and exceed its enforcement powers under Maryland Rules 2-631 and 2-648 by directing demolition of the Addition?

2. Did the circuit court abuse its discretion in its application of the doctrine of unclean hands?

[2] FOL had been cited for multiple violations of the Baltimore County Zoning Ordinance. Two ensuing zoning cases, ultimately consolidated, made their way to the Board of Appeals of Baltimore County. The Board declared, on September 5, 2017, that use of the property at 14 Aigburth Road by FOL "has exceeded the use compatible with that of a residential property, that the property has assumed the dual status of a residence and a community center . . . " and that FOL "is and has been using the property at 14 Aigburth Road as a community center without having obtained the necessary approvals or complying with the necessary regulations, including the Residential Transition Area requirements."

[3] The questions presented in FOL's opening brief are:

I. "Whether the circuit court exceeded its enforcement powers under Rules 2-631 and 2-648 by directing the demolition of a structure, where demolition was not the act mandated by the judgment and other less drastic alternatives would satisfy the judgment?"

II. "Whether the circuit court misapplied the doctrine of unclean hands in enforcement of a judgment, where (1) the inequitable actor was not the applicant for equitable relief; (2) the inequitable conduct was excluded at trial on relevance grounds; (3) the effect was to order more restrictive recourse than was legally available for the alleged misconduct; and (4) the relief bypassed judicial and administrative procedure without exhaustion of administrative remedies?"

In their cross-appeal, Appellees/Cross-Appellants ask us to reverse the circuit court's denial of their request for attorney's fees.[4]

We hold that, by authorizing the receiver to raze the Addition, the court acted within the mandate of the April 2017 Order, and, therefore, within the bounds of its authority to enforce that order under Maryland Rule 2-648. The circuit court did not abuse its discretion in ordering the relief it deemed appropriate to enforce the judgment or in rejecting the option to move the Addition to another location on the property under the unclean hands doctrine because that option would "tacitly endorse that which has been repeatedly found to be a violation of existing restrictions in the residential community." We dismiss Appellees/Cross-Appellants' cross-appeal on the issue of attorneys' fees. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

The instant appeal is the latest chapter in ongoing litigation between FOL and Appellees concerning the Addition. We draw from the background set out in our prior opinion and include additional information necessary for the determination of this appeal.

The Proposed Addition

Rabbi Manachem Mendel Rivkin lives at 14 Aigburth with his wife and seven children. Rabbi Rivkin runs the day-to-day operations of the Chabad-Lubavitch of Towson—an on-campus ministry of Towson University and Goucher College—from an

[4] Appellees' question presented stated:

> "Did the [c]ircuit [c]ourt err in denying Appellees' motion and application for an award of attorney's fees and expenses?"

office on the Towson University campus. Rabbi Rivkin and his family reside in the home owned by FOL at 14 Aigburth, as a form of compensation for his work for FOL. Rabbi Rivkin testified at trial that the residence is "a religious parsonage." The existing home at 14 Aigburth (before the proposed Addition) was approximately 2,200 square-feet.

The Rivkins regularly invite Jewish students to their home for Shabbat dinners to observe the Sabbath and to celebrate the high holidays. FOL proposed building the Addition to the existing home at 14 Aigburth because the Rivkins "had a shortage of space for [their] family[,]" "a shortage of space for [their] guests[,]" and "didn't have enough space to host people for Friday night dinner." At first, FOL proposed to "build [the Addition] as a synagogue" but the "neighborhood actually asked [FOL] not to do that. And they asked [FOL] to keep it as a residence." In the fall of 2014,

> FOL held a meeting for the community on the front lawn at 14 Aigburth to discuss the addition. Based on the neighbors' concerns that the proposed building (as shown on plans) looked too commercial and was too tall, FOL asked their architect to "make some aspects . . . feel more residential and more in tune with the neighborhood." Consequently, FOL lowered the main floor of the proposed building 5 ½-feet further into the ground "so that it wouldn't be as tall." According to Rabbi Rivkin, Mr. Zoll also requested that FOL build further forward, as opposed to behind the existing house, so it would be further away from the Zolls' house.

Friends of Lubavitch, Inc. v. Zoll, No. 372, September Term 2017, slip op. at 5-6 (filed Oct. 23, 2018).

Zoning Administrative Proceedings

Special Exception Hearings

While FOL was campaigning to build a larger structure at 14 Aigburth,

> Baltimore County issued FOL a code enforcement correction notice on January 29, 2015. The County ordered, among other things, that FOL "[c]ease the illegal House of Worship/Religious Institution without the benefit of meeting the [Residential Transit Area "RTA"] requirements,[] the parking requirements and the Non Residential Principle Setback requirements[]" contained in the Baltimore County Zoning Regulations ("BCZR"). The correction notice also ordered that FOL "[c]ease the illegal operation of a Community Building without the benefit of a Special Exception Hearing." The property is 17,122 square feet and zoned D.R.5.5, Density Residential, which permits 5.5 dwelling units per acre. BCZR § 100.1.

Id., slip op. at 6 (footnote omitted). The notice required FOL to comply by February 26, 2015. The County issued FOL another code enforcement and inspection citation on March 2, 2015. The citation stated that FOL had violated the Baltimore County Code by "[f]ail[ing] to obtain a Change of Occupancy permit to change the 'use' of a residential dwelling[,]" "[f]ail[ing] to cease the illegal House of Worship/Religious Institution without the benefit of meeting the RTA requirements, the parking requirements and the Non Residential Principle Setback requirements[,]" and "[f]ail[ing] to cease the illegal operation of a Community Building without the benefit of a Special Exception Hearing."

In response to the citations issued by the County, FOL filed a petition for a Special Hearing before Baltimore County's Office of Administrative Hearings ("OAH") pursuant to BCZR § 500.7. FOL petitioned "to confirm continued use of the subject property as a residential parsonage with an accessory use for religious worship and religious education."

After a public hearing, an Administrative Law Judge ("ALJ") ruled that 14 Aigburth "fails to qualify as a parsonage[,]" and denied FOL's petition on June 26, 2015, explaining:

> While the property is owned by a religious organization, and Rabbi Rivk[i]n is clergy, there is missing from the equation a congregation or parish to which the parsonage would be adjunct. It is simply not sufficient that the home be owned by a religious organization and lived in by a clergy member and his family. Rabbi Rivk[i]n testified that he attends service on Saturday mornings at a synagogue on Pimlico Road, which is located 6+ miles from the subject property. No evidence was presented to establish that Rabbi Rivk[i]n is formally affiliated with or is in charge of that synagogue and congregation. In these circumstances, the property fails to qualify as a parsonage for the same reasons as those articulated by the Court of Special Appeals in Evangelical Covenant. *See* also, Ballard v. Balto, Co., 269 Md. 397, 406 (1973) (minister's home qualifies for exemption only if it is a "parsonage for a house of public worship").

Less than six months later, in early 2016, FOL filed a second petition for a Special Hearing for approval to construct "a structural addition to an existing single family residential dwelling to be used as additional living space for the family who reside therein."[5] The ALJ who presided over the hearing noted in his opinion that several neighbors opposed the petition, arguing that Rabbi Rivkin "is 'disingenuous,'" and that FOL uses the property for religious purposes. As we noted in our earlier opinion,

> Nevertheless, the ALJ approved FOL's petition on April 6, 2016, observing that, although it was clear that FOL could not use the property as a church, synagogue, or community building under applicable zoning rules, the BCZR "does not contain a restriction on the size of a dwelling in the DR 5.5 zone, provided the setbacks and height limitations are satisfied." In the order granting FOL's petition, the ALJ specified that the approval was for a "structural addition to an existing single family residential dwelling to be used as additional living space for the family who reside therein[,]" and noted that the relief "shall be subject to the following:"

[5] Some neighbors had filed their own request for a Special Hearing in which they sought a declaration as to whether the current use of 14 Aigburth violated applicable zoning regulations, including whether the Addition needed to comply with the setbacks required for a community center. This petition and FOL's petition were consolidated before the ALJ.

> Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time *is at its own risk* until 30 days from the date hereof[, April 6], during which time an appeal can be filed by any party. ***If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.***

(Emphasis added).

Friends of Lubavitch, slip op. at 7-8 (bold emphasis added). The Association appealed the ALJ's decision to the Board of Appeals of Baltimore County ("Board of Appeals" or "Board").

The Building Permit

Despite the pending appeal,

> FOL applied for a permit on April 19, 2016, to build a 6,614 square foot structure (the "Building") attached to the front of the existing home on 14 Aigburth. The permit application estimated that the Building would cost $550,000 in material and labor. The Building would roughly quadruple the home's original size (2,200 square-feet) and extend out to between 56 and 57 feet from Aigburth Road. The Building would be three-stories tall and have four bedrooms, seven bathrooms, five wet bars, a mikvah, and two kitchens, one of which was designed specially to accommodate Rabbi Rivkin's cooking needs for Passover. The space would accommodate the Chabad's needs on the high holidays at 14 Aigburth, for which Rabbi Rivkin would invite over 200 guests, with sometimes more than 50 attending dinner. FOL began construction on June 6, 2016.

Id., slip op. at 8-9.

Appeal before the Board of Appeals of Baltimore County

The Board of Appeals held de novo hearings on October 27, 2016 and January 12, 2017. The Board issued a lengthy opinion on September 5, 2017. First, the Board detailed its findings concerning the intended use of the Addition as a community center:

> The size and scope of the structure undermines any claim that it is merely a residence for the use of Rabbi Rivkin, his family, and some of their "friends," as he so testified. . . . Together [with the Addition added to the original house], the "home" went from about 2200 square feet to close to 9,000 square feet. The addition is simply attached to the pre-existing house by a covered breezeway. There was no effort made by design to integrate the addition with the pre-existing house.
>
> The building is a two[-]story building with a basement, although the basement is partially above grade and so it gives the impression of, and is often referred to as, being a three[-]story building. The design of the building is institutional, not residential. It looks like a community center. It is about seven feet higher than the neighboring three story home. It is quite improbable that a private religious organization would spend approximately $3,000,000 – much of which was raised by private donations – to construct a home for one of its rabbis to simply live in without the expectation that the building, designed as it is, will be used for the primary support of the Lubavitch mission.

The Board then summarized FOL's outreach efforts at the property and its "community center activities." The Board focused on Ms. Zoll's testimony, noting that she was "[o]ne of the most compelling witnesses." As the Board summarized, while Ms. Zoll and her husband were "willing to tolerate the relatively low level activity involving noise, trash and parking" of the pre-construction community center activity, she began to take steps to protect her property once the construction project was unveiled:

> On the administrative side, her efforts along with those of the community at large have been largely, and sadly, ineffective. Notwithstanding grave misgivings on the part of the Baltimore County government that the project was really a parsonage/community center camouflaged by using the word "addition", Baltimore County issued the building permit. It is probably the case that no one in officialdom actually believed that those new plans, which called for a structure virtually identical to the rejected parsonage, were for a mere residential addition designed to help Rabbi Rivkin's burgeoning family. And while it is reasonable to believe that few in county government believed the Lubavitch claim, no one in county government felt empowered to take steps to block construction. It was a construction permit strategy relying upon a county administration that viewed itself as

> hamstrung and powerless to acknowledge out loud what everyone believed to be the case.

Ultimately, the Board held:

> There is a unanimous finding by the CBA that Lubavitch has been acting as a community center. It has been doing so apparently since soon after Rabbi Rivkin moved to 14 Aigburth. The scope of those activities has grown over time. There was a certain natural limitation on the level of activities because of the limited size of the house. As Rabbi Rivkin has become more and more successful in his outreach efforts, the activities have grown larger than the physical plant can usefully accommodate. Like most people of goodwill, his neighbors tolerated the activities until it was announced that Lubavitch was going to expand the size of the structure with the corresponding natural expansion of its activities. At that point, the neighbors attempted to block the dramatic alteration of the neighborhood. They called upon County administrative resources in every reasonable way but without any ultimate success. Though the County was not without sympathy, its view of its authority as limited in these circumstances has resulted in a huge institutional building at the site. This building, with its promise of greatly increased activity, represents a significant erosion of the neighborhood as it has traditionally been. Lubavitch has asserted that its use of the original house and now with its new addition has been as a residence with modest accessory residential uses involving student meetings, dinners, and holiday programs. Its description of its level of activity has been coy and insincere. The Protestants believe what they have seen; not what they have been told. Sadly, Lubavitch has achieved its goals by manipulating both the administrative system as well as everyone's natural inclination to defer to religious organizations. In the end, Lubavitch has left the CBA with very few options, but leaving the neighbors stranded cannot be one of them.
>
> While Lubavitch and Rabbi Rivkin have the right to use 14 Aigburth as a dwelling, the credible evidence has established that it has been and is intended in the future to be used as both a dwelling **and** as a community center. *The latter use requires a special exception and compliance with the RTA requirements, neither of which has been done. The CBA believes that Lubavitch has acted in bad faith in obtaining a building permit and constructing the addition. The CBA does not believe that it has the power or authority to order the removal of the building. All that it can do is grant the Protestants' Petition in the form of declaratory judgment.*

(Bold emphasis in original; italic emphasis added).[6] Accordingly, the Board declared that FOL's use of the property had exceeded the residential use authorized under the existing zoning laws and lacked the special exception approval required for operation of a community center.

Underlying Trial Proceedings in the Circuit Court

Setback Covenant

Meanwhile, back in July 2016, while the zoning appeal was pending and approximately 40 days after FOL broke ground on the Addition, Ms. Zoll received word from another member of the local community that the Addition, as proposed, violates a Setback Covenant contained in a 1950 Deed in the property's chain of title. Ms. Zoll contacted a title attorney who issued a title report nine days later, on July 26, confirming that the Setback Covenant was binding on 14 Aigburth and ran with the land. She then "moved immediately" to notify the Association that FOL's proposed Addition violated the Setback Covenant. The Association hand-delivered and emailed a letter to FOL, its attorney, and Rabbi Rivkin the next day, July 27, explaining that the Association had just learned that restrictive covenants running with the land "require[] a building setback of which the current construction is in violation." The letter further warned:

> The [Association] as well as one of the adjoining property owners intend to enforce these covenants and thus request that you issue a stop work order immediately. If you do not issue a stop work order and construction in violation of the covenants continues, the Friends of Lubavitch continues at its own risk.

[6] The Board's decision was not appealed.

> This letter serves as notice to all copied parties that the current construction is in violation of the restrictive covenants. Enforcement of these covenants will require that all nonconforming construction be removed at the expense of the current property owner.

By July 27, construction of the Addition had proceeded only as far as "rough[]" excavation of the front of the property. After receiving the letter, FOL's attorney confirmed that the 1950 Deed contained the Setback Covenant but, as Rabbi Rivkin would later testify at trial, FOL "clearly didn't stop" construction. When FOL refused to stop construction, Ms. Zoll hired an attorney to sue FOL to enjoin the construction.

The Complaint

On August 12, 2016—approximately two weeks after demanding, unsuccessfully, that FOL stop work—the Association, along with Ms. Zoll, individually and as trustee of the "Madge and James Taylor Family Trust,"[7] filed a complaint for declaratory and injunctive relief against FOL in the Circuit Court for Baltimore County. The Plaintiffs asserted that FOL had recently begun constructing the Addition in violation of the Setback Covenant despite the Association sending FOL written notice of the violation and demanding that FOL stop work immediately. They asserted three counts.

First, the Plaintiffs requested a declaratory judgment and an order declaring the Addition to be in violation of the Setback Covenant. Second, they asserted a claim for breach of contract for FOL's breach of the terms of the Setback Covenant. The Plaintiffs

[7] The original complaint misidentified the name of the plaintiff trust, which was actually two trusts. Appellees sought leave to amend their complaint to identify the proper parties. The amendment did not otherwise introduce new facts or materially vary the case. The circuit court granted the motion. *Friends of Lubavitch*, slip op. at 12-13.

averred that they had no adequate remedy at law. Accordingly, they asked the court to issue an order instructing that: (1) FOL was prohibited from constructing or continuing to construct the Addition; (2) FOL was prohibited from constructing any structure or improvement in violation of the Setback Covenant; (3) FOL "shall immediately remove the structure and all other improvements that do not comply" with the Setback Covenant; and (4) Plaintiffs be awarded attorneys' fees and costs. Third, the Plaintiffs asked the court to grant an injunction requiring FOL to remove the Addition and prohibit further violation of the Setback Covenant because "obtaining an injunction outweigh[ed] any potential harm that might befall [FOL] if the injunction were granted."

Trial

This case proceeded to a two-day trial on March 30 and 31, 2017. Both sides presented expert testimony. The Plaintiffs called an expert in "title searches, title examinations, covenants and restrictions and land documents" and an expert in "surveying and measuring setbacks." FOL called an expert in surveying. In addition to expert testimony, the court heard testimony from the Zolls; Rabbi Rivkin; Rabbi Shmuel Kaplan, the president of FOL; Mr. Hartman from the Association; and Ms. Robin Clark, a supervisor of inspections for Baltimore County Code Enforcement. We summarized the testimony by Ms. Zoll and Rabbi Rivkin in our prior opinion as follows:

> Mrs. Zoll testified to the impact the Addition has had on her and her family's use and enjoyment of their property. She explained that the Addition severely blocks the view in front of their home and has devalued their property by five percent. She insisted that the decreased value "[wa]s really the least of it"; and relayed that she and her husband "feel really violated by [FOL] coming in and putting [the] Chabad house on the property violating the zoning laws and violating this covenant[.]" Despite

Aigburth Road's proximity to Towson University, Mrs. Zoll described her neighborhood as "a lovely, quiet [] residential enclave" with old homes "setback from the road in [a] very distinctive kind of way. Old trees. Um, and it was peaceful. Hard to be peaceful that close to Towson, but it was." She explained that her house had a large front porch and that her and her husband's "favorite thing to do is to sit on that porch in the mornings and talk to each other and read the paper and have coffee, and we call it our favorite room in the house." Their view is now "a big brick wall instead of trees and a breeze and the late afternoon sun[,]" and "there's this wall with all the pipes hanging out in our direction." This caused the Zolls to spend "thousands of dollars" to install trees to "try to block it, [] so we wouldn't have to see it." But she described the trees as "a pitiful attempt when you're [] working with a three-story brick building, so you can't block it. We have no choice but to look at it." She concluded, "I don't know what value to put on the use and enjoyment of this property. I would say priceless, I don't know. But it's – it's really, really been devastating to us."

Rabbi Rivkin testified that he did not learn of the restrictive covenants until July 2016. Had he known prior, he testified that FOL

> would have c[o]me to court to determine what it meant or we would have gotten them to sign off on what they thought it meant, and we would have built either behind [] our house, . . . or we would have built it in such a way that it still maintained the setback[] however[] they deemed it to be.
>
> * * *
>
> So I probably would have sat down with them and said, listen, these are my options, how do you want me to do it best, which is kind of what I did already. It's just I probably would have gotten it – I probably would have made them sign off on something.

Rabbi Rivkin confirmed, however, that FOL "did not stop construction" upon learning of the restrictive covenants. When asked why not, he replied that it was because of

> the financial challenges that stopping to build smack in the middle of construction would have caused. At that point we had an apartment that we had leased for two months and [] we actually had to move out by August 1st. So we would have not had [any]where t[o] live.
>
> The lumber was already delivered, and if I would have pulled out of the contract, from [] what I understand our builder . . . would have – we – we probably would have saved about of the

> $800,000 or somewhat that it cost to build, we would have saved about $200,000.
>
> * * *
>
> It basically became a choice of, do we stop because maybe this covenant means something and lose $600,000 or do we go ahead and build and – []– and assume that what we think is.

After explaining that he and his family "needed to move back into the house" by August 25, Rabbi Rivkin continued:

> The construction at that point *was substantially behind schedule* and I was pressing them aggressively, uh, because we needed to move back in. We were having a baby. We had a baby in September – no, in October, the beginning of October. And, um, and, um, my wife wanted to be back in our house before October, which means we needed to get our water and our power.

Id., slip op. at 15-17.

Rabbi Rivkin explained his view that "[w]e kind of didn't have a choice it was like we were on the highway there was no way off." If the court were to order removal of the Addition, he said, it "would be catastrophic to us and our family[.]" He elaborated on cross-examination that, even though he did not own the property, living there was his benefit and he, personally, contributed "[s]ubstantially" for the Addition in cash.

Mr. Paul Hartman testified to the character of the neighborhood on behalf of the Association. He related that, "the entire scope of the project, which was huge" was not immediately known to the Association when FOL consulted with them in 2014. And, "as it turned out[,] the community and the association had objections to [] the size, the bulk, the architecture of [] the project."

Memorandum Opinion and Order

The circuit court issued a 21-page memorandum opinion and an order on April 13, 2017. The court granted Plaintiffs' request for a declaratory judgment, having determined that "[t]he evidence was undisputed that the 1950 deed imposed the restrictive covenants, including the Setback Covenant, on 14 Aigburth Road," and that based on the language of the deed, "the restrictive covenants run with the land." The court explained: "The plain meaning of the Setback Covenant refers to a front setback measured from the front property line to the center of the front plane of the house on the property, exclusive of the porch. This meaning is the only reasonable interpretation of the Setback Covenant." The judge charged FOL with actual notice as of 2008 when it purchased 14 Aigburth based on the title search conducted at that time and the fact that its "title insurance policy included an exception to coverage for the 1950 restrictive covenants." The court entered an order declaring that the Setback Covenant "is valid and in full force and effect[,]" and that the Addition violates the Setback Covenant.

After concluding that FOL breached the Setback Covenant, the court granted injunctive relief. Applying the four factors for injunctive relief that the Court of Appeals set out in *State Commission on Human Relations v. Talbot County Detention Center*, 370 Md. 115, 136 (2002), the court began with the Plaintiffs' likelihood of success on the merits and observed that it already found that FOL violated the Setback Covenant. The court proceeded to the second factor by comparing the hardship on the parties by granting or refusing an injunction. The judge observed that FOL made "no innocent mistakes," and looked to the harm FOL caused the Plaintiffs, finding, among other things, that

"construction of the [Addition], in violation of the Setback Covenant, has been devastating" to the Zolls in terms of their use and enjoyment as well as the devaluation of their property. Comparatively, the court found that FOL "did not present any specific evidence about the monetary loss [it] would suffer from moving the [Addition] or tearing it down. Also, Rabbi Rivkin's testimony about the funding of the construction of the [Addition] was evasive and not credible." Overall, the court found Ms. Zoll to be a credible witness and Rabbi Rivkin to be "evasive and aggressive during questioning." The judge, therefore, credited Ms. Zoll's testimony whenever it differed from that of Rabbi Rivkin.

In determining that the injury to the Plaintiffs would be irreparable absent an injunction, the court noted that Ms. Zoll "testified credibly that her enjoyment of her property at 16 Aigburth is priceless; and, the construction of the [Addition] was devastating"—her "view is a brick wall." Additionally, the court highlighted the Association's interest in maintaining the neighborhood's integrity and found that "the Association [wa]s also harmed by [FOL]'s violation of the Setback Covenant; and, the harm to Plaintiffs is not merely pecuniary in nature."

The court ordered FOL to "remove the [Addition] and all other improvements that violate the Setback Covenant no later than March 1, 2018," and enjoined FOL "from constructing any structure or other improvement that violates the Setback Covenant."

Enforcement Proceedings

Appellees' Motion for Seizure of Property and Appointment of Receiver

On April 5, 2018, while FOL was filing motions to extend and/or stay enforcement of the circuit court's April 2017 Order during the pendency of the prior appeal, Appellees filed a motion for seizure of the property and appointment of a receiver to execute the judgment. The circuit court granted Appellees' motion in an order dated May 15, 2018. The order appointed a receiver "for the purpose of executing and enforcing the judgment entered in this action," and "empowered" the receiver to "undertake immediately all steps necessary for the execution and enforcement of the judgment, including the hiring of such persons or entities necessary to remove the addition which is the subject of removal of the action." The order also ordered FOL to pay all expenses for the execution and enforcement of the judgment.

FOL's Motion for Clarification and to Shorten Time to Respond

On June 21, 2018, FOL filed a motion for clarification and to shorten the time for Appellees to respond. FOL sought clarification of the April 13, 2017 Order "to address a possibility not contemplated by the parties at the time of trial." Specifically, the motion requested that "the Court clarify its April 13, 2017 Order to reflect that FOL is permitted to demolish the original structure on FOL's property and relocate the Addition behind the Setback line[.]" FOL explained that it had learned "that it is feasible to move the Addition, and position it on FOL's property such that the Addition would become a stand-alone structure[.]"

In the ensuing hearing before circuit court on FOL's motion for clarification, Appellees opposed the motion as a lately filed motion for reconsideration. They argued that "nothing has changed at all" since the court's April 13, 2017 Order and that FOL "continued to use this property as a community building" in violation of the Board of Appeals' order. Appellees urged that, "[i]f we allow this building to be moved, we know, my clients know, everyone knows that it will continue to be used illegally."

FOL objected to the arguments advanced by Appellees based on alleged violations of the zoning ordinance, contending that those arguments were not before the court and "not within the scope of what this particular case was about." FOL again requested that the court permit it to relocate the Addition:

> We're proposing to remove the rear piece of the building down which will give us the space that we need to push it back. Our engineers and our contractors tell us that it is something that they can do and so that is what we're asking the Court for permission to do with our motion.

The judge then asked if the receiver had anything to add. The receiver responded that additional time was necessary to obtain estimates from contractors and requested that the court clarify the judgment.

Rather than clarify the judgment at this hearing, the court impressed on the parties the benefits of attempting to mediate and stated:

> This is a longstanding dispute and, whatever I do now, there is still a piece of it that is looming in the distance because even if the structure is razed something new is going to be built and there are going to be disputes about what it should be and how it should be used.

The judge then noted that "reasonable minds could differ" concerning how the Addition "gets removed." The Court granted the receiver's request for additional time to obtain

estimates and to make a recommendation. Following the hearing, the court entered an order on July 2, 2018, directing the receiver, among other things, to "continue efforts to establish and execute a plan for compliance with the Court's prior Orders."

Hearing on Receiver's Motion to Approve Construction Management and Contractor Designation

The hearing on the receiver's motion to approve construction management and contractor designation took place on September 5, 2018. The receiver's motion recommended certain contractors and included pricing for both "removal of the Structure and/or its relocation." At the hearing, the receiver informed the court that the construction manager and the receiver had both agreed on a contractor, regardless of which option is pursued. The construction manager then testified to the construction project, including the timeframe, required permits, and the potential impact on the neighborhood under each option.

Counsel for Appellees renewed and restated the Appellees' objection to FOL's motion for clarification; namely, that the motion failed to comply with Maryland Rules 2-534 and 2-535 governing post-judgment motions. Counsel argued against moving the Addition back because his client would then still have to live with the oversized structure next door. Counsel also pointed out that the Addition does not have a slate roof—another violation of the restrictive covenants. More importantly, counsel urged, moving the Addition to another location on the property would violate the Board of Appeals' order because "there is no legitimate doubt that [FOL] will continue to use the structure[] for an illegal purpose." The permit to construct the Addition, counsel insisted, was obtained in

bad faith as recognized in the Board of Appeals' opinion. Finally, counsel requested that the circuit court award Appellees' attorneys' fees incurred after March 1, 2018—the date when FOL was required to have complied with the April 13, 2017 Order.

Ms. Zoll testified regarding the potential negative impact of relocating the Addition on FOL's property:

> If the building is moved back on the property, it will then be along side our entire house. It will no longer be just in the front yard of the house effecting or even at a little bit at an angle the front of the house. It will be smack on the side of our house, the entire house.
>
> * * *
>
> So, it is ten feet from our property line and there we would be looking at it through the windows of our entire home. That would be much worse than what we had than when it was in front.
>
> Secondly, the noise and the lights from the building. Right now the building is in front of the house. The building is kept lit all night, every light in the place. I have a picture of it and pictures I think have been submitted before Judge Souder as well. The organization advertises that this is open 24/7, always open on the Facebook. Indeed, they keep the lights on like Motel 6 all night, but it is every light in the house. That would now be next to our home shining in all of our bedroom windows and all of our downstairs rooms from this structure just a few feet away.
>
> The side entrances, it has two side entrances which are actually closer to our property than the wall of the home. . . . There are two landings on each of the outside entrances. They are for the apartments inside the structure. Boarders live in the apartments. They come and go. I see them coming and going from the side entrances day and night. They congregate on the landings sometimes in the middle of the night noisily.

Ms. Zoll also pointed out that FOL did not have a permit to move the building to another place on the property, and "cannot get a new permit, it seems to me, without complying with the setback and other zoning requirements for a commercial center, for a commercial structure."

Following Ms. Zoll's testimony, the court then requested the construction manager to return to the stand for a few additional questions. Specifically, the circuit court asked whether a permit would be required for moving the structure back. The construction manager explained:

> There is a series of four different permits that would be required. There is a demolition permit needed for the original structure. There is a building permit that would be required for the new foundation for the addition to be moved back. There is a permit in order to move the structure itself. There is a small land disturbance permit if the disturbance is over 5,000 square feet.

When the judge asked whether there was any substantive review under the permitting process for compliance with the zoning ordinance, the construction manager replied,

> Yes, the building permit would have a zoning process to it and the demolition permit would have a process regarding any issues with asbestos for example. In terms of the review for the structure, the building permit would.

Next the judge inquired whether there is a "process for individuals like the neighbors to contest or to challenge [the] legitimacy of the permits for that structure [.]" Appellees' counsel noted that he could "speak to that" question and related that,

> What would happen with the building permit is the application goes to the Permits, Approvals and Inspections and then it is circulated to agencies -- Zoning, Department of the Environment protection -- and they literally just check off on it and they may or may not look at the plans. In my experience, sometimes they do and sometimes they don't, but those are just plans. No part of that process involves community input. In fact, if a building permit is issued, we can't appeal it. The law does not allow us to appeal the granting of a building permit. If the building permit is denied, the property owner can appeal the denial, but we can't appeal the granting of a building permit.

The receiver responded that she agreed with Appellees' counsel, but pointed out that the community could challenge the move after the fact. Appellees' counsel clarified that "[i]t is called a petition for special hearing and is the administrative equivalent of a declaratory judgment action[,]" to which the court responded "[i]t *would just get you back here in the same way we are now*." (Emphasis added).

Finally, Ms. Rivkin testified concerning her family's use of the Addition and her family's efforts to be good neighbors prior to construction. She testified that the Rivkins' mission is to provide a space where Jewish students may feel at home:

> We are there in Towson because we believe that students who are Jewish and find themselves in college in a foreign culture by themselves surrounded by other ideals and other beliefs should have a place that they could feel at home.
>
> It is true that we do host students for Shabbat dinners. Students know all the time if they break up with their boyfriends, if their pet dies or whatever happens they can come to us and talk.
>
> * * *
>
> Everything we do is residential. They come to my house and it is not commercial. It is my house. That is where I live. It is on the fringe of the college because (inaudible). That is what my grandparents did after the Holocaust. They were sent back from America to Italy and they opened a Shabbat Center there. They wanted a Jewish school for the past fifty years. My other grandparents moved to Baltimore and opened a center there. It was in their house. That is what all of my sister-in-laws and brother-in-laws do, we run Shabbat centers.

At the close of the hearing, the judge again advised the parties to "consider a mediation option" and then noted that the court would rule on the receiver's motion after providing the parties an opportunity to respond. Because none of the parties had time to review the receiver's motion before the hearing, the circuit court provided an opportunity

for the parties to review and file responses afterwards. FOL and Appellees both filed responses. FOL again requested a stay pending the outcome of its prior appeal.

Appellees' Motion for Attorneys' Fees

On October 15, 2018, Appellees filed a motion for attorneys' fees and application for supplementary relief, pursuant to Maryland Declaratory Judgment Act (the "Act"), Maryland Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings ("CJP") Article, § 3-410. In their motion, Appellees sought to recover their attorneys' fees and expenses incurred in this action from its inception, or, "at a minimum," the fees and expenses incurred since March 1, 2018, the date when FOL was required to remove the Addition pursuant to the circuit court's April 13, 2017 Order.

The circuit court denied Appellees' motion in an order entered on November 2, 2018. Appellees then filed a motion for reconsideration on November 19, 2018. The circuit court did not rule on the motion for reconsideration before FOL filed its notice of appeal on December 3, 2018 or Appellees filed their cross-appeal on December 14, 2018.

The Circuit Court's November 2, 2018 Memorandum Opinion and Order

On November 2, 2018, the circuit court entered a memorandum opinion and order authorizing the receiver to enter into a contract to raze the Addition, with construction management overseen by the construction manager. The court found, after reviewing the parties' memoranda, that "'removal' may be accomplished in any number of ways, so long as the structure no longer encroaches in the setback area. In theory[,] FOL could raze the structure, or reconfigure it so that it no longer crosses the setback line, or move it on the property." The court decided not to "authorize moving the existing structure to

replace the original home on the lot, as that would authorize the continuation of a commercial use that has been found to be non-compliant with restrictions on the property."

In the opinion, the court reviewed the "lengthy proceedings concerning this property," including: the code enforcement notices requiring that FOL '"cease the illegal house of worship/religious institution;'" the order denying the use of the property as a religious parsonage; and the Board of Appeals' decision. The court referenced the Board of Appeals' findings that FOL "has achieved its goals by manipulating both the administrative system as well as everyone's natural inclination to defer to religious organizations" and that FOL "has acted in bad faith in obtaining the building permit and constructing the addition."

The court noted, in regard to use of the property that, "[w]hile Rabbi Rivkin testified that the structure 'is residential in nature only,' [the trial court judge] found him to be evasive and aggressive during questioning. By contrast, she found the testimony of Ms. Zoll concerning the use of the property as a Chabad House to be credible." The court also summarized Ms. Zoll's testimony at the September 5 hearing, that "students come and go, the house is lit up throughout the night, and open invitations are posted for students to attend events and celebrate religious holidays at the Chabad House."

Next, the court reviewed Mashana Rivkin's testimony:

> Mashana Rivkin also testified concerning FOL use of the property. She stressed that her family lives in the home and needed more space than the original structure. Mrs. Rivkin was due shortly to give birth to twins, so there would be seven children in the home. Mrs. Rivkin acknowledged that she and her husband are committed to their mission to provide a space

> where students who are Jewish have a place where they can feel at home. She acknowledged that they advertise and host dinners, and open their home to area students.
>
> This is a mission that is central to Mrs. Rivkin, as she testified it is what her parents did in other locations after the Holocaust. However commendable the goal, based upon the evidence produced in other proceedings and the findings that were made, and based upon the testimony presented in post-trial proceedings in this Court, it is clear that the use of the Aigburth Road property as a Chabad House has expanded far beyond what can be fairly characterized as residential use.

Applying the doctrine of unclean hands, the circuit court concluded that, while enforcement is "not limited to razing the structure,"

> to approve enforcement in a manner that will tacitly endorse that which has been repeatedly found to be a violation of existing restrictions in the residential community would constitute an abuse of this Court's discretion. The proposed plan would remove the legitimate residential structure from the lot, and maintain only that which has been found to be a community center that is not in compliance with necessary approvals or regulations. This is precisely the type of circumstance that the doctrine of unclean hands is intended to protect against.

FOL noted a timely appeal on December 3, 2018. On December 14, 2018, Appellees noted their cross-appeal on the issue of attorneys' fees.

On December 13, FOL filed an emergency motion to stay order pending appeal, which Appellees opposed. On January 10, 2019, the circuit held a hearing and granted FOL's motion. The circuit court entered a written order staying its November 2, 2018 order pending appeal and requiring FOL to post a bond. Appellees filed a second notice of appeal on February 11, 2019.

MOTION TO DISMISS CROSS-APPEAL

FOL has moved to dismiss the Appellees/Cross-Appellants' cross-appeal as untimely under Maryland Rule 8-202. Specifically, FOL contends that Appellees/Cross-

Appellants' "notice of appeal was untimely because their Motion for Reconsideration was untimely."

Appellees/Cross-Appellants contend that their notice of cross-appeal was timely filed for two reasons. First, the motion for reconsideration was timely filed, because it was a motion under Rule 2-535 and was filed within 30 days of the judgment. Second, Appellees/Cross-Appellants' cross-appeal was timely filed within ten days of FOL's notice of appeal as authorized by Maryland Rule 8-202(e).

Appellees/Cross-Appellants' cross-appeal from the November 2, 2018 judgment was untimely under Rule 8-202. We explain.

Maryland Rule 8-602(a) mandates that this "Court shall dismiss an appeal if: . . . (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202." Rule 8-202(a), in turn, provides: "Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days ***after entry*** of the judgment or order from which the appeal is taken." "Rule 8-202(c) provides for an exception that tolls the running of that appeal period while the court considers certain motions, including motions . . . that are filed within ten days ***of entry*** of the judgment or order 'under Rule 2-534 and/or 2-535.'" *Johnson v. Francis*, 239 Md. App. 530, 541 (2018) (emphasis added). While a motion for reconsideration filed more than ten days after entry of the judgment or order appealed may be considered by the circuit court, "it does not toll the running of the time to note an appeal." *Id.* (citation omitted). Finally, in the case "when one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal ***was filed*** or

within any longer time otherwise allowed by this Rule." Md. Rule 8-202(e) (emphasis added).

Here, the key dates in determining the motion to dismiss are:

- November 2, 2018: circuit court denies motion for attorneys' fees;
- November 19, 2018: Appellees/Cross-Appellants file motion for reconsideration;
- December 3, 2018: FOL filed its notice of appeal;
- December 14, 2018: Appellees/Cross-Appellants filed their cross-appeal; and
- Circuit court has not ruled on the motion for reconsideration.

Appellees/Cross-Appellants did not file a notice of appeal within 30 days of the court's order denying their claim for attorneys' fees, and, because the Appellees/Cross-Appellants did not file their motion for reconsideration within ten days, the appeal period was not tolled. While the Appellees/Cross-Appellants contend that the notice of their cross-appeal is timely pursuant to Maryland Rule 8-202(e), the Rule clearly specifies that the notice must be ***filed*** within ten days after the first notice of appeal was filed. Appellees/Cross-Appellants are outside this window, and their cross-appeal is not timely.

We do have the discretion to consider an untimely cross-appeal for "exceedingly good cause." *Maxwell v. Ingerman*, 107 Md. App. 677, 681 (1996). In *Maxwell v. Ingerman*, we held "the time requirement in Rule 8-202(e) is *not* jurisdictional in nature but rather serves simply to limit the scope of review." *Id.* at 681. We explained:

> (1) if an appeal is timely noted, this Court acquires appellate jurisdiction over the entire case;

> (2) if a timely cross-appeal is not filed, we will ordinarily review only those issues properly raised by the appellant;
> (3) if a cross-appeal is, in fact, filed, but is not timely under Rule 8-202(e), we will ordinarily regard the issues sought to be raised in the cross-appeal as not being properly preserved for appellate review and thus dismiss the cross-appeal for that reason; but
> (4) if good cause—exceedingly good cause—is shown for the untimeliness, we may, in our discretion, excuse the untimeliness and consider issues raised in the cross-appeal.

Id. Because Maxwell's attorney failed to serve a notice of appeal on the appellee, the appellee did not have notice of the appeal until after the time for filing a cross-appeal had expired. *Id.* at 679. We held that the "facts warrant allowing the cross-appeal" because the appellee "was obviously misled by the non-service into thinking that no appeal had been filed." *Id.* at 683.

Here, the Appellees/Cross-Appellants have not offered any reason for their untimely cross-appeal, so we cannot find "exceedingly good cause" to excuse the late filing. *Id.* at 681. We grant FOL's motion to dismiss.[8]

[8] Were we to consider Appellees/Cross-Appellants' cross-appeal, it is unlikely that their challenge to the circuit court's denial of their motion for attorneys' fees would be successful. As we explained in our prior opinion,

> Maryland courts "follow[] the American Rule of attorneys' fees, which stands as a barrier to the recovery, as consequential damages, of foreseeable counsel fees incurred in enforcing remedies for breach of contract." *Long v. Burson*, 182 Md. App. 1, 25-26 (2008) (quotations omitted); *see also Rice v. Biltmore Apartments Co.*, 141 Md. 507, 516-17 (1922) ("Whatever may be the law elsewhere, it has long been the settled law of this state that, in the absence of some statutory provision, a successful litigant is not entitled to recover the fees paid by him to attorneys for prosecuting the litigation."). This means that, "[o]rdinarily counsel fees are not awarded in a declaratory judgment action." *Maryland Auto. Ins. Fund v. Sparks*, 42

(Continued)

DISCUSSION

I.

STANDARD OF REVIEW

We have not located any authority in Maryland that establishes the standard of review for the enforcement of a judgment prohibiting or mandating action under Maryland Rule 2-648. It is well-established, however, that we review a trial court's decision to grant an injunction for abuse of discretion. *Namleb Corp. v. Garrett*, 149 Md. App. 163, 168 (2002). "[A] trial court has wide latitude to enforce restrictive covenants by means of permanent injunctions so long as the restrictions in the covenant are reasonable and 'made in good faith, and not high-handed, whimsical or captious in manner.'" *Id.* at 174 (quoting *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394 (2000)).

Given the level of deference that we afford a circuit court on review of the grant of an injunction, it follows that we afford similar deference when a party's failure to comply with a judgment for injunctive relief requires enforcement. Thus, our federal appellate courts review grants of relief under Rule 70 of the Federal Rules of Civil Procedure—analogous to Rule 2-648—for an abuse of discretion. *Gates v. Collier*, 616 F.2d 1268, 1271 (5th Cir. 1980) ("Only when the district court's response to the recalcitrance of a

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Md. App. 382, 395 (1979) (citing *New Carrollton v. Belsinger Signs*, 266 Md. 229 (1972)).

Friends of Lubavitch, Inc. v. Zoll, No. 372, September Term 2017, slip op. at 43-44 (filed Oct. 23, 2018). Appellees/Cross-Appellants, again, fail to identify any statute that authorizes the award of attorneys' fees in the underlying action.

litigant is so inappropriate under the circumstances as to amount to an abuse of discretion will the Court of Appeals intervene."). Maryland Rule 2-648 was derived, in part, from the 1937 version of Rule 70.[9] Accordingly, we review a circuit court's order directing the enforcement of a judgment under Rule 2-648 for abuse of discretion, so long as the court acts within the boundaries of the Rule. *See State v. Falcon*, 451 Md. 138, 157 (2017) ("[E]ven with respect to a discretionary matter, [however,] a trial court must exercise its discretion in accordance with correct legal standards." (quoting *Ehrlich v. Perez*, 394 Md. 691, 708 (2006)). We review questions of law without deference. *Id.* 157-58.

FOL contends that the circuit court committed legal error and abused its discretion. First, FOL contends the court lacked the authority to direct the receiver to raze the addition because it was not the act mandated by the judgment. The Court of Appeals has established that "court orders are construed in the same manner as other written documents and contracts." *Taylor v. Mandel*, 402 Md. 109, 125 (2007) (citation omitted). The Court has explained:

> [I]f the language of the order is clear and unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used. Ambiguity exists, however, if when read by a reasonably prudent person, it is susceptible of more than one meaning. We

[9] "In 2007, the language of Rule 70, along with the language of all the other Civil Rules, was amended as part of the general re-styling of the Civil Rules to make them more easily understood. The objective of this effort was to be [stylistic] only; no changes in meaning were intended unless specifically noted." Wright and Miller, History and Purpose of Rule, 12 Fed. Prac. & Proc. Civ. § 3021 (database updated Oct. 2020). The resemblance to Maryland Rule 2-648 is clearer when reviewing Rule 70 before this amendment. *See* Fed. R. Civ. P. 70 (2006).

> have stated that language can be regarded as ambiguous in two different respects: 1) it may be intrinsically unclear . . . ; or 2) its intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain. Thus, a term which is unambiguous in one context may be ambiguous in another. If ambiguous, the court must discern its meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made.

Id. at 125-26 (citations and quotations omitted).

Second, FOL contends, even if the circuit court had the authority to direct the receiver to demolish the Addition, the circuit court abused its discretion by invoking the unclean hands doctrine. A trial court's decision to invoke the doctrine of unclean hands rests in its sound discretion. *Space Aero Products Co. v. R. E. Darling Co.*, 238 Md. 93, 120 (1965). This Court will "disturb a trial court's decision to invoke the doctrine only when the court abuses its discretion." *Hicks v. Gilbert*, 135 Md. App. 394, 401 (2000). However, this Court gives "no such deference when we find 'an obvious error in the application of the principles of equity."' *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 355 (2001) (citing *W. Md. Dairy v. Chenowith*, 180 Md. 236, 244 (1942)).

II.

Scope of Court's Authority under Rule 2-631 and 2-648

A. Parties' Contentions

FOL argues that the circuit court exceeded its enforcement powers under Maryland Rules 2-631 and 2-648 by directing an act—demolition—that the "court acknowledged was not mandated by the Judgment." FOL relies on the circuit court's determination that "'removal' may be accomplished in any number of ways, so long as the structure no longer encroaches in the setback area," including razing, reconfiguring,

or moving the structure. Because the Judgment did not mandate the means of enforcement, "it was erroneous for the lower court to order demolition when the covenant can be 'removed' by relocating the structure to comply with the only covenant properly before the lower court." Accordingly, FOL argues that the order did not direct the removal of the Setback Covenant violation but, to the contrary, "directed a different act—demolition—and expressly found that 'removal' and 'demolition' were not the same."

Appellees respond that, assuming the circuit court determined correctly that there are multiple ways to remove the Addition, "then that must necessarily mean that there is *more than one act* mandated by the judgment or *more than one way* to enforce the judgment." Because there are multiple ways to remove the Addition, Appellees contend, the circuit court's "selection of demolition as the means of removal was clearly not an abuse of discretion."

Appellees also argue that FOL waived its argument that the circuit court could not order demolition of the Addition because "throughout these proceedings, FOL has repeatedly characterized the April [13], 2017 Order as one requiring demolition of the [] Addition." Appellees finally argue that the circuit court's order to raze the Addition is consistent with the plain meaning of "remove."

Regarding Appellees' waiver argument, FOL replies that "as a matter of law, FOL is not precluded by its previously incorrect understanding of the Judgment in the prior appeal because this Court did not accept FOL's position or grant FOL relief."[10]

B. Maryland Rules 2-631 and 2-648

Maryland Rule 2-631 delimits the authority and process available to enforce a judgment to "only as authorized by these rules or by statute." Accordingly, "[a]ll other writs and procedures under the former rules and at common law are replaced." Paul V. Niemeyer & Linda M. Schuett, Maryland Rules Commentary ("Maryland Rules Commentary") Rule 2-631, at 861 (5th ed. 2019). Maryland Rule 2-648 is one of the various enforcement devices specified in the Maryland Rules. *See, e.g.*, Md. Rules 2-641-44 (writ of execution); 2-645, 645.1, and 646 (writ of garnishment); 2-647 (writ of possession); 2-648 (procedures to assist in enforcement of injunctive-type relief); and 2-649 (charging orders).

Maryland Rule 2-648 provides:

> (a) Generally. When a person fails to comply with a judgment prohibiting or mandating action, the court may order the seizure or sequestration of property of the noncomplying person to the extent necessary to compel compliance with the judgment and, in appropriate circumstances, may hold

[10] We are not persuaded by Appellees' contention that FOL waived its argument that demolition was not required by the judgment by initially asserting the opposite proposition before the trial court and this Court. In *Gordon v. Posner*, after a review of the applicable case law, this Court determined that "assertions that do not serve as the basis for any judicial relief generally are not sufficiently prejudicial to either the judicial system or to the party seeking the estoppel to establish a factual basis for estoppel." 142 Md. App. 399, 431-32 (2002). FOL received no relief from the trial court based on this argument, nor was this premise accepted by the circuit court. We determine that FOL was not estopped from making this argument.

> the person in contempt pursuant to Rules 15-206 and 15-207. **When a person fails to comply with a judgment mandating action, the court may direct that the act be performed by some other person appointed by the court at the expense of the person failing to comply.** When a person fails to comply with a judgment mandating the payment of money, the court may also enter a money judgment to the extent of any amount due.
>
> (b) Against Transferee of Property. If property is transferred in violation of a judgment prohibiting or mandating action with respect to that property, and the property is in the hands of a transferee, the court may issue a subpoena for the transferee. If the court finds that the transferee had actual notice of the judgment at the time of the transfer, the transferee shall be subject to the sanctions provided for in section (a) of this Rule. If the court finds that the transferee did not have actual notice, the court may enter an order upon such terms and conditions as justice may require.

Md. Rule 2-648 (emphasis added). The purpose of the Rule is to "provide assistance to the courts and parties in the execution of a judgment that prohibits or mandates any action or conduct, such as a judgment for a permanent injunction . . . or any other judgment permitted by rule or law that requires a defendant to do something[.]" Maryland Rules Commentary Rule 2-648, at 928. The Rule is only applicable when a judgment "mandate[s] that a specific person do (or not do) a specified act." *Id.*

Our appellate courts have had limited opportunity to analyze the scope of Maryland Rule 2-648. The Court of Appeals briefly discussed Maryland Rule 2-648 in *Circuit City Stores, Inc. v. Rockville Pike Joint Venture Ltd. Partnership*, 376 Md. 331 (2003), in describing "the range of post-judgment disputes that may come before the court for resolution." *Id.* at 351. In dicta, the Court described Rule 2-648 proceedings as ones meant "simply to enforce the judgment" and contrasted them with things such as post-judgment settlements, in which the trial court is empowered to "not only alter or

determine the debtor's obligations under the judgment but, in some instances, affect the judgment itself[.]" *Id.*

Several years later, in *De Arriz v. Klingler-De Arriz*, we held that a trial court erred in utilizing Maryland Rule 2-648 to enter a money judgment from the proceeds of the sale of the marital home where the judgment of absolute divorce did not order the monetary award "and furthermore . . . could not have [] so ordered" under applicable statutory and decisional law. 179 Md. App. 458, 475-78 (2008). The order contained in the judgment of absolute divorce "commanded that '[wife] shall be and is hereby granted a monetary award against [husband] in the amount of $110,000 . . . and said *award shall be payable upon settlement of the sale of the marital home* located at 5905 Griffith Road, Laytonsville, Maryland." *Id.* at 463 (internal brackets omitted and emphasis added). The trial judge did not reduce the award of $110,000 to a judgment because "substantial interest would have accrued and, thus, as a benefit to [the husband], the judge did not enter a money judgment." *Id.*

The husband utilized the court's sympathy to absolve him from paying "oppressive interest payments" and then granted his divorce lawyer a deed of trust against his interest in the marital home. *Id.* at 461, 463. The deed of trust gave the husband's divorce attorneys' fees priority over the wife's monetary award and, in conjunction with some additional liens, "effectively eliminat[ed] appellant's interest in the marital home" and the wife's ability to recover. *Id.* As we quipped: "No good deed goes unpunished." *Id.* at 461.

The wife objected to the husband's law firm's lien taking priority because it meant that she would receive no proceeds from the sale of the marital home. *Id.* at 464. She filed an emergency motion in the circuit court "based upon Rule 2-535(2)," *id.* at 468, requesting that the court revise its order *nunc pro tunc*, and grant the wife priority over the law firm's liens, *id.* at 464. The circuit court requested that the parties address the applicability of Maryland Rule 2-648. *Id.* at 465. The trial court granted the wife's motion and entered a money judgment against the husband's law firm under Rule 2-648. *Id.* The husband and his law firm appealed. *Id.* at 462.

We reversed, noting that "the trial court's decision did not take into account that the Judgment of Absolute Divorce did not mandate an action with respect to [the husband's] interest in the marital home." *Id.* at 475. The husband was not ordered to pay the award from the proceeds of the sale (and under our ruling in *Hart v. Hart*, 169 Md. App. 151, 165 (2006), could not have been so ordered); he was only ordered to make the $110,000 payment after the sale of the marital home was settled. *Id.* at 475-76. The application of Rule 2-648 requiring the husband to pay the award from the funds was impermissible because the terms of the judgment gave the husband the choice of how to satisfy the judgment, and the circuit court denied him that choice. We explained that "the trial court effectively ordered that appellant was obligated to pay the monetary award from the funds yielded from the sale of the marital home. Thus, in contravention of statutory and case law, the trial court mandated an unenforceable dictate regarding appellant's use of the proceeds from the sale of the marital home." *Id.* at 477.

Accordingly, we held that "the trial court erred in entering a money judgment against the [husband's law firm] pursuant to Rule 2-648(b)." *Id.* at 478.

In *B & P Enterprises v. Overland Equipment Co.*, we referenced, with approval, a Rule 2-648 order that defined what constituted "reasonable access" to a property, as required in the prior judgment order, and directed what work was required to provide such reasonable access. 133 Md. App. 583, 642 (2000). *Id.* The case arose from a commercial lease under which the tenant operated a motor vehicle towing and storage business. *Id.* at 591. The lease required the tenant to move its operations from an old lot to a new one. *Id.* at 596. The tenant raised several concerns regarding the access and entrance to the new lot and an additional lot. *Id.* at 593, 598. The tenant ultimately filed a complaint seeking, among other things, an injunction requiring the landlord to provide all-weather access to the new lot. *Id.* at 598. After a trial, the court issued a judgment on July 6, 1999 and ordered the landlord to provide "reasonable access" to the new lot and the additional lot. *Id.* at 599-600, 636. The order further specified that "[c]ounsel for the parties shall monitor the . . . work" and that the "work shall be done to the approval of the [tenant] and [landlord] and by a contractor that is mutually agreed[.]" *Id.* at 599-600. The landlord appealed this order on August 2, 1999 and contended "that the court abused its discretion in awarding the injunctive relief." *Id.* at 623, 632.

After the landlord noted its appeal, the tenant filed a motion to enforce the court's award of injunctive relief pursuant to Maryland Rule 2-648(a). *Id.* at 640. The court entered a Rule 2-648 order, on November 15, 1999, which "eliminated the need for

counsel to monitor the progress of the work prescribed" and "named the contractors to perform the work and clarified what work was to be performed." *Id.* at 641-42.

We held that "the circuit court acted within its discretion in ordering [the landlord] to provide reasonable access" to the lots in its initial July order and "perceive[d] no abuse in requiring the parties to agree upon the contractor" or "in the mandate that the parties approve the work." *Id.* at 638. We noted that any concerns with certain requirements in the judgment order was "rendered moot" by the Rule 2-648 order. *Id.* Specifically, we noted that the Rule 2-648 order:

> dissipated any ambiguity concerning the fence and gate repairs. Although the phrase "reasonable access," and what was required to satisfy that concept, were somewhat vague in the July 1999 order, the November 1999 order defined what it termed "reasonable access." The latter order described such access as that which would allow [tenant]'s trucks to enter and exit the New Lot and Additional Lot, with or without a vehicle in tow.

Id. at 642.

C. Analysis

Applying Maryland Rules 2-631 and 2-648 and the foregoing decisional law to this case, we conclude that the trial court did not err in ordering that the Addition be razed because the order was contemplated under the mandate of the April 2017 judgment to "remove the Structure and all other improvements that violate the Setback Covenant."

As we note above, Maryland Rule 2-631 narrows enforcement of a judgment "by these rules or by statute" and confines the court's power to enforce the judgment under Maryland Rule 2-648. Neither party has proposed another rule or statute—and we have not located one—which would grant the circuit court authority to enforce its April 13,

2017 Order. Accordingly, the powers provided under Rule 2-648, in this particular case, are exclusive.

Maryland Rule 2-648 is only applicable when the judgment mandates a specific act. Maryland Rules Commentary Rule 2-648, at 928. In its April 13, 2017 Order, the circuit court ordered FOL to "remove the Structure and all other improvements that violate the Setback Covenant no later than March 1, 2018," and enjoined FOL "from constructing any structure or other improvement that violates the Setback Covenant." None of the parties dispute that the order mandates an act—"remove the Structure." Rather, the parties disagree as to the meaning and the scope of the term "remove" as it stands in the circuit court's order.

A review of the dictionary definition of the word "remove" indicates that the word supports a few alternate, although related, meanings. Webster's New World College Dictionary, Fifth Edition defines "remove" as:

> vt. **1** to move (something) from where it is; lift, push, transfer, or carry away, or from one place to another **2** to take off *[*to *remove* one's coat*]* **3** to do away with; specif., *a*) to kill or assassinate *b*) to dismiss, as from an office or position *c*) to get rid of; eliminate *[*to *remove* the causes of war*]* **4** to take, extract, separate, or withdraw (someone or something *from*)

Remove, Webster's New World College Dictionary (5th ed. 2014).

Of course, we do not read language in isolation but take "into account the context in which it is used." *Taylor v. Mandel*, 402 Md. 109, 125 (2007). In the April 13, 2017 memorandum opinion and order, the trial judge noted that FOL "argued that *removing the Structure* would be financially devastating." (Emphasis added). The trial judge found that FOL "did not present any specific evidence about the monetary loss [FOL] would

suffer from *moving the Structure or tearing it down.*" **(**Emphasis added). This supports the view, expressed by the trial judge assigned to enforce the April 2017 Order, that it permitted either razing the Addition or moving the Addition. Accordingly, we agree with the trial court's determination, in the Rule 2-648 memorandum opinion, that "[e]nforcement [of the April 2017 Order] is not limited to razing the structure," because "'removal' may be accomplished in any number of ways . . . . In theory FOL could raze the structure, or reconfigure it so that it no longer crosses the setback line, or move it on the property."

We further discern no error in the circuit court's choice of razing the building as the mechanism to enforce the act of removal because demolition was contemplated by the parties throughout the proceeding as one of the mechanisms to enforce the act. *See* Md. Rule 2-648(a) ("the court may direct that the act be performed"). The enforcement order did not expand the judgment or venture outside of its scope but was an acceptable and contemplated method of enforcement. Consequently, FOL's reliance on *De Arriz v. Klingler-De Arriz* is misplaced. As addressed above, in *De Arriz*, we held that the circuit court erred in utilizing Rule 2-648 to mandate a payment from the proceeds of a specific sale, when the judgment only specified the timing of the sale, rather than indicate the payment's source. 179 Md. App. at 475, 478. Indeed, in *De Arriz*, the circuit court was precluded from directing that the judgment be paid from the sale of the marital home under applicable law. *Id.* Here, however, the order specified that the Addition be removed, and razing the Addition is well within the contemplation of the order, as a cursory review of the dictionary definition of "remove" indicates.

Ironically, FOL previously and repeatedly interpreted the April 2017 Order as requiring that the Addition be demolished. In FOL's briefing in the first appeal to this Court, FOL repeatedly noted that the circuit court's order required demolition of the Addition. Subsequently, FOL's motion for clarification sought to "address a possibility not contemplated by the parties at the time of trial." We struggle to see how the court erred in enforcing the act mandated by the judgment in the *exact* manner that the parties and court contemplated when it was entered.

III.

Enforcement

A. Parties' Contentions

FOL argues that the circuit court "misapplied the doctrine of unclean hands (1) to the incorrect party, the defendant, and (2) to acts that were unrelated to enforcing the [j]udgment." FOL argues that the doctrine only denies equitable relief rather than granting it. Because, according to FOL, Appellees initiated the enforcement proceedings, the doctrine was "inapplicable to and misapplied in these enforcement proceedings" and constitutes an '"obvious error in the application of the principles of equity.'" (citing *W. Md. Dairy v. Chenowith*, 180 Md. 236, 244 (1942)).

FOL next argues that FOL's alleged misconduct cannot satisfy the nexus requirement of the doctrine of unclean hands. Because FOL's "misconduct did not concern the Addition's location or its violation of the Setback Covenant, which was the sole '"subject of the suit,"' according to FOL, the requisite nexus is absent. FOL further argues that the order directed an impermissible injunction—"remov[ing] the otherwise

permissible structure" rather than "enjoin[ing] the offending use." Finally, FOL argues that the order should be reversed because it "in effect, granted relief that the court could not grant without the exhaustion of administrative remedies and proper judicial procedure."

Appellees counter that the circuit court properly applied the doctrine of unclean hands. They argue that it was in fact FOL that first raised the issue of relocating the Addition well after judgment was entered in its motion for clarification and sought the "interposition of the Court on the issue of whether the [Addition] could be relocated."

Next, Appellees counter that FOL incorrectly identified the proper nexus. The proper nexus, according to Appellees, is "between FOL's misconduct and its request for approval to relocate the [] Addition, not its misconduct and Appellees' underlying claim for violation of the setback covenant." According to Appellees, "the [circuit court properly] relied upon FOL's illegal use of the structure—an adjudicated fact—as the predicate for its determination that FOL has unclean hands and for its conclusion that allowing the [] Addition to be moved elsewhere on the Property would only serve to countenance that illegality."

B. Analysis

As state above, the circuit court correctly identified that the Addition could either be razed or moved to comply with the mandate of the April 2017 Order. In deciding against FOL's request to move the Addition to another location on the property, the court expressed its concern that the Addition did not comply with other laws and restrictions in

the neighborhood, invoking the doctrine of unclean hands. We review that decision for abuse of discretion.

The unclean hands doctrine "'refuses recognition and relief from the court to those guilty of unlawful or inequitable conduct pertaining to the matter in which relief is sought.'" *Hicks v. Gilbert*, 135 Md. App. 394, 400 (2000) (quoting *Manown v. Adams*, 89 Md. App. 503, 511 (1991)). *See also* Black's Law Dictionary 306 (10th ed. 2014) (defining the "clean-hands doctrine" as "[t]he principle that a party cannot seek equitable relief or assert an equitable defense if that party has violated an equitable principle, such as good faith.").

The doctrine "is not applied for the protection of the parties nor as a punishment to the wrongdoer; rather, the doctrine is intended to protect the courts from having to endorse or reward inequitable conduct." *Adams v. Manown*, 328 Md. 463, 474-75 (1992). For that reason, "an important element of the clean hands doctrine is that the alleged misconduct must be connected with the transaction upon which the claimant seeks relief." *Id.* at 475. In other words, "[i]t is only when [a party's] improper conduct is the source, or part of the source, of his equitable claim, that he is to be barred because of this conduct. 'What is material is not that the [party's] hands are dirty, but that he dirties them in acquiring the right he now asserts.'" *Id.* at 476 (quoting D. Dobbs, Remedies § 2.4 at 46 (1973) (footnote omitted)). "Absent the most extraordinary circumstances, a party should not be permitted to obtain relief from a Maryland court by acting with unclean hands in violation of another court's order." *Malik v. Malik*, 99 Md. App. 521, 525 (1994).

Two precepts are central to the doctrine. First, the doctrine only applies to those seeking the "active interposition" of a court and requesting "equitable relief." *Dickerson v. Longoria*, 414 Md. 419, 455 (2010) (quoting *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 729 (2007)). The doctrine applies when a party has asked the court to impose itself in a dispute between it and another party. For example, in *Turner v. Turner*, this Court held that the trial court did not abuse its discretion by denying a wife an accounting on the basis of the unclean hands doctrine. 147 Md. App. 350, 420 (2002). There, the wife "previously aided her husband in diverting funds" and then requested an accounting to receive her fair share of monies that she had previously assisted in stealing. *Id.* at 418, 420. We determined that the "trial court was not obligated to overlook her earlier complicity." *Id.* at 420. Moreover, we determined, "as a matter of equity," that the court did not err in barring the husband's "effort to recover the $30,000 from [wife] that she was found by the court to have diverted." *Id.* Consistent with the doctrine, the circuit court correctly withheld the power of the court from those who request it while acting inequitably. *See Adams*, 328 Md. at 474-75.

Second, the "doctrine of unclean hands applies only when the inequitable conduct and the transaction at issue intersect." *Vito v. Grueff*, 453 Md. 88, 125 n.8 (2017). In short, there must be some nexus between the alleged misconduct and the transaction for which the parties appear. *Hicks*, 135 Md. App. at 400-01.

In *Adams*, a photographer sued his former business partner and paramour to recover unpaid loans. 328 Md. at 466. His partner asserted an unclean hands defense because the photographer had fraudulently transferred title to his boat to his partner "so

that his wife would not find out about it in the anticipated divorce proceedings." *Id.* at 467, 474. Specifically, she argued that his fraudulent conduct against his ex-wife should preclude him from recovering money against her. *Id.* at 470-71. A jury declined to apply the doctrine, and the partner appealed to this Court, which reversed. *Id.* at 472. We concluded that the clean hands doctrine applied and completely barred the partner's claims. *Id.* The Court of Appeals then granted certiorari and affirmed the judgment of the circuit court. *Id.* at 474. The Court explained that "an important element of the clean hands doctrine is that the alleged misconduct must be connected with the transaction upon which the claimant seeks relief." *Id.* at 475. Therefore, the Court held that "[a]ny fraud committed by [the photographer] in concealing the existence of the boat from his wife in the divorce proceeding is independent of [the photographer's] claim" to recover unpaid loans." *Id.* at 476.

In reviewing the elements of the unclean hands doctrine, we conclude that the trial court did not abuse its discretion in ordering that the Addition be razed due to FOL's misconduct in "manipulating both the administrative system as well as everyone's natural inclination to defer to religious organizations" to obtain a building permit and construct the Addition.

First, FOL sought relief from the court. FOL contends that Appellees "initiated the proceedings and sought the active interposition of the court." This is correct; however, FOL also filed a motion to clarify seeking a determination as to whether the Addition could be relocated:

- FOL requested that "the Court clarify its April 13, 2017 Order to reflect that FOL is permitted to demolish the original structure on FOL's property and relocate the Addition behind the Setback line[.]"

- At the hearing on FOL's motion for clarification, FOL noted that "We're proposing to remove the rear piece of the building down which will give us the space that we need to push it back. Our engineers and our contractors tell us that it is something that they can do and so that is what we're asking the Court for permission to do with our motion."

- The circuit court understood that FOL generated the request to "remove the original home on the property and move the addition into that portion of the lot."

FOL sought this relief because, as addressed above, FOL originally asserted that an order to "remove" the structure would result in its demolition.

Second, the "inequitable conduct" and the "transaction at issue" clearly intersect here because the very existence of the Addition is the result of FOL's conduct that led to the Board of Appeals' ultimate determination that "Lubavitch has achieved its goals [to build a community center and residence] by manipulating both the administrative system as well as everyone's natural inclination to defer to religious organizations." *See Adams*, 328 Md. at 475. The Board of Appeals and the circuit court both found that FOL received its permit to build the building by deceit. FOL then "'intentionally completed construction of the offending Building prior to the completion of trial.'" As the circuit court found, to approve enforcement in a manner that would allow the structure to remain would "tacitly endorse" the existence of a community center that had not obtained the

necessary approvals or complied with the necessary regulations. We discern no error or abuse of discretion.[11]

We finally note, FOL's request to for approval to relocate the Addition and its use of the Addition are linked. Because the circuit court understood that the judgment permitted various mechanisms to comply with the judgment, the circuit court did not abuse its discretion in selecting an enforcement mechanism contemplated by the parties throughout the proceeding and declining to authorize an alternative approach which would allow the "the continuation of a commercial use that has been found to be non-compliant[.]"

MOTION TO DISMISS CROSS-APPEAL GRANTED; JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[11] FOL's remaining argument is neither preserved nor persuasive. The circuit court did not "circumvent administrative and judicial procedure to remedy zoning violations." Instead, the circuit court considered the use of the Addition to determine the appropriate mechanism to enforce the act of removal.