



IN THE SUPREME COURT OF DELAWARE

No. 414, 2025

REYBOLD CONSTRUCTION COMPANY, ET AL.,

Appellant,

v.

LENNAR CORPORATION, ET AL.,

Appellee.

APPELLEE'S ANSWERING BRIEF

Appeal from the Superior Court, Civil Action No. N22C-06-206 PRW

A.M. SACCULLO LEGAL, L.L.C.

Anthony M. Saccullo, Esq. (DE Bar #4141)
Thomas H. Kovach, Esq. (DE Bar #3964)
27 Crimson King Drive
Bear, DE 19701
Phone: (302) 836-8877
Fax: (302) 836-8787
ams@saccullolegal.com
kovach@saccullolegal.com

KLEINBARD LLC

Benjamin A. Garber, Esq. (PA # 306765)
Three Logan Square, 5th Floor
1717 Arch Street
Philadelphia, PA 19103
Phone: (215) 568-2000
bgarber@kleinbard.com

Dated: December 12, 2025

TABLE OF CONTENTS

I. TABLE OF AUTHORITIESiii

II. NATURE OF PROCEEDINGS1

III. SUMMARY OF ARGUMENT4

IV. STATEMENT OF FACTS.....6

 A. Settlement Agreement Provisions.7

 B. Evidence before the Superior Court.....9

 C. The Superior Court’s decision.10

V. ARGUMENT12

 A. The Settlement Agreement does not provide for management fees and Reybold failed to produce any evidence of a modification to include those fees.12

 1. Question Presented.....12

 2. Scope of Review13

 3. Merits Argument.....14

 B. Reybold cannot recover for the private alleyway paving it voluntarily undertook that is not covered by the Settlement Agreement.24

 1. Question Presented.....24

 2. Scope of Review24

 3. Merits Argument.....25

 C. The date of Turnover that cuts off CalAtlantic’s payment obligations is clear in the Settlement Agreement and Reybold cannot identify an error in the Superior Court’s contractual interpretation otherwise.29

 1. Question Presented.....29

2. Scope of Review	29
3. Merits Argument.....	30
D. Reybold has alleged no abuse of discretion in the Superior Court’s conclusion not to award attorney fees and, in any event, reads the prevailing party requirements too narrowly.	35
1. Question Presented.....	35
2. Scope of Review	35
3. Merits Argument.....	35
E. The Superior Court properly granted summary judgment dismissing Lennar because Reybold did not adduce any evidence, let alone create a material issue of fact, about Lennar’s relationship to CalAtlantic.	41
1. Question Presented.....	41
2. Scope of Review	41
3. Merits Argument.....	41
VI. CONCLUSION	46

I. TABLE OF AUTHORITIES

Cases

<i>2009 CAIOLA Family Trust v. PWA, LLC</i> , 2015 WL 6007596 (Del. Ch. Oct. 14, 2015)	36
<i>Acciai Speciali Terni USA, Inc. v. Momene</i> , 202 F.Supp.2d 203 (S.D. N.Y. 2002)	43, 45
<i>AHS N.M. Holdings, Inc. v. Healthsource, Inc.</i> , 2007 WL 431051 (Del. Ch. Feb. 2, 2007)	36
<i>Bako Pathology LP v. Bakotic</i> , 288 A.3d 252 (Del. 2022)	36
<i>Bantum v. New Castle Cnty. Vo-Tech Educ. Ass’n</i> , 21 A.3d 44 (Del. 2011)	16, 17
<i>CIT Tech. Fin. Servs., Inc. v. Franklin First Fin., Ltd.</i> , 132 A.D.3d 715 (N.Y. App. Div. 2d Dept. 2015)	21
<i>Continental Ins. Co. v. Rutledge & Co., Inc.</i> , 750 A.2d 1219 (Del. Ch. 2000).	17, 18
<i>E.E.O.C. v. Waffle House, Inc.</i> , 534 U.S. 279 (2002)	42
<i>Gatz Properties, LLC v. Auriga Capital Corp.</i> , 59 A.3d 1206 (Del. 2012).....	passim
<i>Gildepath Ltd. v. Beumer Corp.</i> , 2018 WL 321 WL 321788 (Del. Ch. Jan. 5, 2018)	42
<i>Glass v Baker</i> , 2024 WL 687755 (Del. Ch. Feb. 9, 2024)	20
<i>Great Am. Fin. Servs., Corp. v. Natalya Rodionova Medical Care, P.C.</i> , 956 N.W.2d 148 (Iowa 2021)	21, 22
<i>In re Coinmint</i> , 261 A.3d 867 (Del. Ch. 2021).....	18, 19
<i>In re Oracle Corp. Derivative Litigation</i> , 339 A.3d 1 (Del. 2025)	14, 18
<i>Ivize of Milwaukee, LLC v. Complex Litig. Support, LLC</i> , 2009 WL 1111179 (Del. Ch. April 27, 2009)	36
<i>J.C. Trading Ltd. v. Wal-Mart Stores, Inc.</i> , 947 F.Supp.2d 499 (D. Del. 2013)	17

<i>Kuehn v. Cotter</i> , 77 A.3d 272 (Table), 2013 WL 5656205 (Del. 2013)	20
<i>Lank v. Moyed</i> , 909 A.2d 106 (Del. 2006)	41
<i>LaPoint v. Amerisource Bergen Corp.</i> , 970 A.2d 185 (Del. 2009).....	41
<i>New Castle Cnty. v. Disabatino</i> , 781 A.2d 687 (Del. 2001)	13, 24, 27, 29
<i>New Enterprise Assocs. 14, L.P. v. Rich</i> , 295 A.3d 520 (Del. Ch. 2023)	20
<i>O’Leary v. Telecom Res. Serv., LLC</i> , 2011 WL 379300 (New Castle Super. Jan. 14, 2011)	42
<i>Pepsi-Cola Bottling Co. of Asbury Park v. Pepsi Co, Inc.</i> , 297 A.2d 28 (Del. 1972)	17, 18
<i>Preferred Financial Services v. A&R Bail Bonds</i> , 2019 WL 315331 (Del. Super. Jan 2, 2019).....	18, 19
<i>Radio Corp. of Am. v. Phila. Storage Battery Co.</i> , 6 A.2d 329 (Del. 1939)	15, 16
<i>Ravindran v. GLAS Trust Co. LLC</i> , 327 A.3d 1061 (Del. 2024)	27
<i>Shah v. American Solutions, Inc.</i> , 2012 WL 1413593 (Del. Super. March 8, 2012)	21
<i>Simon Prop. Group, L.P. v. Brighton Collectibles, LLC</i> , 2021 WL 6058522 (Del. Super. Dec. 21, 2021)	18, 19
<i>Sitco Enterprises, LLC v. Tervita Corp.</i> , 2018 WL 3032579 (S.D. Tex. June 19, 2018)	21, 22
<i>Vianix Del. LLC v. Nuance Communs., Inc.</i> , 2010 WL 3221898 (Del. Ch. Aug. 13, 2010)	38, 39
<i>Wallace v. Wood</i> , 752 A.2d 1175 (Del. Ch. 1999).....	42
<i>Williams v. Metzler</i> , 132 F.3d 937 (3d Cir. 1997).....	42
Rules	
Del. Supr. Ct. R. 8	27

Other Authorities

17a C.J.S. Contracts § 185.....20

II. NATURE OF PROCEEDINGS

This appeal arises from the efforts of Appellants, Reybold Construction Company; Reybold Venture Group XI-A, LLC; Reybold Venture Group XI-B, LLC; Reybold Venture Group XI-APT, LLC; Reybold Venture Group XI-D, LLC; Reybold Venture Group XI-E, LLC; and Reybold Venture Group XI-F (collectively, “Reybold”), to seek reimbursements that it claims are due from Appellees Lennar Corporation (“Lennar”) and CalAtlantic Group (“CalAtlantic”) under a 2015 Settlement Agreement (“Settlement Agreement”), related to the development of two residential communities. The Settlement Agreement between Reybold and CalAtlantic’s predecessor resolved prior disputes about fees and sums, and it delineated payment responsibilities and requirements for future improvements from 2015 onward.

Reybold brought breach of contract claims, while Lennar and CalAtlantic brought their own counterclaims for breach of contract, unjust enrichment, and declaratory judgment. Reybold claimed that it was owed reimbursement for various costs under the Settlement Agreement that Lennar and CalAtlantic had not paid. CalAtlantic and Lennar, on the other hand, asserted that Reybold itself breached the Settlement Agreement because it did not comply with Settlement Agreement requirements for submitting payment and used inconsistent and delayed billing practice.

After discovery, and upon Lennar's Motion for Summary Judgment, the Superior Court dismissed Lennar as a party. Reybold's claims against CalAtlantic proceeded to a three-day bench trial. After trial and post-trial briefing, the Superior Court issued its August 13, 2025 Decision After Trial. *See* Trial Ct. Op. attached to Reybold's Br. as Ex. A.

The Superior Court determined that both parties breached the Settlement Agreement, but Reybold did not commit a material breach, while CalAtlantic did. Based on that, the Court determined what costs were recoverable of those that Reybold claimed were due under the Settlement Agreement. As relevant to this appeal, the Court determined that Reybold could not recover (1) for management fees it included in its invoices, (2) reimbursement for the costs it expended to pave private alleyways in the development, and (3) any costs incurred after December 31, 2021, when the community's open space was turned over to the community's maintenance corporation. Excluding those expenses that Reybold could not recover, the Court found that CalAtlantic owed \$314,014.48, plus prejudgment interest. Finally, the Superior Court determined that there was no prevailing party, so no attorney fees were warranted.

Reybold filed a Motion for Reargument on the Superior Court's determination that Reybold was not able to recover costs it expended in paving private alleyways in the community. The Superior Court denied Reybold's Motion for Reargument.

On September 11, 2025, the Superior Court entered the final judgment from which Reybold now appeals.

III. SUMMARY OF ARGUMENT

1. Denied. The Settlement Agreement does not provide for a management fee. Reybold never identified a single writing satisfying Section 19(b)'s explicit bar on oral modification, and its **own witness admitted** no written modification exists. The Superior Court correctly held that past invoices did not alter the Settlement Agreement and properly rejected Reybold's attempt to manufacture a new term through "course of conduct." Reybold's argument requires this Court to disregard the plain contract language and reweigh testimony—something appellate review does not permit.

2. Denied. Nothing in the Settlement Agreement obligates CalAtlantic to reimburse Reybold for paving private alleyways. Section 17 addresses "roadways," not alleyways. The Superior Court found that Reybold knowingly performed work it had no contractual right to be paid for, paving the alleys and "hoping" CalAtlantic would reimburse it later rather than because the Settlement Agreement required it. Those factual findings rest on a fully developed record and are entitled to substantial deference. Reybold's appeal ignores the contractual language, recycles arguments the Superior Court already rejected, and effectively asks this Court to retry a case the Superior Court resolved on credibility and evidence.

3. Denied. The Settlement Agreement expressly provides that CalAtlantic's payment obligations end at "Turnover," defined as the date the open

space is deeded to the maintenance corporation. The deeds show Turnover occurred on December 31, 2021—a date consistent with Reybold’s own pleadings. Reybold’s effort to graft a three-year warranty period from its contracts with the County onto CalAtlantic’s contractual obligations is legally unfounded and foreclosed by the Settlement Agreement’s integration clause. The Superior Court’s reading was faithful to the contract and must be affirmed.

4. Denied. The Superior Court expressly found that both parties breached the Settlement Agreement, and that each prevailed on some issues and lost others. That finding is fatal to any fee request under Delaware law. Reybold does not challenge—let alone overcome—the Court’s finding. Reybold’s conditional request for fees “if it wins on appeal” simply misunderstands the prevailing-party standard and ignores the Superior Court’s core conclusion that neither side predominated.

5. Denied. Lennar is not a party to the Settlement Agreement, and Reybold offered no evidence that Lennar assumed its subsidiary’s obligations, commingled assets, ignored corporate formalities, or engaged in conduct warranting veil-piercing. Occasional invoice routing or ACH processing is not alter-ego conduct as a matter of law. With no genuine issue of material fact, summary judgment was wholly appropriate. Reybold’s argument is meritless and unsupported by the record.

IV. STATEMENT OF FACTS

On February 25, 2015, Reybold, The Ryland Group, Inc. (“Ryland,” which later became CalAtlantic) and certain other entities involved with a residential community known as “Meridian Crossing” (the “Community”) entered into the Settlement Agreement relating to the development of the Community. Reybold, the developer of the Community, entered into the Settlement Agreement to resolve a dispute between the parties as to certain fees and sums Reybold claimed were due and owing, including as it related to improvements of open space and other common amenities and facilities, the pool construction, and stormwater pond construction and maintenance. (A1361). The Settlement Agreement provided a release from all claims relating to any disputed amounts through the effective date February 25, 2015, and delineated payment responsibilities and requirements for future improvements and payments. (A1362).

Claiming that Lennar and CalAtlantic breached Sections 9 and 14(p) of the Settlement Agreement, Reybold filed a breach of contract claim against them. *See* (A1307-37). Reybold alleged that Lennar and CalAtlantic failed to make certain payments under the Settlement Agreement in 2019 through the spring of 2022. (A1318-1321). Reybold claimed that CalAtlantic did not pay Open Space Maintenance invoices, Common Facility Fees, and Future Reybold Improvements,

all of which are defined terms under the Settlement Agreement. (A1318-1321). Reybold sought attorney fees.

CalAtlantic filed counterclaims for breach of contract/breach of good faith and fair dealing, unjust enrichment, and declaratory relief. (A1337-1445). As CalAtlantic contended, Reybold breached the Settlement Agreement by failing to provide requisite certifications with its invoices, failing to demonstrate that the amounts billed were its “actual costs,” billing improperly, and demanding payments covering an extended time at once. CalAtlantic sought damages and attorney’s fees.

On January 4, 2025, on CalAtlantic and Lennar’s Motion for Summary Judgment, the Superior Court dismissed Lennar as a party.

A. Settlement Agreement Provisions.

Through discovery, it became evident that Reybold’s claimed damages included various categories of costs that were not explicitly provided for in the Settlement Agreement—maintenance fees, private alleyway paving, and costs incurred after the date of Turnover.

Section 19(b) of the Settlement Agreement specifically addresses modifications to its terms and prohibits any modifications that are not in writing, stating:

This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions, and undertakings between the parties hereto with respect to the subject matter hereof, and supersedes all prior and

contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. There are no material promises, covenants, agreements, conditions, undertakings or understandings between the parties hereto which have not been incorporated and integrated herein to the satisfaction of the parties and their respective legal counsel. This Agreement may not be changed orally, but only by an agreement in writing, duly executed by or on behalf of the Party against whom enforcement of any waiver, change, modification, assignment, consent or discharge is sought.

(A1380_.

As it pertained to the date of Turnover, the Settlement Agreement states:

Pursuant to the County's Unified Development Code ..., following inspection and approval by the County, open space for a community must be turned over to the community's maintenance corporation ("Turnover") in accordance with certain timeframes and procedures set forth therein.

(A1361). Section 14(P) further states that:

During the interval between the Effective Date of this Agreement and the date of Turnover, for those expenses incurred by Reybold for the operation and maintenance of open space and common facilities ... , Ryland shall reimburse Reybold for a portion of such Common Facility Fees.

(A1376).

Finally, Section 17 of the Settlement Agreement, which Reybold asserted covered private alleyway paving states:

Third Party Lots. Ryland agrees to assume responsibility for the topcoating of the roadways and the turnover to New Castle County of the sewer facilities that are associated with the Third Party Lots.

(A1379).

The Settlement Agreement does not specifically use the term “maintenance fee” anywhere within it. (A1360-85).

B. Evidence before the Superior Court

As relevant to the issues before this Court, the Superior Court heard testimony and received the following evidence. Starting with the issue of modifications to the Settlement Agreement, Reybold’s corporate representative, Mr. Heisler, testified that Section 19(b) of the Settlement Agreement reflects what the parties agreed to. (A1906 at 25:3-12). Mr. Heisler stated there have never been any written releases, modifications, or rescission of the rights and obligations of both parties under the Settlement Agreement. (A1904 At 23:2-7; A1990 at 21:9-11). At trial, Mr. Heisler testified that he did not believe Reybold waived any of their rights or remedies for terms of the Settlement Agreement. (A1901 at 20:18-22).

As it pertained to the paving of private alleyways, Mr. Heisler testified that although Section 17 is the basis upon which Reybold contends alleyway paving is to be reimbursed, that section does not use the words alleyway or rear alleyway at all but, instead, addresses only roadways. (A1847-48 at 154:22-155:11). On CalAtlantic’s behalf, Mr. Stewart similarly testified that CalAtlantic was responsible only for *roadways* under the Settlement Agreement, and alleyways and roadways are not the same. (A1987-88 at 18:21-19:8).

On the issue of turnover, Reybold pleaded in its Second Amended Complaint that the Open Space was turned over in “approximately, January 2022.” (A1321). The deeds delivered by Reybold to Meridian Crossing Maintenance Corporation signifying the turnover are dated December 30, 2021. (A0711-0769). At trial, Stewart, CalAtlantic’s corporate representative, testified that the date of Turnover was completed with that signed deed on December 31, 2021. (A1987 at 18:16-20).

C. The Superior Court’s decision.

On August 13, 2025, the Superior Court issued its decision after trial, with various factual findings and legal conclusions.

The Court found that both parties breached the Settlement Agreement, but Reybold did not commit a material breach, while CalAtlantic did. Moving to the damages owed, the Court concluded that CalAtlantic was responsible for \$314,014.48, plus prejudgment interest, for certain Reybold costs due prior to the date of Turnover.

Relevant here, the Superior Court rejected certain categories of damages that Reybold sought. First, the Court concluded that Reybold could not recover any management fees because the “Settlement Agreement contains no provision granting Reybold the right to any management fee.” Trial Ct. Op. at 21. Further to this point, the Court determined the parties “never modified the Settlement Agreement to add a management fee,” because there was no writing memorializing it and the

Settlement Agreement stated that parties did not waive a right to object to future breaches. *Id.* at 21.

Second, the Court determined that it could not find with certainty that reimbursement for the paving of private alleyways was covered by the Settlement Agreement. In any event, the Court found that the obligation to actually pave would have been CalAtlantic's in the first place. Reybold's choice to undertake private alleyway paving on its own did not entitle it to reimbursement later. *Id.* at 23-24.

Third, the Court found that costs incurred after December 31, 2021, when the Community's open space was turned over to the Community's maintenance corporation could not be recovered. *Id.* at 25. Because the Settlement Agreement provided that Turnover occurs when the open spaces are deeded to the Community maintenance corporation, and the deeds showed that occurred on December 31, 2021, the Court found that CalAtlantic's payment obligations ended on that date. *Id.* at 26.

Finally, the Court found that "[n]either side is due an award of attorney's fees." *Id.* at 28. Because Reybold succeeded on some claims and CalAtlantic succeeded on others, the court found that neither "walks away prevailing on the majority of claims," so no attorney's fees were due. *Id.* at 29.

V. ARGUMENT

This appeal asks this Court to do what settled law forbids: retry a case that the Superior Court resolved after a full evidentiary record, credibility determinations, and straightforward application of the clear, integrated Settlement Agreement. The issues Reybold raises are not legal errors, but rather disagreements with factual findings that are entitled to substantial deference. The Settlement Agreement contains no provision for management fees, no obligation to reimburse private alleyway paving, and a clear cutoff of CalAtlantic's payment obligations at Turnover on December 31, 2021. The Superior Court applied that language faithfully and correctly rejected Reybold's attempt to convert voluntary expenditures and past invoicing habits into contractual rights. And as to Lennar, Reybold offered no evidence—none—supporting liability or veil-piercing. Because the Superior Court's rulings were grounded in the contract's plain terms and supported by the record, affirmance is not only appropriate but compelled.

A. The Settlement Agreement does not provide for management fees and Reybold failed to produce any evidence of a modification to include those fees.

1. Question Presented

Should this Court affirm the Superior Court's holding because the Settlement Agreement does not contemplate management fees and Reybold produced no evidence of a modification to the Settlement Agreement to include those fees?

(Reybold raised most of the arguments for this issue at in its Post-Trial Opening Brief at 18-30 and Post-Trial Answering Brief at 22-24,¹ but has never presented the argument that the Settlement Agreement is ambiguous).

2. Scope of Review

Where a case raises issues of contract interpretation, this Court reviews those issues *de novo*. *Gatz Properties, LLC v. Auriga Capital Corp.*, 59 A.3d 1206, 1212 (Del. 2012). The Court “will uphold the trial court’s factual findings unless they are clearly erroneous.” *Id.* Where a trial judge makes factual findings “based upon consideration of the documentary evidence and the testimony and credibility of ‘live’ witnesses at trial,” those findings “must be given great deference by an appellate court.” *New Castle Cnty. v. Disabatino*, 781 A.2d 687, 690 (Del. 2001). If the factual findings are supported by the record “and the product of an orderly and logical deductive process,” this Court defers to those factual findings even if it would have independently reached a different conclusion. *Id.*

The Court will “not substitute its own notion of what is right for those of the trial judge if that judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.” *Gatz*, 59 A.3d at 1212.

¹ CalAtlantic cites the pagination for these documents in their original form in the Superior Court’s original record because they are not included in Reybold’s Appendix.

3. Merits Argument

Reiterating its same arguments presented to the Superior Court, Reybold argues its recovery should have included a 15% management fee. But, as the Superior court recognized, there is no provision in the Settlement Agreement that speaks to management fees. Trial Ct. Op. at 21; (*see also* A1360-85). Because there is no express provision of the Settlement Agreement providing for management fees, Reybold's arguments to the Superior Court and this Court are grounded in the past conduct of the parties. As the fact finder, the Superior Court determined that Reybold presented "no evidence that the parties discussed adding a management fee and there is no writing on the issue." Trial Ct. Op. at 22. Instead of asserting a legal error in the Superior Court's interpretation of the Settlement Agreement, Reybold recites the same arguments it presented to the Superior Court and seemingly asks this Court to re-weigh the evidence. This is beyond the Court's scope of review. *See In re Oracle Corp. Derivative Litigation*, 339 A.3d 1, 21 (Del. 2025) ("On appeal, the plaintiffs cite facts and testimony favorable to their arguments. But we do not weigh evidence on appeal.").

To begin, the Superior Court determined that the Settlement Agreement "contains no provision granting Reybold the right to any management fee," and that the term "management fee" is not even used within the Settlement Agreement. Trial Ct. Op. at 21. Reybold ignores this determination by referencing this Court's review

of contract interpretation as *de novo* without bothering to analyze the Superior Court’s interpretation of the Settlement Agreement. Rather, Reybold asks the Court to ignore the express provision of Settlement Agreement that prohibits modifications unless they are in writing, instead listing past invoices that contained the purported management fees and, apparently, arguing the Superior Court should have given consideration to Reybold’s view of the parties’ intent. In doing so, Reybold asserts that the parties’ conduct can modify the Settlement Agreement, despite the express terms of the contract, and further argues that CalAtlantic’s conduct was somehow a ratification of the management fee, not modification of the contract. All of these arguments fail.

First, overlooking the plain language of the Settlement Agreement controlling modification, Reybold suggests that the Superior Court was required to give consideration to the intent of the parties in constructing the Settlement Agreement. *See* Reybold’s Br. at 22 (quoting *Radio Corp. of Am. v. Phila. Storage Battery Co.*, 6 A.2d 329, 340 (Del. 1939)). Reybold’s cited authority, however, stands for the proposition that only “**ambiguous**” contract provisions should be construed with consideration to the acts and conduct of the parties. *Radio Corp.*, 6 A.2d at 340 (emphasis added). Although Reybold quotes *Radio Corp.*² to claim the parties’

² Reybold seemingly block quotes *Radio Corp.* for this proposition, but only the first two sentences of that block quote are actually from *Radio Corp.* Reybold’s Br. at 22. The remaining citations appear to be an unrelated string cite.

intent controls, it leaves out the sentence that follows, where the Court explains that “it is equally well settled that if the meaning of the contract is plain, the acts of the parties cannot prove an interpretation contrary to the plain meaning.” *Id.* at 340. The plain meaning of the Settlement Agreement is clear and there is no need to resort to the parties’ intent. Reybold has never before claimed that the Settlement Agreement was ambiguous regarding the inclusion of a management fee and, instead, relies exclusively on the conduct of the parties. As it was not raised below, Reybold has waived its argument that the Settlement Agreement is somehow now ambiguous; but, even if it had been properly raised, Reybold does not explain in any way what is ambiguous about any of the relevant contract provisions.

Second, Reybold relies on the assertion that the parties’ conduct can modify the express terms of a contract. Reybold has a high burden to meet to prove that the parties’ actions modified the Settlement Agreement, because the Settlement Agreement has a clause that prohibits oral modifications and expressly provides that the waiver of a breach does not operate as a waiver to future breaches. (A1380); *see also Bantum v. New Castle Cnty. Vo-Tech Educ. Ass’n*, 21 A.3d 44, 50 (Del. 2011) (“[T]he standards for proving waiver under Delaware law are ‘quite exacting.’”). Where there is a provision prohibiting oral modification, like here, Reybold’s assertion of modification through conduct required it to prove any modification “with specificity and directness as to leave no doubt as to the intention of the parties

to change what they previously solemnized by formal document.” *Continental Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1229-30 (Del. Ch. 2000) (internal quotations omitted). This means that Reybold had to show (1) a requirement to be waived; (2) the waiving party knows the requirement, and (3) the waiving party intended to waive the requirement. *Bantum*, 21 A.3d at 50; *See also J.C. Trading Ltd. v. Wal-Mart Stores, Inc.*, 947 F.Supp.2d 499, 454-55 (D. Del. 2013) (determining that there was no modification through a course of conduct inconsistent with the written agreement or through an express intent to modify the terms of the written agreement).

Reybold does not meet this high burden. Moreover, Reybold fails to explain how the Superior Court erred in determining that there was “no evidence that the parties discussed adding a management fee and there is no writing on the issue,” and that CalAtlantic did not waive its right to object given the Settlement Agreement section that previous waiver is not a waiver of future breaches. Trial Ct. Op. at 22. In light of the testimony from Reybold’s own representative that there was no modification, the Superior Court’s findings are supported.

Nevertheless, Reybold persists that the parties can modify the agreement through their conduct, despite the clause prohibiting oral modifications. Reybold’s Br. at 23-24 (citing *Pepsi-Cola Bottling Co. of Asbury Park v. Pepsi Co, Inc.*, 297 A.2d 28 (Del. 1972); *Preferred Financial Services v. A&R Bail Bonds*, 2019 WL

315331 (Del. Super. Jan 2, 2019);³ *In re Coinmint*, 261 A.3d 867 (Del. Ch. 2021); *Simon Prop. Group, L.P. v. Brighton Collectibles, LLC*, 2021 WL 6058522 (Del. Super. Dec. 21, 2021)). Although this Court recognized in *Pepsi-Cola* that parties **can** modify a written agreement through conduct, 297 A.2d at 33, there still must be evidence “with specificity and directness,” leaving no doubt about the modification. *Rutledge & Co., Inc.*, 750 A.2d at 1229-30. As the Superior Court recognized, there was **no** evidence that the parties modified the Settlement Agreement. Reybold’s argument to the contrary asks this Court to disregard the Superior Court’s factual findings and re-weigh the evidence, which is beyond the scope of this Court’s review. *See In re Oracle Corp. Derivative Litigation*, 339 A.3d at 21 (“On appeal, the plaintiffs cite facts and testimony favorable to their arguments. But we do not weigh evidence on appeal.”).

The authority upon which Reybold relies for the proposition that conduct can modify agreements are markedly different than those existing here. In *Simon Property Group*, for example, the Superior Court determined only that there was *prima facie* evidence of sufficient specificity and directness to show an intent to create an oral modification, despite a lease clause prohibiting that. This evidence

³ Although Reybold cites *A&R Rail Bonds* directly after a quote stating that “integration clauses ... do nothing to prevent the Court’s consideration of subsequent promises, communications, or modifications to the express agreement,” Reybold’s Br. at 24, that quoted text appears in *In re Coinmint*, 261 A.3d at 897.

included conversations and phone calls between the parties about modifying payment structure **along with** the parties' conduct in adhering to those modified payment terms. *Simon Property*, 2021 WL 6058522, at *4. The Court noted, however, that questions of fact remained about if the conduct was "sufficiently continuous" to actually support a modification by conduct alone. *Id.*

In Re Coinmint and *A&R Rail Bonds* do not even address sufficiency of evidence of past conduct to modify agreement, focusing instead on whether evidence of past conduct is even properly considered. *See In re Coinmint*, 261 A.3d at 900 (determining only that a written agreement's waiver provision did not preclude considering the defenses of waiver, estoppel, and acquiescence on a motion to dismiss); *A&R Rail Bonds*, 2019 WL 315331, at *4 (rejecting an argument that testimony about how the parties' performed under a written agreement was improper consideration of parol evidence).

None of these cases grapple with the circumstances here where the Superior Court, as the fact finder, determined that there was no evidence of modification and the Settlement Agreement plainly did not provide for management fees. In the absence of that evidence, Reybold's claim on appeal that the parties' past conduct established a modification is nothing more than a request for this Court to re-weigh the evidence.

Third and finally, Reybold claims the Superior Court erred in not determining that Cal-Atlantic's past conduct was a ratification of the Settlement Agreement. Ratification is a distinct concept from modification. Ratification occurs where there is an otherwise voidable contract that is ratified by performance. *See generally Kuehn v. Cotter*, 77 A.3d 272 (Table), 2013 WL 5656205 (Del. 2013) (explaining that a voidable contract was subject to ratification); 17a C.J.S. Contracts § 185 (“‘Ratification’ is an act by which an otherwise voidable and, as a result, invalid contract is conformed, and thereby made valid and enforceable, and once ratified, the voidable contract or deed is deemed valid.”). For example, a contract with a minor is voidable but subject to ratification if the minor ratifies the contract once reaching the age of majority. *See Glass v Baker*, 2024 WL 687755, at *16 (Del. Ch. Feb. 9, 2024). Ratification also “permits stockholders to extinguish a claim for breach of fiduciary duty by authorizing an act that otherwise would constitute a breach.” *New Enterprise Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 564 (Del. Ch. 2023). As opposed to modification, which involves a party's intent to modify terms in a written agreement, ratification is focused on the validity of an agreement between parties. Ratification has no relevance to the claims here, particularly in light of the Superior Court's determination that “[t]he parties never modified the Settlement Agreement to add a management fee.” Trial Ct. Op. at 22.

Keeping in mind that ratification is a separate concept, Reybold's cited cases are inapposite. The only case Reybold cites that even applies Delaware law highlights how ratification applies to otherwise invalid contracts. *Shah v. American Solutions, Inc.*, 2012 WL 1413593 (Del. Super. March 8, 2012). The plaintiff in *Shah* alleged that when his written agreement expired, the defendant orally agreed to extend the agreement with the same terms and continued to pay for over a year before stopping payment. In the Superior Court's view, these facts were sufficient to support a claim for breach of contract based on ratification—not modification. *Id.* at *2.

Reybold makes no such argument here but, instead, claims that the parties' conduct modified the Settlement Agreement's express terms. Reybold's attempt at persuasive precedent only further emphasizes this fundamental difference between ratification and modification. See Reybold's Br. at 27 25 (citing *CIT Tech. Fin. Servs., Inc. v. Franklin First Fin., Ltd.*, 132 A.D.3d 715 (N.Y. App. Div. 2d Dept. 2015); *Great Am. Fin. Servs., Corp. v. Natalya Rodionova Medical Care, P.C.*, 956 N.W.2d 148 (Iowa 2021); *Sitco Enterprises, LLC v. Tervita Corp.*, 2018 WL 3032579 (S.D. Tex. June 19, 2018)).

CIT Tech, for example, focused on whether a bank branch manager had the authority to enter into a lease on the bank's behalf and, subsequently, if the bank ratified that lease through payment. The Court found both to be true under those

circumstances in an analysis consistent with the concept of ratification by a successor in interest. *Natalya Rodionova* similarly confirms this distinction. 956 N.W.2d at 156. The issue in that case was whether a defendant who claimed that a financing agreement was fraudulently procured ultimately ratified the agreement by making payments. As in *CIT Tech*, this was a standard ratification case where the validity of the agreement was at issue, not whether the terms of the agreement have been modified.⁴

Sitco Enterprises also exemplifies this distinction that Reybold misses. *Sitco Enterprises* similarly involved a sale of goods and ratification instead of purported modification by conduct. 2018 WL 3032579. Like *CIT Tech* and *Natalya Rodionova*, the court there focused on whether a successor in interest that performed under a contract entered into by its predecessor ratified that contract through performance—not whether the contract’s express terms were modified by the parties’ conduct. *Sitco Enterprises*, 2018 WL 3032579 at *11.

In sum, Reybold has not offered a persuasive reason to reverse the Superior Court. Reybold does not engage with the Superior Court’s analysis or take issue with the Superior Court’s interpretation that the Settlement Agreement expressly does not contemplate a management fee. Instead, Reybold largely reiterates its

⁴ Highlighting this distinction, *Natalya Rodionova* involved the sale of goods under the Uniform Commercial Code, which has specific provisions related to acceptance through ratification. 956 N.W.2d at 155 (citing Iowa Code § 554.13515(1)).

arguments made to the Superior Court, relying on inapposite concepts, and asking this Court to reweigh the evidence contrary to the scope of review. For these reasons, this Court must affirm the decision below.

B. Reybold cannot recover for the private alleyway paving it voluntarily undertook that is not covered by the Settlement Agreement.

1. Question Presented

Should this Court affirm the Superior Court’s conclusion that private alleyway paving is not recoverable where that reimbursement is not explicitly covered by the Settlement Agreement and Reybold’s argument otherwise requires re-weighting the evidence? (Reybold raised most of the arguments for this issue in its Post-Trial Opening Brief at 36-42, Post-Trial Answering Brief at 26-30, Motion for Reargument, but has never raised the argument that the Settlement Agreement is ambiguous.)

2. Scope of Review

Where a case raises issues of contract interpretation, this Court reviews those issues *de novo*. *Gatz*, 59 A.3d at 1212. The Court “will uphold the Superior Court’s factual findings unless they are clearly erroneous.” *Id.* Where a trial judge makes factual findings “based upon consideration of the documentary evidence and the testimony and credibility of ‘live’ witnesses at trial,” those findings “must be given great deference by an appellate court.” *Disabatino*, 781 A.2d at 690. If the factual findings are supported by the record “and the product of an orderly and logical deductive process,” this Court defers to those factual findings even if it would have independently reached a different conclusion. *Id.*

The Court will “not substitute its own notion of what is right for those of the trial judge if that judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.” *Gatz*, 59 A.3d at 1212.

3. Merits Argument

Reybold takes issue with the Superior Court’s determination that Reybold was not entitled to reimbursement for any paving fees but, again, fails to engage in a meaningful analysis of the Court’s reasoning for that decision. The Superior Court correctly recognized that there was no certainty that the alleyways were ever meant to be covered by the Settlement Agreement. Trial Ct. Op. at 23. The Superior Court’s factual findings on this point are based on the evidence and not clearly erroneous (nor does Reybold appear to argue they are), and the court’s interpretation of the Settlement Agreement is grounded in the language of that document. Reybold simply asks this Court to interpret the evidence differently than the Superior Court to reach a new conclusion, which is beyond this Court’s scope and standard of review.

At the outset, there is no express provision in the Settlement Agreement that provides for reimbursement of private alleyway paving. Before the Superior Court, Reybold relied on Section 17 of the Settlement Agreement, which addressed CalAtlantic’s obligation for topcoating “roadways ... that are associated with Third Party Lots.” (A1379). As the Superior Court surmised, regardless of whether the

Settlement Agreement covered private alleyway paving through Section 17, Reybold was not entitled to reimbursement for the money it expended in paving the private alleyways on its own accord. Trial Ct. Op. at 23. At best, if Section 17 of the Settlement Agreement applied to private alleyways at all, it required CalAtlantic to do the paving itself. Thus, the Superior Court recognized that Reybold “made the unilateral decision to ignore the Settlement Agreement and pave the alleyways itself because it didn’t want to delay its own progress[.]” *Id.* at 24. Reybold “paved the alleyways ... knowing that it wasn’t its responsibility, but hoping (without contractual promise) that CalAtlantic would pay for a portion.” *Id.* Given the lack of clear contractual obligation for CalAtlantic to pay for this paving and Reybold’s decision to undertake the paving on its own, the Superior Court correctly determined that Reybold was not entitled to reimbursement for this.

Reybold disagrees, claiming again that the Superior Court must give effect to the parties’ intentions and the court failed to consider testimony about **why** CalAtlantic was responsible for top-coating the private alleyways. Reybold’s Br. at 31. This is, once again, grounded in the premise that a court must consider parties’ intentions where the contract is ambiguous. Again, Reybold has waived that argument by not presenting it below. Reybold did not argue before the Superior Court anywhere in its Post-Trial Brief or Post-Trial Answering Brief that Section 17 of the Settlement Agreement was ambiguous, let alone that the ambiguity required

the Court to consider the intention of the parties. As a result, these arguments are waived on appeal. *See* Del. Supr. Ct. R. 8 (“Only questions fairly presented to the trial court may be presented for review[.]”); *see also Ravindran v. GLAS Trust Co. LLC*, 327 A.3d 1061, 1081 (Del. 2024) (concluding an issue that was not explicitly argued at trial or raised in briefing to the trial court was waived on appeal). Even if the issue of ambiguity was properly before the Court, which it is not, Reybold’s argument on this point asks the Court to review the evidence and make new factual findings. Such effort is beyond this Court’s review. *Disabatino*, 781 A.2d at 690.

Finally, the evidence Reybold cites to advance its argument is the same evidence that Reybold repeatedly cited to the Superior Court and the Superior Court repeatedly rejected. For example, in its Post-Trial Opening Brief, its Motion for Reargument, and now its brief to this Court, Reybold cites the exact same testimony from Mr. Lingo about who “typically” is responsible for top coating alleyways. Reybold’s Br. at 31; Reybold’s Post-Trial Br. at 40; Motion for Reargument at 2-3. Reybold also repeats to this Court, nearly verbatim, its argument to the Superior Court that CalAtlantic advised Reybold that it was not responsible for alleyway paving and Mr. Heisler’s testimony confirmed the same. Reybold’s Br. at 33-34; Reybold’s Post-Trial Answering Br. at 29-30; Reargument Motion at 3.

Given that Reybold argued the import of this exact testimony to the Superior Court at least two times before now, it is unclear how the Court erred or failed to

consider this testimony. And no cogent argument is made to link this rehashing of testimony to any purported error by the Superior Court. If anything, these repeated arguments demonstrate only that Reybold wants this Court to review the evidence and reach a different conclusion than the Superior Court did. But that is simply not the purpose or within the scope of appellate review.

In sum, Reybold's argument on this issue amounts to a claim that, despite the plain language of the Settlement Agreement, CalAtlantic would typically be responsible for paving private alleyways, CalAtlantic notified Reybold it was not responsible for private alleyway paving, and so Reybold ultimately decided to pave the alleyways and seek reimbursement later. Reybold's Br. at 31-34. That is exactly what the Superior Court also correctly concluded. Far from articulating how the Superior Court's conclusion on this issue was in error, Reybold's argument seemingly confirms the Superior Court's analysis. Because Reybold has not articulated how the Superior Court erred and otherwise seeks a reweighing of evidence, this Court must affirm.

C. The date of Turnover that cuts off CalAtlantic’s payment obligations is clear in the Settlement Agreement and Reybold cannot identify an error in the Superior Court’s contractual interpretation otherwise.

1. Question Presented

Should this Court affirm the Superior Court’s decision that any expenses after the date of Turnover are unrecoverable where that decision is supported by the plain language of the Settlement Agreement and Reybold fails to identify an error in the Superior Court’s analysis? (Reybold raised this issue at in its Post-Trial Opening Brief at 43-45, and Post-Trial Answering Brief at 20-22.)

2. Scope of Review

Where a case raises issues of contract interpretation, this Court reviews those issues *de novo*. *Gatz Properties*, 59 A.3d at 1212. The Court “will uphold the trial court’s factual findings unless they are clearly erroneous.” *Id.* Where a trial judge makes factual findings “based upon consideration of the documentary evidence and the testimony and credibility of ‘live’ witnesses at trial,” those findings “must be given great deference by an appellate court. *Disabatino*, 781 A.2d at 690. If the factual findings are supported by the record “and the product of an orderly and logical deductive process,” this Court defers to those factual findings even if it would have independently reached a different conclusion. *Id.*

The Court will “not substitute its own notion of what is right for those of the trial judge if that judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.” *Gatz*, 59 A.3d at 1212.

3. Merits Argument

Once again, Reybold reiterates the same arguments it made to the Superior Court and argues that the Superior Court was wrong when it determined that December 31, 2021 was the date of Turnover, which cut off Reybold’s right to reimbursement. Reybold fails to analyze the Superior Court’s rationale at all and, instead, relies on the same arguments that were rejected by the Superior Court. Accordingly, Reybold does not advance a persuasive argument for reversal.

The Superior Court correctly recognized that the Settlement Agreement explicitly defined the date of Turnover and the parties’ obligations until that date. As the Settlement Agreement states, CalAtlantic is only liable for a portion of Common Facility Fees up to the date of Turnover. (A1376). The Settlement Agreement, in turn, provides that the date of Turnover is the date when Reybold turns over the open space for the Community to the Community’s maintenance corporation. (A1361, A1376). Notably, consistent with the Superior Court’s conclusion, the parties agreed that the date the open space was deeded to the Community’s maintenance corporation was December 31, 2021. The deeds to the maintenance corporation were signed on that date, (A711-69), Mr. Stewart

confirmed that was the date of Turnover, (A1987), and Reybold itself alleged in its own Complaint that the open space was turned over in approximately January 2022, (A1321). Accordingly. “by contract, CalAtlantic’s payment obligations ended on the date of turnover and that date was December 31, 2021.” Trial Ct. Op. at 26. Any expenses Reybold incurred thereafter are no longer CalAtlantic’s responsibility. *Id.*

Reybold disagrees, relying on the same arguments it presented to the Superior Court that the Superior Court correctly rejected. Reybold frames these arguments to sound in equity rather than breach of contract. But Reybold brought claims for breach of contract alone. To this point, Reybold claims that the Superior Court’s interpretation of Turnover “excuse[s] CalAtlantic from paying [its] proportionate share of the three years warranty expense after the open space was deeded to the maintenance corporation.” Reybold’s Br. at 36. Again, the plain language of the Settlement Agreement defines the date of Turnover to be when the open space is deeded to the maintenance corporation and the Settlement Agreement controls the parties’ obligations, regardless of whether Reybold thinks that is fair.

Nevertheless, to advance its claim for these improvements “from January 2022 to April 2024,” Reybold cites to Land Development Improvement Agreements (“LDIA”) between Reybold and the County, as well as background recitals of the Settlement Agreement. Reybold’s Br. at 36-37. Reybold argued both of these to the Superior Court, and both are unpersuasive.

First, the LDIA upon which Reybold relies is only between Reybold and the County. But Reybold somehow still takes the position that the LDIA materially modifies the Settlement Agreement such that CalAtlantic's payment obligation apparently continues three years after the date of Turnover. *See* Reybold's Br. at 37. CalAtlantic is not a party to the LDIA and is not bound by Reybold's obligations under the same. Further, Reybold presents no argument as to how an agreement to which CalAtlantic was not a party could extend CalAtlantic's payment obligations. Instead, it merely cites to the language from the LDIA and claims the Superior Court erred.

In any event, the Settlement Agreement's integration clause in Section 19(b) precludes any modifications to its terms except in writing. As the Superior Court found and Reybold's representative testified at trial, there have never been any written releases, modifications, or rescission of the rights and obligations of both parties under the Settlement Agreement. (A1904 at 23:2-7; *see also* A1990 at 21:9-11); Trial Ct. Op. at 22. Accordingly, there was no modification to the term that CalAtlantic's payment obligations end on the date of Turnover. Further, the LDIA between Reybold and the County cannot and does not modify the agreed upon terms of the Settlement Agreement between Reybold and CalAtlantic.

Second, to the extent that Reybold relies on the Settlement Agreement's background recitals that reference the LDIA between Reybold and New Castle

County, that also creates no obligation for reimbursement. *See* Reybold’s Br. at 37 (citing A120-121 ¶¶ B-C). Reybold appears to argue that because CalAtlantic knew that Reybold had a three-year warranty responsibility under the LDIA, CalAtlantic’s obligations continued for those three years too. For this, Reybold relies on the Background recitals in the Settlement Agreement that state (1) Reybold was required to execute certain LDIA, and (2) open space for the Community must be turned over to the maintenance corporation in accordance with certain time frames in the County’s Unified Development Code. Reybold’s Br. at 37 (citing A121). But “recitals are not a necessary part of a contract and can only be used to explain some apparent doubt with respect to the intended meaning of the operative or granting part of the instrument.” *Llamas v. Titus*, 2019 WL 2505374, at *16 (Del. Ch. June 18, 2019). Although the recitals may help construe the parties’ intent, they “do not have the force of contractual stipulations.” *Id.* Therefore, if the recitals are inconsistent with the contract, the contract controls. *Id.*

Section 14(p) of the Settlement Agreement states that CalAtlantic shall reimburse Reybold for a portion of Common Facility Fees “between the Effective Date and the date of Turnover.” (A1376). The Background recitals explaining that Reybold executed the LDIA cannot function, as Reybold suggests, to rewrite the substantive provision to include an additional three years of warranty expense **after** the date of Turnover.

Reybold reiterates its same arguments from the Superior Court to this Court and hopes for a different outcome. Reybold's contractual interpretation fails on the issue of Turnover in light of the plain language of the Settlement Agreement and the facts found by the Superior Court; thus, this Court should affirm.

D. Reybold has alleged no abuse of discretion in the Superior Court’s conclusion not to award attorney fees and, in any event, reads the prevailing party requirements too narrowly.

1. Question Presented

Should this Court affirm the Superior Court because Reybold has alleged no abuse of discretion and interprets the prevailing party requirements too narrowly? (Reybold raised this issue in its Post-Trial Brief at 54-56 and Post-Trial Answering Brief at 40-42.)

2. Scope of Review

This Court will review a Superior Court’s damages awards and attorney’s fee awards for abuse of discretion. *Gatz*, 59 A.3d at 1212.

3. Merits Argument

The Superior Court determined that neither party was a prevailing party entitled to attorney fees. Trial Ct. Op. at 28-29. Reybold does not contend that this was an abuse of discretion but, rather, argues that if this Court reverses on two or more of its foregoing issues, then Reybold is entitled to an award of attorney fees and costs. Reybold’s Br. at 40-41.

Reybold cites to and argues the broad propositions about what criteria establish a prevailing party and reaches the conclusory determination that, if this Court reverses, “on the topcoating issue or any other two issues on appeal, Reybold will be the prevailing party.” *Id.* at 42. But Reybold’s argument does not grapple

with the Superior Court's opinion and reasoning, the issues before the Superior Court, and the nuances of determining who is a prevailing party.

The Settlement Agreement provides that “in the event that any Party breaches or otherwise fails to fulfill its obligations under this Agreement and one or more other Parties to this Agreement initiates litigation to enforce this Agreement ... [t]he prevailing Party in such litigation shall be entitled to an award of all attorney's fees and costs.” (A1377).

Under Delaware law, a litigant must achieve “predominance in the litigation” to be declared the prevailing party. Predominance is accomplished by prevailing on the “chief issue” in the litigation. *2009 CAIOLA Family Trust v. PWA, LLC*, 2015 WL 6007596, at *33 (Del. Ch. Oct. 14, 2015). In determining predominance, courts will generally evaluate the substance of the litigation and focus on “substantive issues” rather than damages. *Ivize of Milwaukee, LLC v. Complex Litig. Support, LLC*, 2009 WL 1111179, at *14 (Del. Ch. April 27, 2009). If each party wins some issues and loses some issues, the Superior Court has discretion to determine that there is no prevailing party. *See Bako Pathology LP v. Bakotic*, 288 A.3d 252, 282 (Del. 2022); *AHS N.M. Holdings, Inc. v. Healthsource, Inc.*, 2007 WL 431051, at *9 (Del. Ch. Feb. 2, 2007).

With this in mind, Reybold initiated this action for breach of contract, claiming CalAtlantic violated the Settlement Agreement because it did not pay its

proportionate share of costs for open space maintenance, common facility work, future Reybold improvement costs, and the paving of private alleyways. CalAtlantic brought its own counterclaims alleging breach of contract and seeking declaratory relief on the basis that Reybold did not follow the billing procedures in the Settlement Agreement to trigger payment but, even if it had, CalAtlantic had no obligation to pay management fees, private alleyway paving, or stormwater pond construction costs. These various claims boil down to two main issues before the Superior Court: (1) whether Reybold complied with the Settlement Agreement and should receive damages, and (2) whether CalAtlantic complied with the Settlement Agreement and should receive damages. These two overarching issues include the subsidiary issues of which categories of damages were appropriate under the controlling Settlement Agreement.

Ultimately, the Superior Court determined that “both parties breached the Settlement Agreement,” and Reybold was able to recover damages for costs incurred up until the date of Turnover and expressly provided for under the Settlement Agreement. Trial Ct. Op. at 11, 26-27. This conclusion bolsters the Superior Court’s later finding that neither party was a prevailing party entitled to fees. As the court reasoned, “both parties have prevailed on some claims and lost on others.” *Id.* at 29. While Reybold succeeded on its recovery of common facility fees and future Reybold improvements, CalAtlantic succeeded on other issues, including what was

its proportionate share of costs. *Id.* Reybold does not address this reasoning at all or argue it is an abuse of discretion but, instead, baldly claims it is entitled to be a prevailing party if it wins on appeal.

On appeal, Reybold challenges only the Superior Court’s determinations about the damages Reybold is permitted to recover. Regardless of whether this Court ultimately agrees with Reybold’s foregoing arguments on its right to damages for management fees, costs after Turnover, and private alleyway paving costs, it does not alter the Superior Court’s conclusion that both parties violated the Settlement Agreement. Reybold does not attempt to explain how this reversal would alter the Superior Court’s analysis on this front. Even if this Court reverses on some of Reybold’s issues, Reybold still prevails on some issues and CalAtlantic prevails on others, precluding either party from being a prevailing party. *See* Trial Ct. Op. at 29.

Finally, it bears emphasis that there are times where a party obtains a large judgment—for instance, “millions of dollars in damages”—but is nevertheless not the prevailing party. *See Vianix Del. LLC v. Nuance Communs., Inc.*, 2010 WL 3221898, at *29 (Del. Ch. Aug. 13, 2010). In *Vianix*, both sides prevailed on a handful of issues in a contractual dispute, but the Chancery Court nevertheless determined that neither party predominated, even though one party would recover millions of dollars and won a plurality of issues. In finding that neither party

predominated, the Court was particularly critical of Nuance, the recovering party, despite its successes, reasoning that:

... I cannot as a matter of equity award Nuance its attorneys' fees because its poor recordkeeping provided the primary impetus for Vianix to bring this suit and measurably increased the complexity of the litigation. Nuance was slow in recognizing when products were upgraded to contain MASC in several instances, failed to keep track of certain data needed to calculate royalties, and, in the words of the auditor from Invotex, kept "the worst records I've ever audited." These problems led Vianix to become distrustful of Nuance and send the inflated \$12 million invoice. Nuance compounded the deficiencies in its recordkeeping by failing to produce accurate sales data until the day the parties' pretrial briefs were due. Based on these actions, I find that Nuance bears a greater degree of responsibility than Vianix for the substantial cost in time and money of this litigation. Therefore, I conclude that it would be inappropriate to award Nuance its attorneys' fees as the putative prevailing party on the relatively technical ground that it won more disputed issues than Vianix.

Id. at *28.

As demonstrated by the record and the Superior Court's findings, Reybold's billing practices and poor recordkeeping complicated this matter and preclude a determination that it prevailed in any sense. In fact, the Superior Court expressly found that "Reybold's method of providing invoices to CalAtlantic could be described as: uncoordinated, at best." Trial Ct. Op. at 9; *see also id.* at 27 (noting "Reybold's billing practices weren't stellar"). The Superior Court further found that Reybold did not send bills on a regular monthly basis, had no systematic method for

processing and sending invoices, and billed in large batches that often included work completed a year prior. *Id.* Some invoices were hand-delivered and others were delivered at meetings on unrelated issues. None of the invoices included the certificate of completion the Settlement Agreement required. *Id.* at 9-10. As in *Vianix*, this weighs heavily on the prevailing party analysis, which is not just a simple question of who wins more than half the issues.

Ultimately, Reybold's argument on attorney fees hinges on its belief that it will win one of the foregoing issues it raises on appeal and, by default, becomes a prevailing party. As set forth above, Reybold has not argued any persuasive reason to reverse the Superior Court but, even if it had, Reybold's argument ignores that it will still not be a prevailing party, given the issues that were before the Superior court. Because the prevailing party analysis is dynamic and not premised simply on who wins more claims, this Court must affirm.

E. The Superior Court properly granted summary judgment dismissing Lennar because Reybold did not adduce any evidence, let alone create a material issue of fact, about Lennar’s relationship to CalAtlantic.

1. Question Presented

Should this Court affirm the Superior Court because, based on the record, there was no genuine issue of material fact and Lennar was entitled to judgment as a matter of law dismissing it as a party? (Reybold raised this issue in its Answering Brief in Opposition to CalAtlantic’s Motion for Summary Judgment⁵ at 46-51.)

2. Scope of Review

This Court’s review of an order granting summary judgment is *de novo*. *Lank v. Moyed*, 909 A.2d 106, 108 (Del. 2006). “The entry of summary judgment is appropriate only when the record shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *LaPoint v. Amerisource Bergen Corp.*, 970 A.2d 185, 191 (Del. 2009).

3. Merits Argument

In its final issue, Reybold challenges the Superior Court’s dismissal of Lennar as a party when Lennar was not even a party to the Settlement Agreement and there was no evidence indicating that Lennar was responsible for the alleged sums due under that agreement. Reybold claims that the Superior Court erred in dismissing

⁵ Again, Reybold did not include this in its Appendix.

Lennar and “failing to pierce the corporate veil” to impose liability on Lennar “as the parent entity.” Reybold’s Br. at 43.

Prior to trial, the Superior Court granted Lennar and CalAtlantic’s Motion for Summary Judgment “requesting that Lennar Corporation be dismissed as a party.” (A1644). The record showed no issue of genuine material fact and that Lennar was entitled to judgment as a matter of law dismissing it as a party. Namely, Reybold failed to adduce any evidence that Lennar was a party to the Settlement Agreement and, therefore, liable under the Settlement Agreement.

It is a fundamental principle of law that one cannot be bound by a contract unless it is a party to such contract. *See Gildepath Ltd. v. Beumer Corp.*, 2018 WL 321 WL 321788, at *2 (Del. Ch. Jan. 5, 2018). *See also E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) (“It goes without saying that a contract cannot bind a nonparty.”); *Williams v. Metzler*, 132 F.3d 937, 946 (3d Cir. 1997) (“Basic contract principles apply to settlement agreements.”). A parent corporation, like Lennar, “can only be held liable for the performance of a contract by a wholly-owned subsidiary under extremely limited circumstances.” *O’Leary v. Telecom Res. Serv., LLC*, 2011 WL 379300, at *7 (New Castle Super. Jan. 14, 2011) (citing *Wallace v. Wood*, 752 A.2d 1175, 1180 (Del. Ch. 1999)). Those limited circumstances include fraud and when the subsidiary is merely an instrumentality or alter ego of the parent corporation. *Id.*

To prove an alter ego, plaintiffs must show “(1) that the parent and the subsidiary ‘operated as a single economic entity’ and (2) that an ‘overall element of injustice or unfairness ... is present.’” *Acciai Speciali Terni USA, Inc. v. Momene*, 202 F.Supp.2d 203, 207 (S.D. N.Y. 2002) (applying Delaware law). Accordingly, a court will only pierce the corporate veil if the alter ego factors are present, including:

whether the corporation was adequately capitalized for the corporate undertaking; whether the corporation was solvent; whether dividends were paid, corporate records kept, officers and directors functioned properly, and other corporate formalities were observed; whether the dominant shareholder siphoned corporate funds; and whether, in general, the corporation simply functioned as a facade for the dominant shareholder.

Id. at 207-08. In addition, there **must** be “an element of injustice or unfairness.” *Id.*

As *Momene* makes clear, no single factor is sufficient to justify disregarding the corporate entity. *Id.* Rather, there must be a combination of those factors and an element of injustice. In *Momene*, the defendant sought summary judgment dismissing a cause of action for piercing the corporate veil. The court there acknowledged documentary evidence that the shareholder individually received certain payments and instructed the other party to transfer funds to his personal bank account. *Id.* at 208. Although that constituted “some evidence” of comingling assets, there was no demonstration of the other factors or that there was any injustice or fairness, which “must always be present.” *Id.* at 209. Given that the plaintiff

failed to show evidence justifying disregarding the corporate form, the Court granted the defendant summary judgment.

The same result was necessary here. Under the relevant standards, it is evident the Superior Court did not err in granting summary judgment and dismissing Lennar as a party because Reybold did not adduce evidence of the relevant considerations or an element of injustice. At best, the evidence showed that CalAtlantic was a successor by merger to Ryland, and CalAtlantic is a mere subsidiary of Lennar. Lennar and CalAtlantic did not merge.

Reiterating its arguments that it made to the Superior Court, Reybold argues only that Lennar comingled CalAtlantic's assets such that the Court should have pierced the corporate veil. For this proposition, Reybold cites the fact that Lennar approved a handful of invoices and some payments came from Lennar's ACH. *See* Reybold's Br. at 44. Similarly, Reybold argues that it invoiced Lennar, rather than CalAtlantic for another handful of payments and Lennar did not object. *Id.* at 45. This is not evidence of comingling assets. At best, this is evidence that Reybold occasionally provided invoices to Lennar and Lennar did not object. More importantly, even if this was some evidence of comingling assets, Reybold did not adduce evidence of any of the other relevant considerations or an element of injustice or unfairness that justified piercing the corporate veil. Reybold did not create an issue of material fact that precluded summary judgment. *Momene*, 202 F.Supp.2d

at 208. Rather, on these facts alone, it was evident that Lennar and CalAtlantic had a clear legal right to relief for dismissal of Lennar.

VI. CONCLUSION

For the foregoing reasons, CalAtlantic respectfully requests that this Court affirm the Superior Court.

Respectfully submitted,

A.M. SACCULLO LEGAL, L.L.C.

By: /s/ Thomas H. Kovach
Anthony M. Saccullo, Esq. (DE Bar #4141)
Thomas H. Kovach, Esq. (DE Bar #3964)
27 Crimson King Drive
Bear, DE 19701
Phone: (302) 836-8877
Fax: (302) 836-8787
ams@saccullolegal.com
kovach@saccullolegal.com

KLEINBARD LLC

By: /s/ Benjamin Garber
Benjamin A. Garber, Esq. (PA # 306765)
Three Logan Square, 5th Floor
1717 Arch Street
Philadelphia, PA 19103
Phone: (215) 568-2000
bgarber@kleinbard.com

Dated: December 12, 2025

Attorneys for Appellees