CASE NO. 21-CV-640

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

UNITED HOUSE OF PRAYER FOR ALL PEOPLE OF THE CHURCH ON THE ROCK OF THE APOSTOLIC FAITH,

Appellant,

v.

RESTORATION DOCTOR, LLC,

Appellee.

On Appeal (following remand by this Court in 17-CV-1013)
from D.C. Superior Court Case No. 2015 CA 002450 B
The Honorable John Campbell, Superior Court Judge, Presiding

BRIEF FOR APPELLANT UNITED HOUSE OF PRAYER FOR ALL PEOPLE OF THE CHURCH ON THE ROCK OF THE APOSTOLIC FAITH

Mary E. Gately
(D.C. Bar No. 419151)
mary.gately@dlapiper.com
*Paul D. Schmitt
(D.C. Bar No. 1007680)
paul.schmitt@dlapiper.com
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, DC 20004
Tel: (202) 799-4500

Mickie Bailey, Esq.
(D.C. Bar No. 483520)
mybailey.uhop@gmail.com
United House of Prayer
Office of Counsel
1113 7th Street, NW
Washington, DC 20001
Tel: (202) 408-0251

Attorneys for Appellant United House of Prayer for All People of the Church on the Rock of the Apostolic Faith

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Court of Appeals Rule 28(a)(2)(A-B) and Rule 26.1, Appellant United House of Prayer for All People of the Church on the Rock of the Apostolic Faith (the "United House of Prayer") hereby submits its list of (A) parties and counsel in the proceedings in the Superior Court; (B) parties and counsel in this appeal; and (C) corporate disclosure statement:

(A) Parties and Counsel in Superior Court:

1. Restoration Doctor, Inc.

   Mr. Stuart L. Peacock
   Attorney at Law
   1311 Buchanan Street NW
   Washington, DC 20011

2. Restoration Doctor, LLC*

   Mr. Stuart L. Peacock
   Attorney at Law
   1311 Buchanan Street NW
   Washington, DC 20011

3. Restoration Doctors, LLC
   Mr. Stuart L. Peacock
   Attorney at Law
   1311 Buchanan Street NW
   Washington, DC 20011

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* The Superior Court held that "Restoration Doctors, LLC" is the successor to "Restoration Doctor, LLC." However, the Superior Court case caption lists "Restoration Doctor, Inc. (a non-existent company under whose name the original action was filed), while the caption in this appeal lists "Restoration Doctor, LLC." In briefing on remand, Appellee represented that the name of the entity is now "Restoration Doc LLC." App. at 790-793. For purposes of argument, and without waiving any of its rights, UHP treats Restoration Doctors, LLC as the Appellee.

4. United House of Prayer

   Mickie Bailey, Esq.
   United House of Prayer
   Office of Counsel
   1113 7th Street, NW
   Washington, DC 20001

(B) Parties and Counsel on Appeal:

1. Restoration Doctor, LLC

   Mr. Stuart L. Peacock
   Attorney at Law
   1311 Buchanan Street NW
   Washington, DC 20011

2. Restoration Doctors, LLC

   Mr. Stuart L. Peacock
   Attorney at Law
   1311 Buchanan Street NW
   Washington, DC 20011

3. United House of Prayer

   Mary E. Gately
   Paul D. Schmitt
   DLA Piper LLP (US)
   500 Eighth Street, NW
   Washington, DC 20004

   and

   Mickie Bailey, Esq.
   United House of Prayer
   Office of Counsel
   1113 7th Street, NW
   Washington, DC 20001

(C) Corporate Disclosure Statement

No publicly held corporation holds 10% or more of United House of Prayer's membership interests.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

RULE 28(a)(5) STATEMENT

This Court has jurisdiction over this appeal because it is from a final order or judgment that disposes of all of the parties' claims.

Appellant United House of Prayer for All People of the Church on the Rock of the Apostolic Faith ("UHP") hereby submits its Opening Brief. For the reasons stated herein, the Superior Court's August 16, 2021 Judgment Order (reinstating its August 23, 2017 Judgment) and Order on Remand should be reversed and vacated, with instructions to the Superior Court to enter judgment in favor of UHP.[1]

STATEMENT OF THE ISSUES FOR REVIEW

1. Whether the Superior Court erred in holding that a July 20, 2012 Work Authorization Agreement between UHP and Restoration Doctor, LLC ("RD-Singular") was a valid and enforceable contract when executed, despite the fact that it contained no specific terms as to the scope and price of the work to be performed.[2]

2. Whether the Superior Court erred by ignoring (a) the parties' course of conduct in using insurance company estimates as the basis for the price of restoration work, (b) RD-Singular's failure to refute the estimates provided by UHP, and (c) RD-Singular's subsequent performance of the very work contained within those estimates, which constituted RD-Singular's acceptance of those estimates, and bound both parties with regard to the price and scope of the restoration work.

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[1] Appellee filed suit under the name "Restoration Doctor, Inc." but later requested that "Restoration Doctors, LLC" be named as the plaintiff. On remand, Appellee claimed that the plaintiff was now called "Restoration Doc LLC." App. at 790-793. Without waiving any rights, UHP treats Restoration Doctors, LLC as the Appellee.

[2] For purposes of clarity, UHP refers to Restoration Doctor, LLC as "RD-Singular" and Restoration Doctor**s**, LLC as "RD-Plural".

3. Whether the Superior Court erred in holding on remand that Restoration Doctors, LLC ("RD-Plural") is the successor to RD-Singular, and thus had standing and capacity to pursue a lawsuit to enforce the Work Authorization Agreement between UHP and RD-Singular.

4. Whether RD-Plural could have brought its claims in the first instance, given that the original complaint was filed by a non-existent entity, and thus was void *ab initio*, leaving nothing to which the Amended Complaint could relate back.

5. Whether the Superior Court erred in its calculation of interest awarded by failing to credit UHP's previous payment of $150,970.19 to principal, thus significantly elevating the interest awarded in RD-Plural's favor.

STATEMENT OF THE CASE

I. Nature of the Case

UHP brings this appeal after remand proceedings in the Superior Court. UHP previously appealed the Superior Court's August 23, 2017 Judgment on largely the same grounds brought in this appeal. *See* DCCA case no. 17-CV-1013. On July 25, 2019, this Court vacated the August 23, 2017 Judgment, holding that the Superior Court erred in precluding inquiry at trial into whether Restoration Doctors, LLC was a proper plaintiff. App. at 466-470. In its remand order, this Court noted that "[i]f the trial court determines on remand that there was a proper plaintiff, then the trial court may enter a new judgment in favor of that plaintiff. UHP would be free to

appeal from that judgment and could then seek review of the trial court's ruling on the merits." App. at 469. On remand, the Superior Court held that RD-Plural was RD-Singular's successor and thus had standing. App. at 797-807. UHP now appeals that ruling as well as the underlying judgment on the merits.

This case arises from a dispute concerning restoration work at one of UHP's churches in Baltimore after a flood on July 20, 2012. UHP, a religious and charitable organization, contacted a company named "Flood Doctor, Inc." to perform mitigation work (removing water and waste) at the church property.[3] On behalf of Flood Doctor, Mr. Frank Darakhshan visited the property the same day and presented UHP with a form contract, titled "Work Authorization Agreement" (the "Agreement"), which lacked specific terms as to the scope or price of the work to be performed. The parties to the Agreement were UHP and RD-Singular.

Over the next few weeks, the parties negotiated and agreed to a price ($165,467.40) for the mitigation work, using insurance estimates provided by an adjustor from Traveler's Insurance, UHP's insurer. It is undisputed that RD-Singular accepted this figure and that UHP paid it. Once the mitigation work was complete, UHP proposed costs for RD-Singular to restore the church property to its former state. As the parties had done for the mitigation work, UHP's proposed price was based on insurance estimates provided by Traveler's. After receiving the

[3] Record cites for facts can be found in the Statement of Facts, *infra* at 15-27.

proposed costs for the restoration work, RD-Singular provided no counter-offer, and performed the work.

Seven months later (in late February 2013), UHP became dissatisfied with the pace and quality of the restoration work and terminated the business relationship. UHP was forced to hire additional contractors to finish the job that RD-Singular failed to complete. In October 2013 (almost eight months later) Mr. Darakhshan sent UHP his "final" invoice, which charged $827,300.02 for restoration services purportedly rendered. This was far in excess of the amount agreed to by the parties for the restoration work ($440,721.32), and it contravened the bargain the parties had struck as to costs through the course of their negotiations and performance.

UHP was faced with a parade of entities in this case, all apparently owned by Mr. Darakhshan. UHP executed the Agreement with RD-Singular; it was directed to make checks payable to Flood Doctor, Inc.; it was presented with a final invoice by Mr. Darakhshan as "Project Manager" of "Flood Doctor LLC"; it was sued by "Restoration Doctor, Inc.", an entity that never existed; and after the Superior Court's judgment on remand, it faces liability at the hands of RD-Plural, now apparently known as "Restoration Doc LLC". UHP was not made aware of RD-Plural's claim under the Agreement until March 2017, when RD-Plural first appeared in the litigation and claimed that it was the "successor" to RD-Singular,

the actual party to the Agreement. No meaningful support has been provided for this successorship theory, other than self-serving statements.

The Superior Court erred in numerous ways. Prior to the initial appeal, the Court wrongly enforced a "blank check" contract and refused to recognize the price terms to which the parties had bound themselves through a course of conduct. Further, despite a lack of supporting evidence, the court wrongly held on remand from this Court that RD-Plural was the corporate successor to RD-Singular and thus had standing to sue. The court also ignored that the statute of limitations had run because the complaint was filed by a non-entity. Finally, the court granted RD-Plural a windfall by miscalculating the interest due, resulting in almost $150,000 in excessive interest charges to date. UHP requests that this Court vacate the judgment below, and instruct the Superior Court to enter judgment in favor of UHP.

II. Course of the Initial Pre-trial and Trial Proceedings

The original Complaint was filed by "Restoration Doctor, Inc." ("RDI") in the Superior Court on April 7, 2015. App. at 19-30. That entity never existed. *See infra* at 24. The Complaint alleged that UHP hired RDI to perform "flood damage mitigation services" at a property at 1515 Ashland Avenue in Baltimore, and that the parties had entered into an Agreement to that effect. App at 21. The Agreement was signed by RD-Singular. App. at 28. RDI also alleged that after services were provided, UHP made only partial payments and "made no further attempt to pay

[RDI] any part of the outstanding balance it owed[.]" App. at 22. RDI brought breach of contract and unjust enrichment claims for $617,767.02 in allegedly unpaid sums, plus interest at 1.5% per month. App. at 24-25.

UHP filed its Answer on April 28, 2015. App. at 31-37. UHP denied the overwhelming majority of RDI's allegations, as well as any liability under the Agreement or otherwise. App. at 32-35. UHP also presented several defenses, including lack of standing and unenforceability of the contract. App. at 35-36.

RDI filed an Amended Complaint on November 1, 2016. App. at 43-49. The Amended Complaint's allegations were largely similar to those in the original Complaint; but RDI now acknowledged that, on September 13, 2016, UHP "sent a check in the amount of $150,970.19[.]"[4] App. at 46. RDI alleged that it was also entitled to 1.5% monthly interest. App. at 47. UHP filed an Answer on November 21, 2016, again denying the overwhelming majority of RDI's allegations, as well as any liability. App. at 50-57. UHP also reasserted its standing and enforceability defenses, among several other defenses. App. at 56.

[4] Subtracting that payment from the original principal amount claimed by RDI in the Complaint ($617,767.02), the principal amount due should have been $466,796.83. However, RDI alleged that after the payment, there was "a remaining balance due in the amount of $511,796.83" – *i.e.*, $45,000 more than what was originally claimed, once the additional payment was credited. App. at 46. RD-Plural seems to have addressed this error in its closing argument after trial by acknowledging that the restoration work cost $827,300.02. App. at 429.

UHP filed a motion to dismiss / motion for summary judgment on March 3, 2017. App. at 58-72. UHP argued that (a) RDI did not legally exist as a corporation, and therefore had no legal capacity to bring suit (App. at 64-65); (b) the complaint could not be amended, because the original suit was a nullity as it was brought by a non-existent entity (App. at 65-68), and (c) because the original suit was void *ab initio,* it could not toll the three-year statute of limitations, which had expired (App. at 69). UHP also sought leave to amend its Answer to add a defense that RDI lacked capacity, and a motion for a determination that Maryland law applied.

On March 17, 2017, Appellee responded to UHP's motion to dismiss/motion for summary judgment, claiming that RDI was not the actual plaintiff, and that RD-Plural, a separate corporate entity, was the proper plaintiff as a "successor" to RD-Singular. App. at 96-99. In support, RD-Plural submitted an affidavit from Mr. Darakhshan. App. at 108. RD-Plural argued, *inter alia,* that (a) the naming of RDI as the plaintiff was a "mistake," and that leave should be given for RD-Plural to be substituted (App. at 96); and (b) RD-Plural had capacity to sue. App. at 99-100.

UHP filed its reply on March 22, 2017. App. at 109-118. UHP noted that the plaintiff (a) had not contested that RDI did not exist, and therefore had no capacity to sue (App. at 111-112); and (b) had not addressed UHP's argument that the filing of the initial complaint was void *ab initio,* thus leaving nothing for the Amended Complaint to "relate back" to for statute of limitations purposes. App. at 112-113.

On May 8, 2017, the Superior Court denied UHP's motion to dismiss/motion for summary judgment "for the reasons stated in the opposition." App. at 124. On the same day, the Court held that "Maryland substantive law presumably applies to claims at issue here, but the Court does not agree that Maryland law settles the question of 'capacity.'" App. at 126. The Court granted UHP's motion to amend the answer to add the defense of lack of capacity. App. at 128, 136.

Because RD-Plural had now changed its entire theory of the case – *i.e.*, it now based its standing to sue on its "successor" status *vis-à-vis* RD-Singular, the actual party to the Agreement – UHP moved for reconsideration of the Superior Court's ruling on May 17, 2017. UHP argued, *inter alia*, that (1) RD-Plural had no standing because it was not a party to the Agreement, a third party beneficiary, or a successor; and (2) RD-Plural was not the proper party to bring suit. App. at 153-154.

Trial was held from June 19 through June 22, 2017. On the first day of trial, the Court denied UHP's motion for reconsideration. App. at 211:21-24. At trial, RD-Plural called as witnesses (1) Foad David Darakhshan, brother of Frank Darakhshan and owner of Galaxy Granite; and (2) Frank Darakhshan, purported owner of RD-Singular and RD-Plural. UHP called four witnesses: (1) Adam McGahee, UHP's accountant; (2) James Hanrahan, former adjuster with Traveler's Insurance Companies; (3) Wayne Jones, maintenance supervisor for UHP's Pennsylvania and Maryland districts; and (4) Frank Smith, a commercial contractor.

During the cross-examination of Frank Darakhshan, UHP's counsel attempted to explore whether RD-Plural was RD-Singular's corporate successor, but the court prohibited that line of questioning. App. at 258:6 – 259:13. The court stated that the issue of standing was "not relevant to the merits of this case" (App. at 258:14-15) given that it had "already ruled against" UHP. App. at 258:24-25.

The parties submitted written closing arguments on July 7, 2017. In its closing argument, UHP argued, *inter alia*, that the Agreement was unenforceable with regard to the restoration work, and that the amounts claimed by RD-Plural in damages were excessive. App. at 391-402. UHP's standing defense had already been raised and preserved as discussed above. App. at 259:10-12. In its closing, RD-Plural's damages demand now contradicted the damages theory in the Amended Complaint, in that it sought to credit a $150,970.19 payment made by UHP on September 13, 2016 to interest, rather than principal. App. at 416, 429.

III. Initial Disposition Below

The Superior Court rendered its verdict on August 23, 2017, and entered judgment in favor of the plaintiff. App. at 432-450. These findings and rulings were incorporated in a Judgment Order the same day. App. at 452. They included:

- "[A]s a matter of law" the Agreement was "a binding contract" and "[t]he fact that it is missing a price term is unsurprising, unavoidable, and legally unimportant in the circumstance." App. at 436:4-10.

- The Agreement "covered both phases of the project as of the date of signing" – *i.e.*, both mitigation and restoration. App. at 436:17-22.
- The price for the mitigation work (approximately $165,000) "was negotiated with the plaintiff's assistance with Traveler's [Insurance]" App. at 438:2-5. That amount was paid by UHP and was thus "off the table." App. at 438:5-8.
- With regard to the restoration work, "the plaintiff never agreed to accept less than the amount that was billed finally, and never in particular agreed to accept any estimate provided by Traveler's Insurance." App. at 437:13-16.
- The court found that "the work . . . was properly and professionally done" and "the costs billed were reasonable[.]" App. at 439:2-5.
- The plaintiff had received "maybe exactly [$380,000] from [UHP] or from the insurance company for this project." App. at 438:12-15. After UHP's counsel noted that UHP had paid $530,000, the court clarified that the $380,000 figure was for "the restoration part of it." App. at 438:16-18.
- The plaintiff was claiming $617,767.42 (which allegedly represented the amount billed, minus the amount that UHP paid), along with a 1.5% "monthly late fee", running from September 20, 2013, when the final invoice was presented to UHP. App. at 438:18-25; App. at 446:23 – 447:8.

- Adding the interest accrued from September 20, 2013 through July 7, 2017 to the principal figure, plaintiff was owed $882,038.49, plus interest of $304.65 per day starting July 7, 2017. App. at 447:24 – 448:2, 448:21-25.

IV. UHP's First Appeal

UHP filed its first Notice of Appeal on September 7, 2017. App. at 453-455. In that appeal, UHP raised the same arguments as in this appeal, but also argued that the Superior Court erred in precluding UHP from litigating the issue of standing. App. at 457-460. On July 25, 2019, this Court vacated the August 23, 2017 Judgment and remanded the case, holding that the Superior Court "erred in precluding inquiry at trial" as to standing, and it declined to address UHP's other arguments pending the Superior Court's resolution of whether RD-Plural was a proper party. App. at 466-470.

V. Proceedings in the Superior Court on Remand

On remand, UHP filed a renewed motion for summary judgment on October 31, 2019, arguing that RD-Plural had not established that it was the successor or assignee of RD-Singular (and thus had no standing). App. at 10. After being informed that UHP would file the renewed motion for summary judgment – and just prior to the filing of UHP's motion – RD-Plural filed a "Praecipe" attaching a "corrected affidavit of Frank Darakhshan" changing the date of RD-Singular's corporate cancellation from May 2010 to May 2013. App. at 471-475. RD-Plural

claimed this correction was necessary "[d]ue to a typographical error." App. at 472. UHP moved to strike the "corrected" affidavit on November 21, 2019. App. at 11.

The Superior Court denied both the renewed motion for summary judgment and the motion to strike via oral order at a hearing on December 13, 2019, and set a schedule for discovery and an evidentiary hearing. App. at 11. Over the course of the next several months, the parties conducted written discovery, and the depositions of Mr. Darakhshan and UHP's Elliott Thompson were taken.

The Superior Court held an evidentiary hearing on October 15, 2020 and November 2, 2020, hearing testimony from Mr. Darakhshan and Mr. Thompson. In lieu of closing arguments, it directed the parties to file briefs, which they did on November 16, 2020. App. at 729-771. UHP argued, *inter alia*, that (1) RD-Plural did not have standing, because it was not a party to the Agreement, was not a successor to RD-Singular, and was not assigned any rights to the Agreement; and (2) in any event, the statute of limitations had run, as the initial complaint was filed by a non-entity and was void *ab initio*, leaving nothing to which the Amended Complaint could relate back. App. at 729-755. RD-Plural argued that (1) it was the successor and equitable assignee of RD-Singular; and, that (2) RD-Plural was now named "Restoration Doc LLC." App. at 756-771. UHP filed a response on November 24, 2020 (App. at 772-783), and RD-Plural filed a reply on December 14, 2020. App. at 784-795. UHP argued that the request to substitute "Restoration Doc

LLC" as the plaintiff contradicted the evidence and RD-Plural's previous theory of the case. App. at 777-781.

VI. Ruling on Remand

The Superior Court rendered its ruling in an Order on Remand on August 16, 2021, and entered judgment in favor of RD-Plural. App. at 796-807. The court held that RD-Plural was RD-Singular's successor, and that RD-Plural had standing to pursue the lawsuit. App. at 798. Among the court's specific findings were:

- RD-Singular contracted with UHP in July 2012 for the flood remediation work, and it performed the work. When RD-Plural came into existence in May 2013, work had already ended on the UHP project. App. at 800.
- RD-Plural was born in May 2013, "just as RD-Singular was abandoning its corporate registration and ceasing to operate[.]" App. at 803-804.
- The court accepted Mr. Darakhshan's testimony that RD-plural continued RD-Singular's work, *inter alia*, using the same employees, equipment, website and bank account, and working on the same projects. App. at 800, 804.
- The court discounted the fact that when it was formed and registered, RD-Plural was given a different entity ID number from the one RD-Singular was assigned, because RD-Plural was not asserting that it was "literally the 'same' entity" as RD-Singular; rather "they were <u>effectively</u> the same, because the former continued the business of the latter as its successor." App. at 804.

- The court acknowledged that "Mr. Darakhshan seems to have paid little attention to the differences, if any, between these corporate forms or their names[,]" that there was no documentation of the successorship of RD-Plural to RD-Singular, and that UHP proved "that Mr. Darakhshan never notified it of the change in the name or the formal succession[.]" App. at 802, 805.
- However, the court found "the absence of documentation insignificant, given the volume of the other evidence" and that "notifying contractual parties that your company has changed names and is now technically a different entity is not required by law, as long as the change does not prejudice the other party[.]" It held that UHP was not prejudiced, and was "never at all interested in the formal name of Mr. Darakhshan's company." App. at 805-806.
- The court accepted Mr. Darakhshan's explanation that the name change of RD-Plural to "Restoration Doc LLC" was "intended to be only a 'd/b/a' designation," that Mr. Darakhshan checked the wrong box on the relevant form, and that "he has filed new paperwork to correct the mistake and to restore the company to its correct name of RD-plural." App. at 801.
- Given that it had found that RD-Plural was RD-Singular's successor, the court declined to address the equitable assignment theory. App. at 802.
- The court did not address UHP's argument that the statute of limitations had run because a non-existent entity filed the initial complaint.

UHP filed its Notice of Appeal on September 10, 2021, appealing from the August 16, 2021 ruling and judgment, and renewing its appeal as to the judgments and orders of May 8, 2017, June 29, 2017, and August 23, 2017. App. at. 811-812.

STATEMENT OF FACTS

A. The Flood at UHP's Church at 1515 Ashland Avenue

The United House of Prayer is a 501(c)(3) nonprofit religious corporation, organized and existing under the laws of the District of Columbia and 25 states. UHP provides religious services for all people regardless of race or creed, and is a significant contributor to the communities in which its churches are located. On July 20, 2012, UHP suffered a flood at its church located at 1515 Ashland Avenue in Baltimore, Maryland (the "Property"). App. at 82. Although the flood damage was contained to the basement of the Property, it required immediate remediation efforts to minimize damage, as well as repair work to restore the Property to its former state.

Given the exigent circumstances, UHP could not conduct an exhaustive study of companies capable of performing the necessary mitigation services. After a brief search, Apostle Elliott Thompson (a UHP employee) identified a flood remediation company named "Flood Doctor Inc.", which he contacted by telephone. App. at 82. Responding to Mr. Thompson's call, Mr. Frank Darakhshan visited the Property that same evening, July 20, 2012. App. at 220:25–221:7; 225:3-18.

B. The Work Authorization Agreement

After Mr. Darakhshan viewed the premises, UHP and RD-Singular signed the Work Authorization Agreement. App. at 265:16-23. RD-Plural was not a party to the Agreement. App. at 1157, 532:20-24, 570:15-25. UHP authorized RD-Singular to "enter [the] property, furnish materials, supply all equipment and perform all labor necessary to protect [the] property from further damage, and to perform all restoration procedures necessary to repair and restore the carpet, furniture, structure, and other furnishings." App. at 830. With regard to price, the Agreement stated that UHP understood that:

> "*water damage* is a progressive condition and that *drying time* varies depending on the types of materials, quantity of water, degree of saturation, airflow volume and velocity, temperature and the indoor and outdoor humidity. Therefore, I understand it is impractical to give an accurate quote for services before completion. I have been supplied with an estimate or invoice from [RD-Singular], and agree to pay the full price for the work [RD Singular] performs.

App. at 830 (emphasis added). The Agreement provided no further details about the scope and price of the work to be performed. UHP agreed that it was "personally responsible for any and all work performed by [RD-Singular], regardless of whether my insurance company covers the loss" (App. at 831), but it never received an "estimate or invoice" from RD-Singular prior to signing the Agreement – or at any time thereafter. The Agreement does not mention any third-party beneficiaries or assignment of rights to any other party.

On the day the Agreement was signed, Mr. Darakhshan told Mr. Thompson to make any checks payable to Flood Doctor, Inc. (not RD-Singular). App. at 266:14-17; App. at 937. UHP subsequently did so.

C. The Parties Negotiate the Cost of the Mitigation Work.

Shortly after the Agreement was executed, RD-Singular[5] began negotiating with UHP's insurance company, Traveler's Insurance, as to an all-inclusive cost for the mitigation work. App. at 234:20–235:4. As Frank Darakhshan testified, initially the parties did not know how much the mitigation phase would cost at the time the Agreement was signed because "with water damage you're basically looking at the surface of things and we need to actually get into the work and start tearing stuff out and figure out how much work there is for you to be able to figure out what the charge [is]." App. at 222:18-223:12; *see also id.* at 223:15-18 (confirming that his previous testimony referred to mitigation phase). He further testified that Traveler's approved an amount of approximately $165,000 for the mitigation work. App. at 234:16-18; *see also* App. at 1008 (reflecting estimate of $165,467.40); App. at 357:25 – 358:8 (testimony of Mr. Hanrahan confirming same). Mr. Darakhshan admitted at trial that he accepted that amount after initially asking for approximately $185,000 for the mitigation work. App. at 281:8-24.

[5] As discussed below, Mr. Darakhshan's company repeatedly represented itself as "Flood Doctor." For purposes of consistency, UHP refers to the entity as "RD-Singular", but it was unclear exactly what entity UHP was dealing with.

D. Negotiations Regarding the Restoration Work

Once the mitigation work was complete, RD-Singular commenced restoration work on the property. Mr. Darakhshan testified that initially, at the time he and Mr. Thompson reviewed and signed the Agreement, they did not discuss the price of potential restoration work, because Darakhshan "didn't know how much it was going to cost to restore the property. We didn't know what things needed to be restored." App. at 227:18-21. However, Mr. Darakhshan admitted that later on (*i.e.*, once the mitigation phase was completed), it was "a little bit easier" to estimate costs for the restoration work compared to the mitigation work, because at that point, "we are into the project, we know what was taken out" of the building. App. at 223:19-23.

Traveler's Insurance engaged a separate company, F.B. Davis Sons, to estimate the costs to restore the property. F.B. Davis agreed to perform the work included in that estimate for $282,504.36. App. at 320:5-12. Mr. Hanrahan, then employed as an adjustor in Traveler's major case unit (App. at 316:5-7), sent the estimate to Mr. Thompson, who in turn emailed it to Mr. Darakhshan on August 25, 2012. App. at 948-969. Mr. Darakhshan admitted that he received the estimate. App. at 274:24–275:3; App. at 273:15-20. The estimate was based largely on figures provided by Xactimate, a computer program used by insurance companies and contractors, including Mr. Darakhshan. App. at 276:15 – 277:13; 321:13 – 322:1; 441; 969. It included costs for labor, materials and time. Accordingly, through Mr.

Thompson's email, UHP informed Mr. Darakhshan that UHP would pay $282,504.36 for the services specified in the estimate.

The F.B. Davis estimate of $282,504.36 was not all-inclusive; as Mr. Hanrahan testified, it did not include costs for the mitigation phase (already negotiated at $165,000), nor did it include the replacement of electrical systems and specialty items as discussed below. App. at 323:18-23; 346:16–347:22. As for the items that were contained within the estimate, Traveler's determined that the replacement cost value of the property as of August 26, 2012 was $282,504.36, based on the F.B. Davis estimate. App. at 348:4-9. That same figure was later memorialized in Traveler's statement of loss. *See* App. at 1008; App. at 324:21-25.

At trial, Mr. Darakhshan claimed that he never agreed with the amount contained in the insurance estimate (App. at 285:11-20), and Mr. Hanrahan admitted that he was never privy to any conversation in which RD-Singular accepted the insurance estimate as the price for the restoration. App. at 360:18-25. However, Mr. Darakhshan admitted that he never expressly refuted the amount quoted in the estimate.[6] App. at 276:15 – 277:25. And Mr. Darakhshan never offered his own estimate (as the Agreement required) or a counter-proposal, as he had previously

[6] UHP relied to its detriment on Mr. Darakhshan's failure to object or make a counter-proposal, because based on his silence, UHP declined to accept the F.B. Davis offer to perform the work for the amount quoted by the insurance company.

done with the mitigation work. UHP only learned of the exorbitant costs when it received the "final" invoice in October 2013. *See infra* at 23-24.

Once the Traveler's estimate had been shared between the parties, restoration work commenced for the very same work that had been enumerated in the F.B. Davis estimate. On August 29, 2012 (*i.e.*, after having received the Traveler's Insurance estimate), Mr. Darakhshan sent an email to Mr. Thompson, noting that "[o]ur electrical inspection was passed this morning and now we can go full speed ahead. I am requesting another $50,000 to put down the deposit with the elevator company and to start ordering your flooring." App. at 971. The restoration phase of the project commenced shortly thereafter. App. at 235:7-18.

Because the Traveler's estimate did not include all costs for the restoration, Mr. Darakhshan and Mr. Hanrahan began negotiating prices for the replacement of certain electrical systems and other specialty equipment. Mr. Darakhshan testified that he worked with Mr. Hanrahan to agree on prices for various items. App. at 272:1-9, 273:4-7. The final prices were memorialized in Traveler's final statement of loss, which Mr. Hanrahan sent to Mr. Thompson on February 26, 2013. App. at 1007-1009. The additional items included an alarm system ($9,970), a PA system ($9,005), elevator replacement ($64,460), fire resistant doors ($10,000), air conditioning units ($59,500), range hood and ducts ($3,120), kitchen equipment ($56,661.96), and an additional charge for kitchen equipment ($5,000) to correct the

price of a stove. *Id.* The total for these items was $217,716.96, for which Traveler's agreed to provide coverage to UHP. *Id.*

As Mr. Hanrahan testified, he reached agreement with Mr. Darakhshan on most of the prices for the additional items overseen by RD-Singular over the course of the next few months (*i.e.*, those not contained in the initial Traveler's estimate of $282,504.36). *See* App. at 325:1-10, 976-980 (alarm systems); App. at 327:1-16 (PA systems); App. at 327:24 – 328:25, 984-987 (elevators); App. at 329:8–331:11, 981-983 (fire resistant doors); App. at 332:22 – 333:15, 992-997 (range hood and ducts). In the case of these five items, Mr. Darakhshan provided the estimate directly to Mr. Hanrahan and/or UHP, and Mr. Hanrahan approved those costs on behalf of UHP and Traveler's. App. at 339:3-17, 22-24, 992-994. Three additional items – the air conditioning units, the kitchen equipment, and the stove correction – were submitted by independent contractors to Traveler's or UHP (not RD-Singular). *See* App. at 331:15–332:11, 339:18-21, 998-1000 (air conditioning units); App. at 333:25–334:24 (kitchen equipment); App. at 336:8-23 (stove correction). For the air conditioning units, UHP paid the contractor (Bell Childress) directly for the full amount of $59,500. App. at 300:9–301:12; 1003-1005. As was the case for the initial estimate of $282,504.36 from FB Davis, Mr. Hanrahan testified that Mr. Darakhshan never disagreed with the final figures for any of the additional eight items eventually contained in the statement of loss. App. at 342:24–343:4.

E. RD-Singular Fails to Adequately Complete the Restoration Work, and is Terminated by UHP.

Seven months into the project, restoration work was not proceeding at an adequate pace for UHP, and much of the work was not yet complete. On February 13, 2013, Wayne Jones, maintenance supervisor for UHP (App. at 367:6-17), emailed Mr. Darakhshan regarding several items that needed additional attention. App. at 1002. RD-Singular's efforts were unsatisfactory to UHP, and UHP terminated the relationship on or around February 20, 2013. App. at 670:19–671:3.

On remand, Mr. Darakhshan testified that RD-Singular performed the work under the Agreement, and completed it no later than March 2013. App. at 536:21–537:3; 544:2-13. He admitted that RD-Plural performed none of the work, because it was not a corporate entity during the relevant period. App. at 541:7-12. No payments were ever made to RD-Plural for the work. App. at 674:2-15.

As Mr. Jones testified, UHP was forced to hire other contractors to finish the incomplete restoration work. App. at 369:11-18. This included wood trim, repair of ceiling tiles, painting of doors and drywall, completion of the elevator floor, wainscoting, floor tiling, installation of an ice machine, connection of the fire alarm, and properly affixing hand dryers in the bathrooms. App. at 369:19 – 373:21; *see also* App. at 374:10 – 382:24. Adam McGahee, UHP's accountant UHP (App. at 297:5-9), paid the invoices to third parties for this additional work. App. at 300:9 – 312:13. The basement restoration was not completed until June 2013.

On February 26, 2013, Mr. Hanrahan sent Mr. Thompson the all-inclusive statement of loss from Traveler's. *See* App. at 1007-1009. Including the funds paid for the mitigation phase ($165,467.40), Traveler's valued the total claim at $665,688.72. *Id.*; App. at 337:2-8. Accordingly, Traveler's figure for the restoration phase was $500,221.32. That amount included the $59,500 paid to Bell Childress for air conditioning units. *Id.* After subtracting the Bell Childress invoice, the most that UHP would have owed RD-Singular for the restoration phase was $440,721.[7]

F. "Flood Doctor" Sends Exorbitant Invoices to UHP Seven Months After Termination, and then Sends a Demand Letter.

As of February 2013, UHP had paid $380,000 for work done on the property, which included the amount for the mitigation phase. App. at 405. After a delay of over seven months, and presumably on behalf of RD-Singular, "Flood Doctor" presented a "final" invoice to UHP on October 11, 2013. App. at 906-923. The invoice claimed a total due of $827,300.02 – almost double the $440,721.32 which UHP actually owed for restoration work. App. at 922; 238:8-12. As Mr. Darakhshan testified, the invoice did not include previous charges for the mitigation phase of the work. App. at 253:4-13. Nor did it acknowledge that any payments had been made by UHP for the restoration. And it did not mention RD-Plural. App. at 587:11-19.

[7] That number does not account for the offset UHP should have received for the $19,878 paid to other contractors it engaged to complete the work. *See* App. at 369: 11-17; 300:9–312:13.

The main source for the discrepancy between the insurance estimates and the October 2013 invoice is found in invoices underlying the October 2013 invoice, from "Galaxy Granite." That company is owned by Foad Darakhshan, brother of Frank Darakhshan. App. at 212:4-10. The Galaxy Granite invoices pertained to work largely within the scope of the Traveler's estimate. Mr. Darakhshan testified that RD-Singular relied on "bid items" – which were often more expensive than what had been provided in the Traveler's estimate – for much of the restoration work. App. at 240:8 – 249:1. Some invoices were printed over half a year after RD-Singular ceased performing restoration services. App. at 218:13-20.

When UHP declined to pay the amount charged for the restoration work, in February 2014, Mr. Darakhshan's counsel, Paragon Law Firm, sent a letter to UHP on behalf of Flood Doctor Inc., demanding payment to Flood Doctor Inc. App. at 1204-1207. RD-Plural was not mentioned in that letter.

G. RDI Files the Complaint and UHP Makes a Final Payment.

RDI filed the original Complaint in the Superior Court on April 7, 2015. App. at 19-30. Mr. Darakhshan admitted at the evidentiary hearing that RDI "never existed" and that he "never owned" RDI. App. at 551:3-10; 608:18 – 609:2.

On September 13, 2016, UHP sent an additional check in the amount of $150,970.19. RD-Plural later acknowledged receipt of this amount. App. at 46. The total of UHP's payments for both phases was $530,970.19. Therefore, after

subtracting the $165,467.40 UHP paid for the mitigation phase, UHP paid $365,512.19 to "Flood Doctor" for restoration services.

RDI filed the Amended Complaint on November 1, 2016, claiming that UHP owed a balance of $511,796.83. App. at 43-49. It arrived at that figure by subtracting what it claimed were UHP's total payments ($525,970.19, after subtracting $5,000 for what RDI claimed was "stolen equipment", *see* App. at 429) from the $1,037,767.02 allegedly owed for both phases ($165,467.00 for mitigation and $872,300.02 for restoration). App. at 46, ¶¶ 17-20. RD-Plural also claimed a 1.5% monthly finance charge on the unpaid balance. App. at 47, ¶ 26.

H. "Restoration Doctors, LLC" (RD-Plural) Is Created.

Unbeknownst to UHP during this time, on May 10, 2013, RD-Plural (also owned by Mr. Darakhshan) came into existence and was registered in Virginia. *See* App. at 1127. RD-Plural was formed as a distinct entity from RD-Singular. It had a different entity ID number (S4543825) than RD-Singular (S3184738). App. at 1084, 1127; 623:24–624:4. Mr. Darakhshan claimed that RD-Plural was the successor to RD-Singular (App. at 108), and that they were "basically the same company" (App. at 728:12-13).[8] But there is no evidence in the official Virginia State Corporation Commission records that RD-Plural was a "successor" or

[8] Mr. Darakhshan previously submitted an affidavit stating that RD-Singular was "cancelled in May 2010" – three years before RD-Plural was formed. App. at 108.

"continuation" of RD-Singular – even though the VSCC database enables users to indicate an entity's "old name" or "name change." App. at 171. RD-Plural's Articles of Organization, filed on May 10, 2013, do not mention RD-Singular or any successorship. App. at 1128. And Mr. Darakhshan admitted that there was no written agreement regarding any succession (App. at 540:22–541:1), and no written documentation as to any asset transfer (App. at 561:11-20). He also confirmed that RD-Plural has not provided a single document to support the proposition that RD-Plural is the successor or continuation of RD-Singular. App. at 612:4 – 613:25.

Further, at no point from May 10, 2013, when RD-Plural came into existence, until March 17, 2017, when it first appeared in this suit, did RD-Plural step forward to assert that it was owed anything under the Agreement. Mr. Darakhshan admitted that prior to 2017, he had not informed UHP about any "continuation", "successorship", or "assignment" as to RD-Plural, or that RD-Singular, the party to the Agreement, had been cancelled. *See* App. at 598:19–599:14; 603:22–607:9; 609:13–610:7; 611:4-22. Mr. Thompson's testimony confirmed the lack of notification. *See* App. at 668:15–669:2; 669:15–670:10; 694:12-17.

I. Subsequent History of Restoration Doctors, LLC

On August 31, 2015, RD-Plural's registration status was cancelled by the VSCC. App. at 1137. In March 2017, Mr. Darakhshan reinstated RD-Plural's registration status by paying a filing fee on an expedited basis. App. at 1134-1138.

On August 31, 2019, Virginia canceled RD-Plural (entity ID# S4543825) yet again. Instead of reinstating that entity, as he previously did, Mr. Darakhshan formed a **new** entity called "Restoration Doctors LLC" (entity ID# S8617278) on October 25, 2019. App. at 1149-1152. Mr. Darakhshan filed Articles of Organization for entity ID# S8617278. App. at 1151.

After the "new" Restoration Doctors LLC (entity ID# S8617278) was created, Mr. Darakhshan reinstated the "original" Restoration Doctors LLC (entity ID# S4543825) on April 5, 2020. App. at 1143, 1145. He changed the name of the original Restoration Doctors LLC (entity ID# S4543825) to "Restoration Doc LLC" the same day. App. at 1144. As of the date of this filing, entity ID# S4543825 remains active in Virginia, with the name "Restoration Doc LLC" – although Mr. Darakhshan testified on remand that he had since filed paperwork to restore the company to the name "Restoration Doctors, LLC." App. at 635-636, 655.

SUMMARY OF ARGUMENT

The Superior Court's August 23, 2017 judgment, as well as its August 16, 2021 Judgment Order and Order on Remand, was flawed in five ways:

First, the Superior Court erred by holding that the Agreement was a valid and enforceable contract between UHP and RD-Singular with regard to the restoration phase of the project. The Agreement lacked terms as to scope and price of the restoration work to be performed by RD-Singular. Under Maryland law – which

governs here – scope and price of work are required terms for an enforceable agreement. Absent such terms, the Agreement cannot justify either the exorbitant invoices issued to UHP or the Superior Court's verdict in favor of RD-Plural.

Second, the Superior Court erred by refusing to acknowledge that (a) a course of conduct existed between the parties with regard to the negotiation and agreement of prices to be charged for the restoration work, (b) RD-Singular failed to refute estimates prepared by UHP's insurance adjustor, and (c) RD-Singular subsequently performed the work contained within those estimates, thus constituting acceptance of those rates, and binding RD-Singular to them for the price of the restoration work.

Third, the Court erred by holding that RD-Plural was the successor to RD-Singular, and thus had standing to bring suit against UHP for claims arising under the Agreement. According to the evidence presented to the court during the 2020 evidentiary hearing, there is no direct evidence of a succession by RD-Plural, nor is there any evidence that UHP was notified of such a succession even if it took place.

Fourth, the Superior Court erred by not addressing UHP's argument that the statute of limitations had run on RD-Plural's claims because the initial complaint was filed by RDI – a non-entity – and therefore there was no operative complaint to which the Amended Complaint could "relate back."

Fifth, the Superior Court miscalculated damages owed by UHP to RD-Plural. The court failed to credit the $150,970.19 payment made by UHP in September 2016 to principal, thus elevating the amount of interest owed by almost $150,000 to date.

For these reasons, both the August 23, 2017 Judgment, and the August 16, 2021 Order on Remand and Order Re-Entering Judgment, should be reversed and vacated, with instructions to the Superior Court to enter judgment in favor of UHP.

ARGUMENT

I. Standard of Review

The validity and enforceability of a contract is subject to de novo review. *See District of Columbia v. Brookstowne Cmty. Dev. Co.*, 987 A.2d 442, 446 (D.C. 2010) ("The determination whether an enforceable contract exists ... is a question of law" and the Court "review[s] de novo the trial court's conclusion that the contract was enforceable"). The existence or non-existence of a contract is also subject to de novo review. *Kramer Assocs., Inc. v. Ikam, Ltd.*, 888 A.2d 247, 251 (D.C. 2005).

The Superior Court's ruling that RD-Plural was the successor entity to RD-Singular and thus had standing to bring this suit is afforded *de novo* review. *Bd. of Dirs. of the Washington City Orphan Asylum v. Bd. of Trs. of the Washington City Orphan Asylum*, 798 A.2d 1068, 1074 (D.C. 2002). Factual determinations as to standing are reviewed under the clearly erroneous standard. *Gaetan v. Weber*, 729 A.2d 895, 897 (D.C. 1999).

Whether an amended complaint relates back to a previous complaint pursuant to Sup. Ct. R. 15(c) is a question of law that this Court reviews de novo. *Comer v. Wells Fargo Bank, N.A.*, 108 A.3d 364, 372 (D.C. 2015).

A trial court's award of damages is an issue of fact reviewed for abuse of discretion. *McKesson Corp. v. Islamic Republic of Iran*, 672 F.3d 1066, 1083 (D.C. Cir. 2012); *see also Joel Truitt Mgmt., Inc. v. D.C. Comm'n on Human Rights*, 646 A.2d 1007, 1010 (D.C. 1994). However, "it is essential that the trial court give sufficient indication of how it computed the amount so that the reviewing court can determine whether it is supported by the record." *Cort Furniture Rental Corp. v. Cafritz*, 10 F.3d 13 (D.C. Cir. 1993) (citation omitted).

II. The Superior Court Erred in Holding that the Work Authorization Agreement Was Valid and Enforceable When Signed.

The Superior Court's verdict was flawed in that it rested on a contract that was inherently unenforceable. With regard to the mitigation work, it is uncontested that the parties subsequently agreed to a price that UHP would pay. However, with regard to the restoration work, the Agreement's lack of scope and price of work terms renders the contract unenforceable as written.[9]

Maryland law is clear that "[a] contract, to be final, must extend to all the terms which the parties intend to introduce, and material terms cannot be left for

[9] UHP raised these arguments at trial. *See* App. at 382, 384-385, 393.

future settlement."[10] *Falls Garden Condo. Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 107 A.3d 1183, 1191 (Md. 2015) (citation omitted). "Failure of parties to agree on an essential term of a contract may indicate that the mutual assent required to make a contract is lacking." *Id.*; *see also Advance Telecom Process LLC v. DSFederal, Inc.*, 119 A.3d 175, 186 (Md. Ct. Spec. App. 2015) (because contract "left material terms for future negotiation, it constituted an agreement to agree on a future subcontract, and there was no enforceable requirement[.]").

Further, Maryland law holds that price and scope of work are material terms *per se*, and must be included in a contract for it to be enforceable. *See Advance Telecom Process LLC*, 119 A.3d at 186 n.6 (agreement not enforceable because it "did not set forth the material terms that the contemplated subcontract would contain, failing to specify what services [plaintiff] would actually perform, and what [plaintiff] would be paid."); *Goldstein v. Miles*, 859 A.2d 313, 329 (Md. Ct. Spec. App. 2004) (defendant's statements "were not enforceable promises" because they "did not contain any material terms of the sale" including purchase price).[11] *See also* 1 Williston on Contracts § 4:21 (4th ed.) ("A contract's material terms, such as

[10] *See also Georgetown Entm't Corp. v. District of Columbia*, 496 A.2d 587, 590 (D.C. 1985) (agreement as to all material terms required for enforceable contract).

[11] *See also Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d 320, 327 (D.C. 2001) ("[T]o be enforceable, 'a contract must be sufficiently definite as to its material terms (which include, e.g., subject matter [and] price)").

subject matter, price, payment terms and duration, must be sufficiently definite so that each party can be reasonably certain about what it is promising to do or how it is to perform."). The Agreement does not satisfy this requirement because it does not clearly define the restoration work or how much UHP would be required to pay.

In its verdict, the Superior Court attempted to minimize this issue, stating that "[t]he fact that it is missing a price term is unsurprising, unavoidable, and legally unimportant in the circumstance. It even recites in the contract that there's no way to know how much this is going to cost." App. at 436:8-11. Notwithstanding that this ruling conflicts with Maryland law on contract enforceability, a contextual look at this language demonstrates that it refers to the mitigation services to be performed, not the eventual restoration work. The relevant paragraph of the Agreement states:

> **Prices**: I understand that *water damage* is a progressive condition and that *drying time* varies depending on the types of materials, quantity of water, degree of saturation, airflow volume and velocity, temperature and the indoor and outdoor humidity. Therefore, I understand it is impractical to give an accurate quote for services before completion. I have been supplied with an estimate or invoice from Restoration Doctor LLC, and agree to pay the full price for the work Restoration Doctor LLC performs.

App. at 830 (emphasis added). As the language indicates, this paragraph refers to the mitigation services that RD-Singular would perform – it discusses "water damage" and the unpredictability of pricing given the variables that could hinder any mitigation effort (*i.e.*, "types of materials, quantity of water, degree of saturation, airflow volume and velocity, temperature and the indoor and outdoor humidity"). In

contrast, both the scope and costs for repairs for restoration were reasonably ascertainable and could have been fixed prior to commencement of the restoration work; *i.e.*, once water was extracted and an evaluation of the affected areas was complete, an estimate for restoration work could have been (and in fact was) ascertained prior to the commencement of any restoration work.

Indeed, Mr. Darakhshan's own testimony bears out this difference. He admitted that once the mitigation phase was complete, it was "a little bit easier" to estimate costs for that phase of the project compared to the mitigation phase, because at that point, "we are into the project, we know what was taken out" of the building. App. at 223:19-23. In short, the language in the "Prices" paragraph did not refer to restoration work, for which the parties could have negotiated a finite price (and in fact did based on insurance estimates) once the mitigation efforts had concluded.

RD-Plural's reading of the Agreement would essentially give a "blank check" to RD-Singular to charge any price, even in the millions of dollars, and it would not have mattered whether UHP disagreed with that price. Maryland courts will not interpret contracts in a manner that leads to such an unreasonable result. *See, e.g.*, *SDC 214, LLC v. London Towne Prop. Owners Ass'n, Inc.*, 910 A.2d 1064, 1070 (Md. 2006) ("[C]ontractual provisions generally . . . should be interpreted reasonably and should not be given interpretations leading to unreasonable results."); *Glassman Constr. Co. v. Maryland City Plaza, Inc.*, 371 F. Supp. 1154, 1159 n.3 (D. Md. 1974)

("[T]he interpretation which makes a contract fair and reasonable will be preferred to one leading to a harsh and unreasonable result.") (citation omitted). This Court should not do so here either. UHP did not obligate itself to a limitless obligation when it engaged RD-Singular's services.

III. The Superior Court Erred by Ruling That the Traveler's Insurance Estimates Were Not Binding on the Parties.

The Traveler's estimate (sent to Mr. Darakhshan by UHP) and the subsequently-negotiated prices for additional items not contained within the estimate (*see supra* at 20-21), were accepted by the parties as the total cost for the restoration work. Thus, the insurance company's price estimate and list of materials and labor needed to restore the property provided the necessary scope and price terms that the Agreement did not set forth. RD-Singular's failure to refute the prices UHP offered, and its subsequent performance of the restoration work as provided in the estimates, formed a contract. The Superior Court erred by failing to enforce it.[12]

Under Maryland law, "[a]ssent to an offer to vary, modify or change a contract may be implied and found from circumstances and the conduct of the parties showing acquiescence or agreement." *Fantle v. Fantle*, 782 A.2d 377, 382 (Md. Ct. Spec. App. 2001); *see also Dolan v. McQuaide*, 79 A.3d 394, 400 (Md. Ct. Spec. App. 2013) ("Conduct can serve as the basis for [a] contract implied in law or fact").

[12] UHP raised these arguments below. *See* App. at 294:1-5, 295:13-20; 393.

Such acquiescence need not "be in writing or expressly stated."[13] *Fantle*, 782 A.2d at 382. Maryland law is also clear that performance – in this case, RD-Singular's commencement of the work after UHP sent Mr. Darakhshan the insurance estimate – can constitute acceptance.[14] *See U.S. Life Ins. Co. in City of New York v. Wilson*, 18 A.3d 110, 123 (Md. Ct. Spec. App. 2011) ("It is axiomatic that an offer can be accepted by the performance of a desired act[.]"); *NRT Mid–Atlantic, Inc. v. Innovative Props., Inc.*, 797 A.2d 824, 836 (Md. Ct. Spec. App. 2002) ("one of the ways a contract can be formed is by acceptance of an offer by performance").[15]

A. Work Performed Pursuant to the $282,504.36 Insurance Estimate

In this case, performance clearly constituted acceptance of a contractual offer. First, the parties established a course of dealing whereby Mr. Darakhshan negotiated directly regarding the mitigation work for the property, based on an insurance estimate provided by Traveler's. *See supra* at 18-20. Accordingly, it was consistent

[13] *See also Georgetown Sch. of Arts & Scis. v. Microsystems Eng'g Corp.*, No. 81-0422, 1984 WL 564182, at *8 n.11 (D.D.C. Feb. 29, 1984) ("Sometimes the course of the parties' performance will permit the court to recognize an implied contract or to supply the missing terms to an indefinite contract.").

[14] *See also King v. Indus. Bank of Washington*, 474 A.2d 151, 156 (D.C. 1984) (holding that, with regard to unilateral contracts, "[p]erformance of the act constitutes acceptance of the offer, and at that point a contract comes into being."); *Gen. Ry. Signal Co. v. Washington Metro. Area Transit Auth.*, 875 F.2d 320, 325 (D.C. Cir. 1989) ("[W]hen parties have . . . included a specific price for work to be performed, that price is presumed to represent the reasonable costs of the work.").

[15] In *U.S. Life*, the court applied Illinois law, but held that Maryland law and Illinois law were the same on all relevant legal principles in the case. 18 A.3d at 116.

with established practice for a subsequent insurance estimate from Traveler's to serve as the foundation for the price of the restoration work. Mr. Thompson sent this estimate for $282,504.36 to Frank Darakhshan on August 25, 2012, and Mr. Darakhshan received it. App. at 948; App. at 274:24 – 275:3; App. at 273:15-20; App. at 276:15 – 277:13. Thus, RD-Singular was placed on notice that UHP expected to pay $282,504.36 for the restoration services contained in the estimate.

Mr. Darakhshan's behavior after he received the $282,504.36 estimate is critical. He admitted that he never refuted the estimate (App. at 276:15 – 277:25), and he never presented UHP with the estimate required by the Agreement or any counteroffer. Indeed, until "Flood Doctor" sent its belated and exorbitant invoices in October 2013 – over seven months after its work on the project had ended – RD-Singular did not propose a single figure for any of the work contained in the estimate. Tellingly, on August 29, 2012 – four days after he received the estimate – Mr. Darakhshan emailed Mr. Thompson, noting that "[o]ur electrical inspection was passed this morning and now we can go full speed ahead." App. at 971. RD-Singular then commenced the restoration work contained in the estimate.

RD-Singular's performance (and consequent acceptance) of the insurance estimate is similar to the circumstances in *United States ex rel. Modern Electric, Inc. v. Ideal Elec. Sec. Co., Inc.*, 81 F.3d 240 (D.C. Cir. 1996). There, the court held that performance by a contractor pursuant to the terms of a purchase order constituted

acceptance of those terms, including price and scope of work. In that case, the contractor and its subcontractor had an agreement for the subcontractor to perform work relevant to a separate contract that the contractor held for electrical transformer work. During the course of the relationship, the contractor sent purchase orders identifying specific tasks to be done by the subcontractor, and those purchase orders included quantity and price terms. The subcontractor then performed the work and sent the contractor invoices for that work on terms corresponding to those contained in the purchase orders. The court held that "[e]ven when a purchase order is signed by only one party, the purchase order may stand as an offer with performance of its terms constituting acceptance." 81 F.3d at 244. Here, the result is the same; RD-Singular's performance of the work constituted acceptance of the insurance estimate.

B. The Parties' Agreement Regarding the Eight Additional Items

As previously discussed, the insurance estimate for $282,504.36 did not include replacement costs for certain electrical and specialty items. There were eight additional items for work to be done by third-party contractors (i.e., not RD-Singular). *See supra* at 20-21. These included: an alarm system ($9,970) (App. at 325:14–326:2, 976-980); a PA system ($9,005) (App. at 326:8-16); an elevator ($64,460) (App. at 327:24–328:25, 984-987); fire resistant doors ($10,000) (App. at 329:8–331:11, 601-603); air conditioning units ($59,500) (App. at 999-1000); range hood and ducts ($3,120) (App. at 332:22–333:20, 992-997); kitchen equipment

($56,661.96) (App. at 333-334, 834-838), and a price correction for a stove ($5,000) App. at 336, 902. The total for these items was $217,716.96. *Id.* Mr. Hanrahan, who previously negotiated the mitigation cost with Mr. Darakhshan, agreed with him on prices for the additional work – indeed, for five items, Mr. Darakhshan proposed the price by sending Mr. Hanrahan contractor estimates submitted to RD-Singular. *See supra* at 20-21. Mr. Darakhshan never disagreed with the figures for these items (App. at 342:24–343:4), and cannot repudiate them now.

C. Total Amount Owed by UHP for the Restoration Phase

Although the Superior Court held that the amount charged by RD-Singular for the restoration work was "reasonable", that finding does not override the fact that it was far in excess of what the parties agreed to, as the below table demonstrates:

Figure	**UHP Position**	**RD-Plural Position (App. at 422)**
Cost of mitigation work	$165,467.40	$165,467.40
Cost of restoration work	$440,721.32	$827,300.02
Total cost of work	$606,188.72	$992,767.42 (+$5,000 for "stolen" equipment)
Amount UHP paid for mitigation to RD-Singular/Flood Doctor	$165,467.40	$165,467.40
Amount UHP paid for restoration to RD-Singular/Flood Doctor	$365,502.79	$214,532.60 ($150,970.19 applied to interest)
Total Amount Paid by UHP to RD-Singular/Flood Doctor	$530,970.19	$530,970.19
Principal Balance Owed by UHP[16]	$75,218.53	$617,767.42

[16] As noted above, this number should be reduced by $19,878 to account for sums paid to other contractors to complete the restoration work. *See supra* at 23 n. 7.

Through their conduct and performance, the parties agreed that UHP would pay $282,504.36 for the restoration services set forth in the insurance estimate, and $217,716.96 for eight additional items beyond the scope of the insurance estimate. The overall total for the restoration work – as memorialized by Mr. Hanrahan's statement of loss for the Property – was $500,221.32. Of that amount, UHP paid a sum of $59,500 to Bell Childress for one of the eight additional items negotiated with RD-Singular. *See supra* at 21, 23. After subtracting that amount, the most that UHP would have owed RD-Singular for the restoration phase was $440,721.32.

UHP paid RD-Singular $365,503.19 for the restoration phase. This included a September 2016 payment in the amount of $150,970.19, which, as RD-Plural admitted in the Amended Complaint, should be credited to principal. App. at 46-47, ¶¶ 19-20, 26. Thus, the most in principal that UHP should owe RD-Plural is $75,218.13, or $440,721.32 minus $365,503.19. That is far below the excessive and unwarranted windfall of $617,767.42 in principal, *plus 1.5% per month in interest*, that the Superior Court awarded to RD-Plural.

IV. The Superior Court Erred in Holding that RD-Plural Is the Successor to RD-Singular and Thus Had Standing to Sue UHP.

The Superior Court erred in holding that RD-Plural met its burden to show that it was the successor to RD-Singular and that RD-Plural had constitutional and

prudential standing to sue.[17] To satisfy constitutional standing, a plaintiff must demonstrate an injury in fact, fairly traceable to the defendant's conduct, and capable of being redressed by the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Further, Superior Court Rule 17(a)(1) requires that an action be "prosecuted in the name of the real party in interest." This is "essentially a codification of th[e] nonconstitutional, prudential limitation on standing." *Martin v. Santorini Capital, LLC*, 236 A.3d 386, 393 (D.C. 2020) (citation and internal quotation marks omitted). To satisfy prudential standing, "'the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" *Id.* (quoting *Consumer Fed'n of Am. v. Upjohn Co.*, 346 A.2d 725, 727 (D.C. 1975)). The burden to establish both types of standing lies with the plaintiff. *Am. Trucking Ass'ns, Inc. v. Fed. Motor Carrier Safety Admin.*, 724 F.3d 243, 246 (D.C. Cir. 2013); *Vining v. Exec. Bd. of D.C. Health Benefit Exch. Auth.*, 174 A.3d 272, 278 (D.C. 2017). RD-Plural did not satisfy either burden. It suffered no injury, and was not a successor to RD-Singular.

A. RD-Plural Was Not a Party to the Agreement.

First, it is undisputed that RD-Plural was not a party to the Agreement, which was signed on July 20, 2012 by UHP and RD-Singular. App. at 1157, 532:20-24,

[17] UHP has consistently challenged this assertion before and during trial, on appeal, and on remand. *See* App. at 135, 144-145; 259:3-13; 729-755.

570:15-25. RD-Plural performed no work under the agreement, because it did not exist during the relevant period. App. at 541:7-12. Mr. Darakhshan testified that the work was completed no later than March 2013 (App. at 536:21–537:3, 544:2-13), and RD-Plural did not come into existence until May 10, 2013 – two months later.[18] App. at 1127-1129, 537:10-20. It is unrefuted that no payments were ever made to RD-Plural for the work performed under the Agreement. App. at 674:2-15.

B. RD-Plural Is Not a Successor to RD-Singular.

Nor was RD-Plural a "successor" to or a "continuation" of, RD-Singular. There is no evidence in the official records from the Virginia State Corporation Commission to support that conclusion. RD-Plural was formed as a distinct entity from RD-Singular, with a different entity ID number (S4543825) than the one RD-Singular had (S3184738).[19] App. at 1084, 1127, 623:24–624:4. RD-Plural's Articles of Organization, filed on May 10, 2013, do not mention RD-Singular or any such successorship. App. at 1128. And Mr. Darakhshan admitted that there was no

[18] "[J]udicial notice may be taken of public records and government documents available from reliable sources." *Al-Aulaqi v. Panetta*, 35 F. Supp. 3d 56, 67 (D.D.C. 2014). UHP requested that the Superior Court take judicial notice of official records from the VSCC, and RD-Plural did not object. App. at 532:25–533:10.

[19] The Superior Court dismissed the significance of the entity identification numbers. App. at 804. But there can be no question that each corporate entity registered in the state of Virginia is assigned a unique ID number. The Virginia Limited Liability Company Act references "[t]he identification number issued by the Commission to the limited liability company" no less than five times. *See* Va. Code §§ 13.1-1050.A.2; 13.1-1050.4.B.1; 13.1-1052.A.2; 13.1-1056.A.1; 13.1-1056.3.B.1.

written agreement regarding any succession (App. at 540:22–541:1), and no documentation as to any transfer of assets (App. at 561:11-20). He also confirmed that RD-Plural has not provided a single document to support the proposition that RD-Plural is the successor or continuation of RD-Singular. App. at 612:4–613:25.

Moreover, if RD-Plural was in fact the successor to RD-Singular, it was strangely silent as to its "rights" throughout the relevant period. At no point from May 10, 2013, when RD-Plural came into existence, until March 17, 2017, when RD-Plural first appeared in this suit, did RD-Plural step forward to assert that it was owed anything, despite several previous (and obvious) opportunities to do so:

- The final invoice, sent by Flood Doctor in October 2013 (over five months after RD-Plural was formed) did not mention RD-Plural.[20] *See* App. at 1169-1186, 587:11-19.
- Nine months after RD-Plural was formed, Mr. Darakhshan's counsel, Paragon Law Firm, sent a letter to UHP on behalf of Flood Doctor Inc. (not RD-Plural), demanding payment to Flood Doctor Inc. App. at 1204-1207.
- RDI filed the initial Complaint on April 7, 2015, eleven months after RD-Plural was formed. App. at 1208-1219.

[20] Mr. Darakhshan claimed at the evidentiary hearing that RD-Plural sent the invoice. App. at 590:10-25. But he was impeached with his deposition testimony, when he unequivocally stated that RD Singular sent the invoice. App. at 592:9-23 ("[T]his is an invoice from Restoration Doctor, singular, LLC.") (quoting App. at 1282).

- The Plaintiff referred to itself as "Restoration Doctor, Inc." throughout the initial discovery period. *See, e.g.*, RDI's December 3, 2015 supplemental discovery responses (App. at 1330-1336).
- The Amended Complaint was filed by RDI on November 1, 2016. App. at 1220-1226. Although RD-Plural had been in existence for almost 3½ years at this point, again, there was no mention of RD-Plural.

Importantly, Mr. Darakhshan confirmed that as of the date of each of these stages, he had not informed UHP about any "continuation", "successorship", or "assignment" as to RD-Plural, or that RD-Singular, the party to the Agreement, had been cancelled. *See* App. at 598:19–599:14, 603:22–607:9; 609:13–610:7; 611:4-22. Mr. Thompson's testimony confirmed this. App. at 668:15–669:2, 669:15–670:10, 694:12-17. This demonstrates Mr. Darakhshan's contemporaneous view that RD-Plural held no rights under the Agreement. Combined with the lack of documentary evidence as set forth above, these facts demonstrate that no "succession" or "continuation" took place, either at the time or since.

C. Self-Serving Testimony Cannot Establish Successorship.

Left with no documentary evidence to support RD-Plural's successor theory, the Superior Court relied upon Mr. Darakhshan's self-serving, "say-so" declaration and testimony that RD-Plural continued the work of RD-Singular, used the same employees and the same equipment, worked on the same types of projects, and used

the same website and bank account, among other things.[21] App. at 800, 804. As an initial matter, most of the authority relied upon by the Superior Court in crediting Mr. Darakhshan's testimony on these points (App. at 803) dealt with successor *liability*, not whether a corporate plaintiff may sue to enforce the debts of its predecessor. *See Sodexo Operations, LLC v. Not-For-Profit Hosp. Corp.*, 930 F. Supp. 2d 234, 238 (D.D.C. 2013); *Reese Bros., Inc. v. U.S. Postal Serv.*, 477 F. Supp. 2d 31, 41 (D.D.C. 2007); *Bingham v. Goldberg. Marchesano. Kohlman. Inc.*, 637 A.2d 81, 91 (D.C. 1994); *Alkanani v. Aegis Def. Servs., LLC*, 976 F. Supp. 2d 1, 10-11 (D.D.C. 2013).[22]

In any event, Mr. Darakhshan's testimony on the succession issue has changed over time. He initially claimed in his March 17, 2017 Declaration that RD-Singular was cancelled by Virginia in May of 2010.[23] App. at 1232 ¶ 6. As the Superior

[21] In holding that RD-Plural was the successor to RD-Singular, the Superior Court relied upon *Dawn v. Stern Equipment Co.*, 134 A.2d 341 (D.C. Mun. Ct. App. 1957), in which this Court concluded that a corporation owner's testimony that one of his companies had succeeded the other was sufficient to establish successorship. App. at 806-807. But *Dawn* is distinguishable, because the owner's testimony was uncontroverted, whereas here UHP has presented evidence challenging Mr. Darakhshan's self-serving testimony.

[22] Nor do the other two cases cited by the Superior Court support RD-Plural's theory. In *Richter v. Analex Corp.*, 940 F. Supp. 353, 356 (D.D.C. 1996), there was documentary evidence of the succession in the form of a purchase and sale agreement. No such evidence exists here. In *Safer v. Perper*, 569 F.2d 87, 95-96 (D.C. Cir. 1977), the plaintiff performed its predecessor's contractual obligations and therefore occupied the predecessor's place. Here, RD-Plural never performed under the contract, and was not even in existence at the time the work was completed.

[23] When initially asked basic questions at his deposition regarding the declaration, Mr. Darakhshan terminated the deposition. He only answered those questions after

Court recognized, that would have severely undermined any claim that RD-Plural, which was not formed until three years later, was a successor to RD-Singular. Only after the declaration was in the record for over two and a half years, after the issue came up on appeal, after remand by this Court, and after RD-Plural was notified that UHP would file a motion for summary judgment, did RD-Plural "correct" the Darakhshan declaration to reflect a date of May 2013 (as opposed to May 2010) for RD-Singular's cancellation.[24] He also testified that RD-Singular did not exist and was not the plaintiff in the case, yet RD-Plural filed a motion to substitute RD-Singular as the plaintiff just before the evidentiary hearing. App. at 14. That renders Mr. Darakhshan's testimony unreliable.[25]

The Superior Court also discounted the fact that UHP was not given notice regarding RD-Plural's purported successorship status, holding that notice was not required and that, in any event, UHP was not prejudiced. App. at 805-806. But the

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the Superior Court compelled him to do so. RD-Plural was sanctioned by the Court for Mr. Darakhshan's conduct. *See* Oral Order, Sept. 11, 2020, App. at 14

[24] The Superior Court noted that the relevant documents from the VSCC show that RD-Singular was cancelled on May 31, 2013. App. at 799. But the language in the VSCC records states that RD-Singular was cancelled "as of May 31, 2013.". It does not specify whether it was cancelled **on** that date, or at some earlier date.

[25] Moreover, it is unclear who the plaintiff is – "Restoration Doctors LLC" (entity ID# S8617278) or "Restoration Doc LLC" (entity ID# S4543825). The fact that they have separate entity ID numbers demonstrates they are separate entities. *See, e.g., Leiser, Leiser & Hennessy, PLLC v. Leiser*, 97 Va. Cir. 130 (2017). As of the evidentiary hearing, both entities remained in existence.

relevant inquiry is whether RD-Plural fulfilled its burden to establish standing, not whether UHP satisfied a non-existent burden to "prove" it was not prejudiced. None of UHP's dealings with Mr. Darakhshan's other entities can bind UHP as to RD-Plural, a separate corporate entity. *See Richfood, Inc. v. Jennings*, 499 S.E.2d 272 (Va. 1998) ("The mere showing that one corporation is owned by another or that they share common officers is not a sufficient justification for a court to disregard their separate corporate structure."). Further, standing is a defense that a party cannot waive, either anticipatorily or after the fact. *See Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) ("As a jurisdictional requirement, standing to litigate cannot be waived or forfeited." Prior to RD-Plural's eleventh-hour parachuting into this litigation, UHP simply had no notice that RD-Plural would claim successor status under the Agreement with RD-Singular.

In short, other than Mr. Darakhshan's questionable and self-serving testimony, there is no evidence to suggest that RD-Plural was the successor to RD-Singular, and RD-Plural has failed to meet its burden to demonstrate standing.

V. The Statute of Limitations on RD-Plural's Claims Has Run.

UHP also argued below (App. at 65-69) that because the initial Complaint was filed by RDI (a non-entity), it was void *ab initio*, leaving nothing to "relate back" to when the Amended Complaint was filed (again by RDI). Mr. Darakhshan admitted that RDI "never existed", and that he "never owned" RDI. App. at 551:3-10,

608:18–609:2. Even if RD-Plural properly substituted itself as plaintiff in March 2017, by that time the three-year statute of limitations had run. A suit filed by a non-entity is a nullity. *Stein v. Smith*, 751 A.2d 504, 506 (Md. 2000); *see also Dual Inc. v. Lockheed Martin Corp.*, 857 A.2d 1095, 1101 (Md. 2004) (complaint filed by nonentity corporation with forfeited charter was a nullity).

In *Stein*, the Maryland Court of Appeals addressed a near-identical issue. There, a defunct corporation alleged breach of contract. After the statute of limitations expired, the defendants moved to dismiss, asserting *inter alia*, that the plaintiff lacked the capacity to sue. In support, the defendants attached an exhibit from the Maryland State Department of Assessments and Taxation, certifying that the plaintiff's corporate status had been forfeited. The plaintiff then amended its complaint to substitute another party in place of the defunct corporation. The Court of Appeals held that "[b]ecause the original complaint was filed by a nonentity and was a nullity, there was nothing to which the amended complaint could relate back."[26] 751 A.2d at 506. The same holds true here; indeed, the point is even more apt, because Stein dealt with a *defunct* corporation, whereas RDI never existed

[26] To be clear, this Court has held that Rule 15(c), which establishes the parameters for when an amended complaint can relate back, "seeks to ensure that litigation be decided upon the merits rather than upon technical pleading rules." *Strother v. District of Columbia*, 372 A.2d 1291, 1297 (D.C. 1977). But the circumstances in *Strother* and related cases are different than those here. In *Strother*, the amended complaint was permitted to relate back because the plaintiff had sued in the wrong capacity. Here, RDI had no capacity to sue at all, because it was nonexistent.

Because there is nothing to which an amendment could relate back, the statute of limitations was not tolled. The Maryland civil statute of limitations clearly provides that unless otherwise specified, a civil suit "shall be filed within three years from the date it accrues[.]" Md. Code §5-101. The breach of contract claim began to accrue no later than September 2013 when UHP received a demand for payment and refused to pay the demand. By the time RD-Plural appeared in this litigation and requested substitution as a party in March 2017, the limitations period had already run. The Superior Court erred in not dismissing the case on these grounds.

VI. The Superior Court Erred in Its Calculation of Damages.

Finally, the Superior Court miscalculated interest due by failing to credit UHP's September 2016 payment of $150,970.19 to the principal sum purportedly owed. RD-Plural admitted in its Amended Complaint that the September 2016 payment should have been credited to principal, as that payment left "a remaining balance due in the amount of $511,796.83." App. at 46. RD-Plural requested this "outstanding balance" *plus 1.5% monthly interest*, in damages. App. at 47. Yet in its closing argument, RD-Plural argued that the September 2016 payment should have been credited to <u>interest, not principal</u>, thus directly contradicting its Amended Complaint. *See* App. at 416 (requesting that the court "deduct the $150,970.19

payment . . . from the finance charge"). The Superior Court relied on this revised damages theory in rendering its verdict for RD-Plural.[27] *See* App. at 446:23– 449:5.

This was plainly an abuse of discretion. It is well-established that "factual allegations in operative pleadings are judicial admissions of fact." *El Paso Natural Gas Co. v. United States*, 750 F.3d 863, 876 (D.C. Cir. 2014). Thus, a plaintiff is "bound throughout the course of the proceeding" by allegations in an operative complaint. *Id.* (citation omitted); *see also Kreuzer v. George Washington Univ.*, 896 A.2d 238, 242 (D.C. 2006) (plaintiff's allegations in complaint were "judicial admissions" which plaintiff could not foreswear.). The same rule applies to the prior allegation that the September 2016 payment should be credited to principal.

The court's refusal to credit the September 13, 2016 payment of $150,970.19 to principal as of the date it was paid increases the interest due from $230.20 to $304.65 per day, starting on that date. That is a difference of $74.45 per day, over $27,000 per year, and approximately $149,094 total (and counting) as of the date of this brief. RD-Plural is not entitled to such a windfall. If this Court does not reverse the liability verdict of the Superior Court, it should direct the Superior Court to

[27] The Superior Court simply declared RD-Plural's calculation to be accurate and performed no independent calculation. *See* App. at 447:19-23 ("I'm not going to undertake the exercise of counting the number of days between then and now and multiplying by three hundred and four dollars and sixty-five cents. We'll go with the figure that's in plaintiff's memorandum.").

amend the judgment to reflect the proper interest amount.[28] *See Duggan v. Keto*, 554 A.2d 1126, 1132 (D.C. 1989) (remanding to trial court for proper computation of damages after trial court's calculation was partially in error).

CONCLUSION

The Superior Court's August 23, 2017 Judgment, as well as its August 16, 2021 Order on Remand and Order Re-Entering Judgment, should be reversed and vacated, with instructions to the Superior Court to enter judgment in favor of UHP.

[28] Moreover, this analysis does not even account for the almost five years of interest (still running at 1.5% per month) on the approximately $400,000 that RD-Singular overcharged UHP for the restoration work. *See supra* at 38. Through the Agreement, UHP agreed to the 1.5% interest rate as to the mitigation work, not the restoration work.

Respectfully submitted,

Dated: March 8, 2022

/s/ Paul D. Schmitt

Mary E. Gately (D.C. Bar No. 419151)
mary.gately@dlapiper.com
Paul D. Schmitt (D.C. Bar No. 1007680)
paul.schmitt@dlapiper.com
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, DC 20004
Tel: (202) 799-4500

Mickie Bailey, Esq.
(D.C. Bar No. 483520)
mybailey.uhop@gmail.com
United House of Prayer
Office of Counsel
1113 7th Street, NW
Washington, DC 20001
Tel: (202) 408-0251

Attorneys for Appellant
United House of Prayer for All People of the Church on the Rock of the Apostolic Faith

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Paul D. Schmitt
Signature

21-cv-640
Case Number(s)

Paul D. Schmitt
Name

March 8, 2022
Date

paul.schmitt@dlapiper.com
Email Address

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March 2022, I caused to be served a true copy of the foregoing Brief for Appellant United House of Prayer for All People of the Church on the Rock of the Apostolic Faith, via first class mail and electronic mail on:

Mr. Stuart L. Peacock
Attorney at Law
1311 Buchanan Street NW
Washington, DC 20011
stuart.l.peacock@gmail.com

Attorney for Appellee

/s/ Paul D. Schmitt
Paul D. Schmitt
Counsel for Appellant