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Case Number 414,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REYBOLD CONSTRUCTION COMPANY, a Delaware corporation, REYBOLD VENTURE GROUP XI-A, LLC, a Delaware limited liability company, REYBOLD VENTURE GROUP XI-B, LLC, a Delaware limited liability company, REYBOLD VENTURE GROUP XI-APT, LLC, a Delaware limited liability company, successor-by-merger to Reybold Venture Group XI-D, LLC, a Delaware limited liability company, REYBOLD VENTURE GROUP XI-E, LLC, a Delaware limited liability company, and REYBOLD VENTUREGROUP XI-F, LLC, a Delaware limited liability company,	)	No. 414, 2025
Plaintiffs Below, Appellants	)	Superior Court Below
v.	)	Civil Action N22C-06-206 PRW
LENNAR CORPORATION, a Delaware Corporation, and CAL-ATLANTUC GROUP, LLC, a Delaware limited liability Company,	)	
Defendants Appellees.	)	

APPELLANTS' REPLY BRIEF

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December 30, 2025

TABLE OF CONTENTS

Exhibits

TABLE OF CITATIONS **Page**

Other

ARGUMENT I. 15% MANAGEMENT FEE

A. Question presented: Did the 2/25/15 Agreement entitle Reybold to recover a 15% Management Fee in addition to its actual costs?

B. Standard of Review: and Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023). Factual Findings are "clearly erroneous" if they are not supported by the record and are not the product of orderly and logical deductive process. *Geronta Funding v. Brighthouse Life Insurance Company,* 284 A.3d 47, 59 (Del. 2022).

C. Merits of the Argument :There was not any ambiguity as to the 15% fee prior to, in and after the Settlement Agreement until the Court's Decision

Prior to 2/25/15 Agreement, The Developers Paid the 15% Fee to Reybold

Commencing April 2006 and continuing monthly thereafter, Reybold invoiced maintenance (2006 $43,284.95 (A-191), 2007 $69,718.58 A-200&205), 2008 $75,614 (A-226&238) and improvements (Clubhouse) to Atlantic Meridian Crossing ("AMC") and virtually all of these invoices reflected a 15% Overhead Charge (PX#4) (A190-A238).

Commencing in February 2012, after the foreclosure and Sheriff's sale, and continuing monthly thereafter, Reybold invoiced Provident Bank/Bergen Delaware for maintenance (2012 $44,049.60) and improvements and several of these

invoices (A-241,243 and 245) explicitly reflected the 15% fee (PX#6) (A240-A258).

Commencing October 2013 through December 2014, after Bergen conveyed the 203 lots to Ryland, Reybold invoiced Cornell/Ryland for maintenance (2014 $33,339.89) and improvements, if any, including the 15% fee (A-286, 292, 296, 301 and 304) ("PX#11(A284-A304) and PX#12 (A305-A328).

In fact, it was undisputed that for more than one year, the negotiations leading up to the 2/25/15 agreement included the 15% Fee on Improvements (A271) and Maintenance (A272&273).

In summary, prior to the 2/25/15 Agreement, Reybold's invoices to AMC/MCF, Provident/Bergen, and Cornell/Ryland for maintenance or any improvements, explicitly noted the 15% fee and were paid by AMF/MFC, Provident/Bergen, and Cornell/Ryland prior to the 2/25/15 Agreement.

The 2/25/15 Agreement Referenced and Incorporated the 15% Fee

On or about 2/25/15, a Release and Settlement Agreement ("Agreement") was entered into by Ryland, MCP, Bergen, and Reybold (PX#13) (A329-A411).

The Background of the Agreement provided the sum total of the Disputed Amounts through the Effective Date was Eight Hundred Sixty-Nine Thousand Five Hundred Eighteen and 54/100 Dollars ($869,518.54) as described and identified in

Exhibit A *annexed hereto and by this reference made a part hereof (Italics to reflect emphasis)* (PX#13, p.2) (A330).

Exhibit A, annexed and made part of the Agreement, was Reybold's September 30, 2013 letter reflecting open space maintenance and any improvements from January 2012 through September 2013, and the August 31, 2013 and September 30, 2013 for open space maintenance and any improvements. For example, Provident/Merdian's portion of the pool costs was $183,202.82, after which there was the 15% Fee of $27,481.43 (S-360) which was paid at the closing (PX#13, p.29 to 36) (A357-A364) (Emphasis Added).

Payment of a 15% Management Fee of $27,481.43 in an Exhibit annexed and made part of the Agreement establishes that the Agreement did in fact "speak" thereto.

Post 2/25/15 Agreement- The Developers/Signers Paid the 15% Fee to Reybold

Commencing with November 2014 and continuing through June 2017, Reybold invoiced Cornell/Ryland $168,879.94 for its proportionate share of maintenance and related expenses. These invoices include the 15% Fee reflected in each itemization (A-418, 421, 423, 425, 428, 431, 434, 437, 440, 443, 445, 447, 450, 453, 455, 457, 460, 463, 465, 467, 469, 471, 473, 475, 477, 479, 481, 483, 486 and 488 (PX#15) (A416-A491)).

Cornell/Ryland, as signers of the Agreement, and after the merger, CAG Inc paid $160,599.52 of the $168,879.94 (PX#24) (A692).

Post 2/25/15 Agreement- Lennar and Its Affiliates Paid the 15% Fee to Reybold

From December 2017 and continuing through March 2019, Lennar and its affiliates paid the 15% Fee.

Commencing with July 2017 to November 2017, Reybold invoiced Cornell/Ryland $20,693.95 (PX#17 (A507-A516) for its proportionate share of maintenance and related expenses including the 15% Fee (A-508, 510, 512 and 516) and Lennar, not a party to the Agreement, paid the $20,693.95 (PX#24) (A693).

Commencing January 2018 to March 2018, Reybold invoiced Lennar $15,064.38 for its proportionate share of maintenance and related expenses and improvements including the 15% Fee (A-518, 522 and 524) (PX#18) (A517-A547) and U.S. Homes. Corp., a Lennar subsidiary, paid $15,064.38 (PX#24) (A692).

Commencing with December 2017, and April 2018 through March 2019, Reybold invoiced Lennar $128,720.45 for its proportionate share of maintenance and related expenses and including the 15% Fee (A526, 528, 530, 532, 534, 536, 538, 540, 542, 544 and 546) (PX#18 (A517-A547) and Improvements (A-531) PX#20 (A552-A654)) and Lennar paid (PX#24) (A693).

Commencing with April and May 2019, Reybold invoiced Lennar

$5,074.58, representing its proportionate share of maintenance and related expenses including the 15% Fee (A-549 and 551) (PX#19) (A548-A551) and Lennar paid (PX#24) (A693).

Commencing with December 2019, Reybold invoiced Lennar $2,469.51 for its proportionate share of maintenance and related expenses including the 15% and Lennar paid (PX#24) (A693).

In summary, after the 2/15/25 Agreement:

(1) For November 2014 through June 2017, Cornell/Ryland, signers to the Agreement, paid 30 monthly invoices each reflecting the 15% fee totaling more than $160,000 for open space maintenance; and

(2) For December 2017 through May and December 2019, Lennar paid 20 monthly invoices each reflecting the 15% fee totaling more than $169,000 for open space maintenance.

In conclusion, there was not any ambiguity as to the 15% Fee for almost one decade prior to, in the 2/25/15 Agreement and for more than 4 years after.

Modification

In their Answering Brief (Answering Brief ("AB") page 15), Lennar/CAG argue that Reybold's authority only stands for the proposition that ambiguous contracts should be construed with consideration to the acts and conduct of the

parties, citing *Radio Corp. of America v. Philadelphia Storage Battery Co.*, 6 A.2d 329, 340 (Del. 1939).

However, two other subsequent cases cited by Lennar/CAG did not involve an ambiguous contract. Like the instant dispute, *In re Coinmint, LLC*, 261 A.3d 876, 898 (Del. 2021) also involved an "anti-waiver" provision, this Court held that "non=waiver clauses are not iron-clad protections that preclude courts from holding (a party) responsible for their post contracting behavior.

Similarly, *Simon Property Group, L.P. v. Brighton Collectibles, LLC,* 2012 WL 6058522 (Del. Super., 2021) involved a "a no oral modifications" clause with no ambiguity. The Court noted that the parties by their conduct may make an oral contract without formally amending the written agreement.

Waiver

In their Answering Brief (AB-16), Lennar/CAG cite *Bantum v. New Castle County Vo-Tech Education Association,* 21 A.3d 44 (Del. 2011), *Continental Ins. Co. v. Rutledge & Co., Inc.,* 750 A,2d 1219 (Del.Ch.2000) *and J.C. Trading v. Wal-Mart Stores, Inc.,*947 F.Supp.2d 449 (D. Del. 2013) in support of its argument that Reybold has not met the "high bar" of waiver.

However, it's hard to imagine what could be higher level of "specificity and directness" leaving no doubt as to the intentions of the parties than payment of management fee for more than 4 years after the 2/25/15 Agreement was signed.

Specifically, Cornell/Ryland, as signers of the Agreement, and after merger CAG Inc., paid $160,599.52 of the $168,879.94 (PX#24) (A692) each reflecting the 15% Fee and Lennar paid 20 monthly invoices totaling more than $169,000 for open space maintenance each reflecting the 15% fee.

Thus, Reybold submits that the conditions of waiver set forth in *Bantum, supra,* on page 50-51 of the case citation have clearly been satisfied in this case.

Likewise, Cornell/Ryland and Lennar/CAG engaged in a course of conduct post the 2/25/15 Agreement which negates any reliance upon *J.C. Trading Ltd, supra*, another case cited by Lennar (AB-17). There, the Court held that there had been no modification or waiver of the "no oral-modification" provision of the Integration clause. The Court stated, "Here, there has been no oral modification or waiver of the "no oral modification" provision of the Integration Clause because Walmart did not express an intent to modify the terms of the Supplier Agreement. Nor has there been a modification by the parties' conduct because Walmart's actions did not modify the Order Clause, which expressly provides that "representations about quantities to be purchased are not binding." (D.I. 96, Exs. 1–2 at ¶ 2(f)). Walmart did not engage in any course of conduct inconsistent with the Supply Agreements". (Emphasis Added).

Similarly, in *Continental In., supra, t*he Court acknowledged that parties may demonstrate that conducted amended a contract: "Although parties can orally

amend a contract with their conduct, when a party attempts to demonstrate that conduct has amended a written contract, that party still must present sufficient evidence of the conduct to prove the asserted modification with 'specificity and directness as to leave no doubt of the intention of the parties to change what they previously solemnized by formal document."

In this case, to the extent there was any ambiguity, there was a clear intent to modify the agreement and any prohibition against any oral modification provision through course of conduct.

Ratification

In the Opening Brief in support of ratification Reybold cited *CIT Tech. Fin. Servs., Inc. v Franklin First Find,* 132 A.D.3d 715(N.Y. App., 2015) where the Court held that the bank ratified the lease by making monthly payments; *GreatAmerica Financial Services Corporation v Natalya Rodionova Medical Care, P.C.* 956 N.W.2d 148 (Iowa 2021) in which the Court held that the principal ratifies an unauthorized transaction of its agent where the principal accepts the benefits of the contract and makes payments on the contract over two years; and *Sitco Enterprise, LLC v, Tervita Corporation*, 2018 WL 3032579 (S.D. Texas, 2018) in which the Court held by performing the contract obligations, Republic ratified the contract and may be held liable under it…"

In the Answering Brief (AB-20), Lennar/CAG argue that ratification only applies to voidable contracts.

To the extent that Lennar/CAG assert that the 2/25/15 Agreement did not include the 15% fee and, therefore, Lennar's agent, Stewart, approving the payment of the 15% fee for payment was not authorized, thereby making the 15% fee void or voidable, absent failure to disaffirm the unauthorized act within a reasonable time and accepting the benefits therefrom, the 15% fee was ratified. Cf (based upon New Jersey law) CompuSecure, L.L.C. v. CardUX, LLC, 206 A.3d 807, 820 (Del. 2018).

II. PRIVATE ALLEYWAYS

A. Question presented: Did the Agreement require Lennar/CAGLLC, as successors to Ryland, to pay the costs for topcoating the private roadways /alleyways located within and around the 236 third party lots and, if so, upon Lennar's refusal was Reybold entitled to recover those for topcoating?

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023) and Factual Findings are "clearly erroneous" if they are not supported by the record and are not the product of orderly and logical deductive process. *Geronta Funding v. Brighthouse Life Insurance Company,* 284 A.3d 47, 59 (Del. 2022)

C. Merits of the Argument:

Located within Meridian Crossing are 12 private roadways/alleyways including 8 (Vega, Canis, Cetus, Horizon, Virgo, Draco, Castor, and Lyra) private roadway/alleyways located within or around the original 236 lots conveyed out to other builders (A914).

Prior to conveying any lots in Meridian Crossing, Reybold had installed the base asphalt coat and curbs in all 12 private alleyways.

In March 2006, Reybold conveyed 236 lots to MCF (PX#3) and from 3/31/06 to 6/07/07 MCF conveyed 33 of these lots to NVR (trading as Ryan Homes), and NVR constructed and sold houses to third parties from 3/31/06

through 6/06/07 (PX#13) (A172-A190).

The 203 lots descended by Sheriff's Deed to Bergen and thereafter, on 8/16/12, Bergen agreed to sell the 203 lots to Ryland Group, Inc. and On 9/26/13, Bergen sold each of its 203 Lots to Ryland (hereinafter the "Ryland Lots") (PX#8) (A260-A267).

As of the effective date and in BACKGROUND Article B of the 2/25/15 Agreement, the 236 lots previously conveyed were acknowledged and referred to therein as the "Third Party Lots." (PX#13, page 1) (A329).

Exhibit H of the 2/25/15 Agreement sets forth the public roads (streets) eventually to be turned over to DelDOT). Exhibit H-2 set forth Reybold's responsibility; Exhibit H-3 set forth Ryland Homes' responsibility; and Exhibit H-4 reflected all public roads and streets as allocated between Reybold and Ryland Homes (PX#13 pages 53 to 55) (A381-A383). At the time of trial in March, 2025, Lennar/ CAG was just finishing up the Ryland public streets (A1688&A1689).

The 8 private roadways/alleyways located within the original 236 and remaining 203 lots are not referenced in Exhibit H of the 2/25/15 Agreement.

Instead, Article 17. Third Party Lots of the 2/25/15 Agreement explicitly provided that "Ryland agrees to assume responsibility for both the topcoating of the roadways and the turnover to New Castle County of the sewer facilities that are associated with the Third-Party Lots." (Emphasis Added). Since Ryland was

already bound by contract with DelDOT and Exhibit H to construct the other roadways, Article 17 did not serve any other purpose other than to memorialize Ryland's obligation to topcoat the above 8 private roadways/alleyways (A348).

The last 6 house conveyed by CAG were 3 in April, 2020, 3 in May, 2020 and the last and final on September 18, 2020 (Reybold Trial Exhibit #37) (A655-A662).

After one year had passed without CAG paving the alleyways, Reybold followed up and had two conversations with CAG about paving the alleyways and there were two different views of it. "...he (Chase) felt it was just proportionate to the open space. And I (Heisler) told him it was a cost and their responsibility" (3/12/25 AM p.90 L.22 to p.91 L.4) (A1793-1794).

By email sent 11/10/21, Chase/Lennar, advised that "Lennar is not responsible for this work directly as the alleyways are considered open space requirements" (DX#2 page 089). Although taking that open space position, CAG/Lennar still failed to pay $72,352.31 (23.94% of $302,223.53) their 23.94% proportionate share of alleyways that they erroneously alleged were part of open space improvements in light of the fact that the Record Major Land Development Plan (PX#1) (A28-A119), the Land Development Improvement Agreements (PX#2) (A120-A171) (parenthetically the Developer Completion Agreement executed less than 1 week later (PX#22) (A670-A689)) refer to and identify the

open space by 38 tax parcel numbers, not one of which is above the other roadways.

Heisler testified at trial that as a result of Lennar's refusal to pave these roadways/alleyways, Reybold had to pay for paving Lennar's private alleys in order to continue to receive permits for Reybold's lots (3/12/25 P.91 L.4 to P.95 L.12) (A1793-A1798) commencing in December, 2021 and continuing through May 2022, Reybold paved the alleyways and invoiced CAG $183,215.90 ($159,318.17 plus $23,897.73 management fee) and $119,007.65 ($103,484.91 plus $15,522.74 management fee (Reybold Trial Exhibit #135 and #136) ($262,803.08 paving + $ 39,420.45 management fee= $302,233.53) (PX#135 (A937-1021) & #136 (A1020-A1079).

In the Answering Brief (AB-26), Lennar/CAG defend based upon the Court's finding that irrespective of whether Article 17 of the 2/15/15 Agreement covered private alleyway paving Reybold was not entitled to reimbursement because 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".

The record was undisputed while Reybold had a self-interest in having the private alleyways paved so Reybold could proceed and develop and sell the last 10% of the lots, Reybold waited for CAG to perform, when CAG failed to perform, Reybold at the last hour for CAG's performance, demanded CAG

perform, GAG refused (based upon a rationale-common area- which CAG did not rely upon at trial) and Reybold to mitigate the damages of approximately 85 lots not being able to be developed for approximately 3 years while litigation proceeded, paid the costs for paving CAG's private alleyways.

Lastly, the Court's rationale totally ignores an injured party's duty to mitigate its damages after the other party has breached its duty. *McKinley v Casson*, 80 A.3d 618, 627 (Del. 2013). For approximate 90 years, Delaware Courts have recognized that mitigation including paying for the costs of minimizing the injury. *Wise v. Western Union Telegraph Co.,* 37 Del. 209, 181 A.302 (1935); *Katz v Exclusive Auto Leasing, Inc.,* 282 A.2d 866, 868 (Del. Super. 1971). Delaware Superior Court Jury Instructions-Duty to Mitigate Damages in Contract Section 22.26. See also RESTATEMENT (SECOND) OF CONTRCTS Section 350 (1979).

III. TURNOVER

A. Question presented: Did the Agreement require Lennar/CAGLLC to contribute to the continuing three-year warranty expense after the open space had been deeded to the maintenance corporation and, if so, is Reybold entitled to recover Lennar/CAGLLC's proportionate share?

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023)

C. Merits of the Argument

In Reybold's Opening Brief, in connection with the approval of the Record Major Land Development Plan, commencing in June 2003, New Castle County (the "County") required Reybold to execute certain Land Development Improvement Agreements (collectively, the "LDIA") and to post certain letters of credit as financial security to secure the completion of site improvements as shown on the Plan (PX#2) (A120-A171).

The 2003 LDIA also included in PART III – PERFORMANCE GUARANTEE Section L. Warranty against defects that "Twenty percent of the entire performance guarantee shall serve as a warranty that all improvements are free from defects for a period of three years after the later: (1) of the date of COUNTY's inspection and acceptance of the final improvement to be constructed,

or (2) the date of the transfer of title to the final improvements..." (PX#2, p.14) (A133)

The 2/25/15 Agreement in Background explicitly provided:

B. In connection with the approval of the Plan, New Castle County (the "County") required Rebold to execute certain Land Development Improvement Agreements (collectively, the "LDIA") and to post certain letters of credit as financial security to secure the compellation of the improvements as shown on the Plan...) (PX#13, p.1) (A120)

C. Pursuant to the County's Unified Development Code (the "UDC"), 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 time frames and procedures set forth therein." (Emphasis Added). (PX#13, p, 2) (A121).

On November 16, 2021, consistent therewith, Reybold and the County executed the "Developer Completion Agreement," (PX#22) (A670-A689) and in approximately January 2022, the open space was deeded ("turn-over") to the Maintenance Corporation/ subject to the Developer's three-year warranty (PX#26 (A711-A769).

The turnover concluded Reybold's responsibility for improvements to and maintenance of the open space and the 2/25/15 Agreement assured Ryland, and in turn, Lennar/CAG, that their liability to Reybold concluded concurrent therewith; however, nothing explicitly or implicitly could eliminate Reybold's LDIA warranty of all improvements for three more years and Lennar/CAG's concurrent

post turnover liability was included by the phrase "time frames and procedures set forth therein" in the 2/25/15 Agreement.

In Lennar/CAG's Answering Brief, they argue that : (1) "Recitals are not a necessary party 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" (AB- 33); and (2) "CalAtlantic is not a party to the LDIA and is not bound by Reybold's obligations thereunder" (AB-32).

In reply, Reybold submits that Lennar selectively cites the case law regarding recitals to support its argument that recitals do not have the force of contractual stipulations and do not control when they conflict with the contract. *Llamas v. Titus*, 2019 WL 2505374, at *16 (Del. Ch. June 18, 2019).

First, Lennar does not offer any explanation why the "recitals" are mere recitals, and not material provisions to the Settlement Agreement. The Recitals are entitled "Background" for the Agreement and, therefore, necessary for an understanding of the agreements reflected thereafter. For example, Recital K, provides "The sum of the Disputed Amounts through the Effective Date is Eight Hundred Sixty-Nine Thousand Five Hundred Eighteen and 54/100 Dollars ($869,518.54)... and on the very next page in Article 2. Reybold Accrued Payment "Ryland and Bergen shall pay the sum of Eight Hundred Sixty-Nine Thousand Five Hundred Eighteen and 54/100 Dollars ($869,518.54).

Alternatively, while "generally, recitals are not a necessary part of the contract, they can be useful to explain the intended meaning of other terms." *Creel v. Ecolab, Inc.*, 2018 WL 5778130, at *4 (Del. Ch. Oct. 31, 2018) (citation omitted). When language in a recital defines terms in a contract, courts consider that language necessary, as it offers insight into the contractual intent of the parties. *Stein v. Wind Energy Holdings, Inc.*, 2022 WL 17590862, at *1, FN5 (Del. Super. Dec. 13, 2022) (citations omitted).

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Next, in reply to Lennar/CAG's argument that CalAtlantic is not a party to the LDIA, Reybold starts by noting that as a matter of law CalAtlantic is a party to the 2/25/15 Agreement.

The Agreement was entered into by and between The Ryland, MCP, Bergen, the Reybold Plaintiffs and Meridian Crossing Homeowner's Association (PX#13) (A329-A411). In 2015, Ryland and Standard Pacific Group merged becoming CalAtlantic Group Inc. ("CAGInc.") (PX#14) (A412-A415). In the winter of 2018, it was reported in the media generally that the CAGInc. had merged into Lennar (DX#14 P.1191); specifically, on 2/12/18, Cheetah Cub Group Corp., a wholly owned subsidiary of Lennar, was formed and merged with and into CAGInc and then converted and changed its name to CAGLLC (DX#15 P.1403 para.23 (A1343).

Thus, if the parties to the Agreement are bound by the UDC/LDIA, CalAtlantic is so bound.

Lastly, while the cases cited by Lennar/CAG references, the operative part of the instrument Lennar/CAG argue only based upon the Recitals ignoring the operative provisions within the Agreement. For example:

Article 1. Definitions commence with (a) Appliable Laws:

all....county...including, in without limitation, the UDC...(PX#13 (A-);

Article 13. Developer Covenants provides that "In order to induce Ryland to enter into this Agreement, in addition to any covenants set forth elsewhere herein, Developer covenants and agrees as follows for the Term of this Agreement:

f. Provided that Ryland is not in monetary default under this Agreement, Developer shall take all efforts to ensure that "open space" in the Community is turned over to the County in a full and timely manner as required by the UDC, the terms of the Plan approval, and the LDIA and otherwise (Emphasis Added);

Article 14. Ryland Covenants. In order to induce Developer to enter into this Agreement, in addition to any covenants set forth elsewhere herein, Ryland covenants and agrees as follows for the Term of those Agreement:

C. Ryland shall pay all assessments for common expenses against Ryland Lots pursuant to the terms of the Declaration and Applicable Laws (Emphasis Added).

Thus, Ryland explicitly agreed to pay all assessments for common expenses pursuant to the terms of Applicable Laws which by definition referenced the UDC/LIDA and which included the continuing three-year warranty expense after the open space had been deeded to the maintenance corporation and CalAtlantic is bound thereby.

IV. ATTORNEY FEES

A. Question presented: Would Reybold be the prevailing party for the litigation as a whole thereby entitled to recover its attorney fees and costs if this Court reverse?

B. Standard of Review: Contract interpretation is question of law subject to de novo review. *Daniel v. Hawkins,*268 A.3d 631, 645 (Del. 2023).

C. Merits of the Argument: The Trial Court held that in its eyes, neither party walks away prevailing on the majority of its claims; however, if this Court reverses on the topcoating issues or two or more of the other issues on appeal thereby entitling Reybold to an award of its attorney fees and costs.

In the Opening Brief, Reybold submitted that if this Court reverses on the topcoating issue or on any other two issues on appeal, Reybold will be the prevailing and contractually entitled to an award of their attorney fees and costs incurred beyond Court costs.

In their Answering Brief, Lennar/CAG relied upon the Trial Court's findings that "Reybold's billing practices and poor recordkeeping complicated this matter and preclude a determination that it prevailed in any sense (AB-39). However, Lennar/CAG know that the Court's comments regarding Reybold's method of providing invoices to CalAtlantic were not material to any of the Court's findings.

Reybold sought $904,142.29 in damages:

(1) Maintenance $77,747.42 ($67,606.45+15% $10,140.97)) and the Court awarded $66,468.53(or 98.3% of the principal).

(2) Improvements $534,791.53 and the Court awarded $247,545.95 (or 46.2%) the difference not being attributable to any billing practices/poor recording keeping but primarily to: (1) $80,218.73% in 15% fees; and (2) $125,337.24 without 15% fee on improvements and maintenance after the open space was deeded. In summary, but for the Court's determination as to management fees and post turnover, Reybold would have recovered $453,101.92 for improvements ($247,545.95 + $80,218.73 + $125,337.24) of $534,701.53 (or 84.7% of the improvements)

Paving Alleyways $302,233.53 and Court awarded $0 but not based upon any billing practices/poor record keeping.

In summary, $66,468.53 maintenance awarded, $247,545.95 improvements awarded, $10,140.97 15% fee denied on maintenance, $80,218.73 15% fees denied on the improvements, $125,337.24 denied post turnover and $302,222.53 denied paving totaled $831,933.95 or 92% totally unrelated to any billing practices and poor record keeping.

Thus, Reybold's request if this Court reverses on the topcoating issue or on any other two issues on appeal, Reybold will be the prevailing and contractually

entitled to an award of their attorney fees and costs incurred beyond Court costs was premised upon Reybold defeating all of CAG's counterclaims and prevailing upon their "predominance" on their claims as illustrated objectively hereinafter.

If this Court reverses just as to $125,337.24 turnover without the 15% fee ($123,040.69 for improvements and $2,296.55 for maintenance), Reybold will have recovered $439,351.72 ($314,014.48 + $123,040.69 +$2,296.55) 48.6% resulting in Reybold breaking even on the majority of its claims and defeating all of CAG's counterclaims.

If this Court just reverses just as to the $262,803.08 paving without the 15% fee paving, Reybold $576,817.56 ($314,014.48 + $262,803.08) or 63.8%, which would be predominance on its claims in addition to defeating all of CAG's counterclaims.

If this Court reverses as to the $125,337.24 turnover and the $262,803.08 paving, both without the 15% fee, Reybold will recover $702,154.80 ($314,014.48 + $125,337.24 + $262,803.08) or 83.9%, which would be overwhelming on its claims in addition to defeating all of CAG's counterclaims.

If this Court reverses as to the 15% Fee, Reybold would recover $105,385.89 ($47,102.17 not awarded with Improvements/Maintenance, $18,682.58 with the turnover fees and $39,430.45 with the paving) for a total of $864,218.27 or 95.6%.

V. LENNAR PROPER PARTY

A. Question presented: Did the Trial Court err in granting Lennar summary judgment by failing to consider a parent corporation's liability for a subsidiary's actions based upon commingling of assets and operations as an alternative to piercing the corporate veil?

B. Standard of Review: This Court reviews a Trial Court's decision on a motion for summary judgment de novo, applying the same standard as the Trial Court. *Paul v Deloitte & Touche,* LLP, 974 A.2d 140, 145 (Del. 2009)

C. Merits of the Argument: Reybold presented sufficient evidence of Lennar's commingling of assets and operations as to created issues of material fact that precluded summary judgment.

In *O'Leary v. Telecom Resources Service., LLC*, 2011 WL 379300 at *7 (Del. Super. Jan. 14, 2011), the Superior Court identify the "extreme circumstances" including the commingling of assets and operations, in which a parent corporation can be held liable for a subsidiary's action:

"...Fraud is one circumstance under which a parent company can be held liable for a subsidiary's action. Another circumstance is when the subsidiary is merely an instrumentality or alter ego of the parent corporation. The degree of control that would be required to "pierce the veil" and hold the parent corporation liable would be a degree of control by the parent corporation that the subsidiary no

longer has legal or independent significance of its own. The key to this degree of control is an absence of corporate formalities separating the parent and the subsidiary, "such as where the assets of the two entities are commingled and their operations intertwined." (Internal citations omitted)

In addition, this principle that a parent, as an agent, can be responsible for the acts of its subsidiary was recognized by this Court in footnote 35 in *Bhole, Inc. v. Shore Investments, Inc.* 67 A.3d 444, 455 (Del. 2013).

In the Opening Brief, Reybold set forth the undisputed facts in this case established that the assets of Lennar and CAGLLC were commingled and their operations intertwined including without limitation:

1. Commencing December 2017 and continuing throughout Reybold invoiced Lennar, including to the attention of Joel Goldfinge, then a Lennar Division Controller and subsequently Lennar's Vice President of Finance, not CAGLLC;

2. Stewart, Lennar's (not CGLLC's) Land Development Director approved based upon the work performed approved for payment invoices (PX#16 P.4) (A494);

3. All communications regarding unpaid invoices were initiated by and

responses were to Stewart, Lennar's Land Development Director (PX#20) (A552-654); (PX#21) (A663-669 and A690&691); (PX#27) (A770-912); (PX#28) (A913) (PX#136) (A915-A936) (PX#135) (A937-A1021) (PX#29) (A1002-A1079);

4. Any payments were not made by CAGLLC but by Lennar or its subsidiary U.S. Homes, Corp. including by check with the signature of Diane Bessette, not CAGLLC's but Lennar's Chief Financial Officer (PX#16 P.9) (A495) (PX#24 (A692&693); and

5. In connection with the private alleyway dispute, by email sent 11/10/20 Chase, as Lennar's Senior LDM advised Reybold that "Lennar is not responsible for this work directly as the alleyways are considered open space requirements." (Emphasis Added).

In summary, there was not any evidence that Stewart, Chase or anyone else with Lennar ever objected to Reybold's emails and letters being addressed to them in their Lennar Capacity and not to CAGLLC and there was not a single CAGLLC document nor CAGLLC person was ever identified.

In fact, CAGLLC was so absent from any involvement that on 6/28/22 when the Complaint Reybold filed its Compliant (A1080-1277), Reybold named only Lennar as a Defendant and on 8/22/22, Lennar filed an Answer (DX#8) (A1278-1296) for the first time denying that "it is the correct party in interest," and

subsequently on in response to Reybold's interrogatory, identified an entity called CAGLLC.

In their Answering Brief (AB-44) Lennar/CAG address only that the invoices were addressed to and payments were made by Lennar and that this was not sufficient evidence of commingling of assets.

Lennar/CAG totally fail to address commingling of operations including without limitation, why Lennar's Land Development Director was approving Reybold invoices for payment, why Lennar's Senior Land Development Director was responding that Lennar was not responsible for the costs of the private alleyways based upon the CAG being a party to the 2/25/15 Agreement and why there is not a single CAGLLC document nor CAGLLC person was ever identified.

Reybold respectfully submits, at a minimum, the above facts, inter alia, create a dispute as to material facts as to whether Lennar exercised the degree of control over CAGLLC such that CAGLLC no longer had any legal or independent significance as a result of which the Trial Court erred in granting Lennar summary judgment and that any reversal upon issues I to III be combined with trial upon Lennar's responsibility unless mooted by CAGLLC's payment of any judgment (Particularly in light of the granting of CAG's Motion to Deposit Funds and the a absence of such deposit in the record as of 10/10/25 (A27).

CONCLUSION

The Reybold Appellants respectfully submit that based upon the undisputed facts and as a matter of law the Trial Court erred in not awarding Reybold:

1. $47,272.86 in management fees based upon award for common facility and improvements);

2. $302,233.53 for paving Lennar/CAG's private alleyways; and

3. $143,996.26 based upon the warranty on the improvements from January 2022 to April 2024 and maintenance invoiced in January and February 2022.

In addition, should this Court reverse as to #1 and #3 above Or #2 above alone, Reybold under any standards would be the prevailing party and contractually entitled to an award of their attorney fees and costs incurred beyond Court costs.

Lastly a dispute as to material facts as to whether Lennar exercised the degree of control over CAGLLC such that CAGLLC no longer had any legal or independent significance as a result of which Reybold requests that any reversal be combined with trial upon Lennar's responsibility unless mooted by CAGLLC's payment of any judgment.

Respectfully Submitted

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