

Circuit Court for Baltimore County
Case No. 03-C-18-009971

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1861

September Term, 2021

HENRY PORTER, *et al.*

v.

JEFFREY JACOBSON, *et al.*

Kehoe, C.**
Nazarian,
Reed,

JJ.

Opinion by Reed, J.

Filed: March 31, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** Kehoe, J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

Following a bench trial in the Circuit Court for Baltimore County, the trial court ruled in favor of the group of Plaintiffs below (herein “Appellees”). On appeal, Appellants present six questions for our review, which we have rephrased as follows:¹

- I. Did the circuit court err by concluding that Henry Porter’s purported transfers were not valid and effective?
- II. Did the circuit court err by concluding that the MaiTai Board did not breach its duty of candor and entire fairness?
- III. Did the circuit court err by concluding that the MaiTai Board did not breach its duty of candor or entire fairness when it removed Porter from the Board?
- IV. Did the circuit court err by denying Appellants’ Motion To Advance Fees or the related Motion to Compel Information?

¹ Appellants formulated their questions presented as:

- I. Did the circuit court erroneously conclude that Henry’s transfers of membership interest to his mother were not “for estate planning purposes”?
- II. Did the circuit court erroneously conclude that the MaiTai board did not breach its duty of candor and entire fairness?
- III. Did the circuit court erroneously conclude that Baltimore 41 is a “subsidiary” of MaiTai under the Operating Agreement such that Henry’s conduct was not a “Disqualifying Event”?
- IV. Did the circuit court err by refusing to either enjoin MaiTai’s advancement of attorney’s fees to Appellees or declare that Appellees were not entitled to the advancement of fees?
- V. Did the circuit court err in denying Appellants’ motion to compel information related to the advancement of fees?
- VI. Did the circuit court err by assigning a fair market value to Henry’s and Braveboat’s interests in MaiTai?

- V. Did the circuit court err by determining the fair market value of Porter’s interests in MaiTai?

Appellees filed a Cross-Appeal and present one further issue for this Court to consider, which we also have restated:²

- I. Did the circuit court err by concluding that MaiTai was obligated to repay Braveboat LLC’s capital contribution?

For the following reasons, we shall affirm the judgment of the circuit court on all issues, except that we shall reverse and remand in part solely the circuit court’s conclusion that Appellees are obligated to repay Appellants for their capital contribution.

FACTUAL BACKGROUND

At a kiteboarding festival³ in Southampton, New York in 2015, four businessmen of varying fields and experience met for the first time. Conversations ensued between the group, namely Henry Porter (“Porter”), Jeffrey Jacobson (“Jacobson”), Timothy Piccin (“Piccin”), and Scott Pack (“Pack”), and they eventually endeavored to start a business. After the state of Maryland established a medical marijuana program in 2014, the newly formed group aspired to receive a license to operate a medical marijuana dispensary.⁴

² Appellees/Cross-Appellants present their issue on appeal as: “Did the trial court err when it ordered MaiTai to return Braveboat’s capital contribution in addition to the payment of the fair market value of Porter’s and Braveboat’s membership interests?”

³ Jacobson testified that he believed kiteboarding to be “the new golf course, basically, for people raising money in venture capital.” Billionaires such as Richard Branson were involved with the festival.

⁴ In 2014, the Maryland General Assembly created the Natalie M. LaPrade Maryland Medical Cannabis Commission. Md. Code (1982, 2019 Rep. Vol., 2018 Cum. Supp.), § 13-3302 of the Health – General (“HG”) Article (repealed 2023). The Commission was mandated to “[e]stablish an application review process for granting

Maryland employed a two-step application process to obtain a license through the Maryland Medical Cannabis Commission (“the Commission”).⁵ The group, identified as H&G Maryland, LLC, was granted Stage One approval by the MMCC on December 9, 2016. The Commission informed all applicants that received Stage One pre-approval that they were expected to open their dispensary within one year.⁶

During 2017, the group settled with one of the founding members, Scott Pack, and he relinquished his interest in the company.⁷ The parties changed the name of their

dispensary licenses in which applications are reviewed, evaluated, and ranked based on criteria established.” HG § 13-2207(c)(1) (repealed 2023).

⁵ In Stage One, the Commission solicits information from interested parties to evaluate their credentials and ability to open a dispensary. The Commission gave limited applicants Stage One pre-approval and those parties were required to submit a more comprehensive Stage Two application. As Jacobson testified, Stage One Pre-Approval signified that “[y]our basic background check has been approved.” However, the supplemental Stage Two application required:

[A] much deeper dive in the background checks—financial background checks, company checks, learn more about your fundraising and your money. You had to have a site. You had to have built it out. You had to have it ready for operations. You had to get local zoning approval. You had to get all the permits—a, you know, a Use & Occupancy Permit. You had to be ready to open. You had to follow the state regulations on build out and security and the way your dispensary was set up. You had to have all your systems in place. And once you got the background check approved, the next step was they would come out and actually physically give you an inspection of your dispensary, and if you passed the physical inspection by the Commission, which is after all the state and local authorities, then you were granted, basically what’s called a Stage Two license, which is your operational license.

⁶ The MaiTai group did not meet this deadline. The dispensary officially opened in December 2019, two years after receiving their pre-approval.

⁷ On May 26, 2017, the parties executed a Settlement Agreement with Scott Pack. The Agreement purports that the founding members of MaiTai discovered that Pack “was

company to MaiTai 41, LLC (“MaiTai”) and executed an Operating Agreement on June 21, 2017. The members of MaiTai were Porter, Jacobson, and Piccin, who were issued Founders Units, and SPRE 41, LLC (owned by Jacobson and Alex Kopicki), Florio 41, LLC (owned by Piccin), and Braveboat, LLC (“Braveboat”) (owned by Porter), which were issued class A units. The three member entities of MaiTai, namely SPRE, Florio, and Braveboat, all made contributions in the amount of \$75,000.00. Also on June 21, 2017, Jacobson executed an Operating Agreement for Baltimore 41, LLC, which is the entity that holds the medical dispensary license.

The group mailed its Stage Two application to the Commission for their consideration on October 27, 2017. In late 2017, the MaiTai group also set out to begin their fundraising campaign for the dispensary. After consulting with corporate counsel, the members of MaiTai decided to fund the dispensary through “the sale of securities under Rule 506 of Regulation D.”⁸ By early 2018, MaiTai had raised \$1,500,000.00 by offering and selling Class B Units to prospective investors.

a named defendant in litigation in Colorado State Court alleging that Pack had committed fraud and engaged in other tortious and/or illegal activity.” The remaining members of MaiTai paid Pack \$250,000 to sever his ties to the company. After the parties’ separation, Pack was convicted under Colorado’s racketeering statute and sentenced to twelve years in prison and ordered to pay approximately \$2.5 million in restitution to former investors. Michael Roberts, *Scarface of Colorado Marijuana Scott Pack’s Rise and Fall*, WESTWORD (Nov. 17, 2020), <https://www.westword.com/news/scarface-of-colorado-marijuana-scott-packs-rise-and-fall-11845558>.

⁸ As various experts testified to, and as noted by the trial court, “Rule 506 of Regulation D is the most commonly used method of selling securities by small, start-up companies because it provides a safe harbor from registration requirements, it preempts

In April 2018, while waiting for their Stage Two approval, Jacobson discovered that one of MaiTai’s founding members, Porter, had been “permanently barred by the Financial Industry Regulatory Authority” (“FINRA”) after he was terminated by Goldman Sachs.⁹ Porter had agreed to a FINRA Letter of Acceptance, Waiver and Consent (“AWC”) that described his termination from Goldman Sachs for “allegedly submitting personal travel expenses as business expenses.” The AWC Letter stated that “[Porter] received FINRA’s requests to provide information to appear for testimony and that he will not provide the requested information or appear for on-the-record testimony at any time.” Porter consented to the sanction that he “be barred from associating with any FINRA member in any capacity.” Porter did not disclose this ban to the other members of the MaiTai group or include this information on the Stage Two Application to the Commission.¹⁰

state registration laws and avoids the substantial expense of registration of securities under Rule 506.”

⁹ According to Jacobson, he began to investigate Porter’s background when a representative from the Commission informed Piccin that the background investigations on Porter and Alex Kopicki had not been completed. Jacobson uncovered an article that referenced criminal charges against Porter while he was in high school. Jacobson also undertook a broker check and discovered that Porter had been fired from Goldman Sachs.

¹⁰ The Stage Two Application to the Commission mandates that the applicant “**must** make accurate statements” and the application “shall be complete in every material detail.” (emphasis in original). Furthermore, “[t]he Commission may deny an application that contains a misstatement, omission, misrepresentation, or untruth.” E.25 of the Application asked, “[h]as the Applicant, any of its subsidiaries, principals, directors, partners, trustees or officers ever been called to testify before, been the subject of an investigation conducted by...any governmental agency, court, committee, grand jury or investigatory body (municipal, state, county, provincial, federal, national, etc.)?” Question E.27 of the Application asked “[h]as the corporation ever had a judgment, order, consent decree, or consent order pertaining to a violation or alleged violation of the federal antitrust, trade

After learning this information about Porter, the remaining members of MaiTai decided to contact an attorney to determine what their next steps should be. Daryl Sidle from Baxter, Baker, Sidle, Conn & Jones, P.A. authored an opinion letter and recommended that Porter was “subject to both a Jeopardizing Act and a Disqualifying Event, he has experienced a Triggering Event and is required to offer his Units to the Company for purchase” under the terms of the Operating Agreement.

On advice of their counsel, the members of MaiTai decided to convene a board meeting and confront Porter about this new information. After communicating with Porter about his availability, the remaining members of MaiTai ultimately scheduled the board meeting for May 14, 2018. Porter was given ten days’ notice of the board meeting pursuant to Section 10.9 of Operating Agreement.¹¹ After the meeting was set, Porter repeatedly inquired what the purpose of the meeting was or for an agenda. The group did not inform him that the purpose of the meeting was to present his FINRA ban but instead stated “[t]here are some very important issues we need to discuss / strategize that could affect the timing of the issuance of our Stage 2 approval.”

regulation or securities laws, or similar laws of any state, province, or country entered against it?” Porter responded “N/A” in both of his individual responses to the questions.

¹¹ Section 10.9 of the Operating Agreement says:
Meetings of the Company shall be held on ten (10) days’ notice or on such shorter notice as may be mutually agreeable to the Members on the call of the Board of Managers or the call of an affirmative vote of at least thirty three and 1/3 percent (33 1/3%) or more of the outstanding Units (Founders, Class A, and Class B) in the Company. Notice of the time and place of each meeting shall be given in writing by the Board of Managers to each Member.

Before the meeting, Sidle prepared a script for the members of MaiTai to follow as they confronted Porter. According to the minutes of the meeting, prepared by Tim Piccin, the meeting adhered relatively closely to the script. At the meeting, Jacobson and Piccin appeared in person at an office in Baltimore and Porter and Jason Klein, corporate counsel to MaiTai, appeared telephonically. After the meeting began, Piccin introduced the newly uncovered information about Porter and gave him a chance to respond with any further information about his FINRA ban or termination from Goldman Sachs. Porter declined to speak. The minutes reflect that Piccin moved that “Mr. Porter experienced both a disqualifying event and a jeopardizing act within the meaning of those terms in our operating agreement.” The motion to disqualify Porter passed by a vote of 2-1, with Jacobson and Piccin voting in favor and Porter voting against.¹² After the meeting concluded, Porter informed the rest of the MaiTai group that he had already transferred his interest to his mother, Margaret Porter. Piccin and Jacobson prepared the minutes of the meeting and sent them to Porter along with an attached correspondence purporting to “schedule a time to discuss a mutually acceptable fair market value for [the] Class A Units and Founders Units.”

Porter alleges that at the time of the Board meeting on May 14, 2018, he had already transferred his interest in MaiTai to his mother, Margaret Porter. From the time of Porter’s termination from Goldman Sachs until the Board meeting on May 14, 2018, Margaret had

¹² Following the vote to disqualify Porter, the remaining members of the Board voted to fill his vacancy with Alex Kopicki.

transferred monies to her son in excess of \$500,000.00. During this time period, Porter had extensive discussions with his parents about how he would repay the money. On June 21, 2017, Porter sent his parents a signed letter that “all of my and my LLC’s (Braveboat, LLC) ownership (one third of the company), in the Baltimore dispensary MaiTai 41, LLC (previously H&G MD), will be transferred to you, Margaret R. Porter, in the event something happens to me (death, etc).”¹³

Previously, in April 2018, Porter broached the topic of transferring his interest to his mother with the other partners. Porter testified that in “a final phone call towards the end of April before I left for eastern Europe where I - - where we agreed that I will transfer all of my ownership interest in MaiTai to her.” Porter then contacted an attorney to draft an agreement to transfer his interests to his mother. According to his testimony, Porter received the transfer documents from his attorneys on May 12 and executed them that day. The following day, Porter stated that he received another email with an agreement that inadvertently transferred his interests to his father. So, he amended the document to reflect his mother as the transferee before signing it.

On the morning of the board meeting, May 14, 2018, Porter changed the dates on the agreements that he purportedly had signed to May 11 because he “thought that these documents had to have a weekday on them.” Margaret Porter received the documents,

¹³ The trial court ruled that this letter did not constitute “estate planning” as contemplated by the parties’ Operating Agreement. As such, the court stated: The letter is not a bequest in a will; Mr. Porter does not have a will and had not prepared estate planning documents. Rather, the letter is in regard to Mrs. Porter’s request (more so a demand) of June 16, 2017 for a document and collateral before she made another loan of \$60,000 at an interest rate of 20%.

signed them, and returned them to Henry. Porter proceeded to print that version of the agreement and signed it. At that time, he also changed the dates back to May 12 and 13 after learning that they did not have to be dated on a weekday.

Following the Board Meeting, Porter took further steps to get his mother to sign the agreements because he believed that they required a “wet signature.” Porter sent one of the signed documents to his mother via FedEx to a hotel that she was staying at in Portland, Oregon. Margaret Porter did not receive the FedEx package, so Henry asked her to fly to New York to sign the agreements. On May 17, Margaret flew from Portland to New York. Henry met her at the airport where she signed the documents and then immediately took a flight back to Portland.¹⁴

Following the Board Meeting, on May 23, 2018, Appellant’s counsel, William Sinclair, sent an email to Appellees’ counsel that stated, “the actions purportedly taken by the MaiTai 41 LLC Board on May 14, referenced in the attached meeting minutes and letter, are null and void and neither Mr. Porter nor Braveboat have any units to offer for sale.” This email attached three documents that purportedly represented Porter and Braveboat’s transfer of MaiTai’s Founder and Class A units to Mrs. Porter. Sinclair also requested to find a time to discuss this with Appellees’ counsel. The record reflects that this phone call took place on May 25, 2018.

¹⁴ Henry Porter booked a flight for his mother that departed Portland at 9:30 p.m. and landed in New York at 5:55 a.m. Henry and Margaret had breakfast for less than an hour, where she signed the documents. Then, she boarded a flight back to Portland that departed at 8:35 a.m. and landed at 11:38 a.m. In total, she traveled 11 hours and 28 minutes to spend less than an hour with Henry.

On July 17, 2018, Margaret McKee, counsel for Appellees, sent Appellant a letter titled, “RE: MaiTai 41 Recission of Operating Agreement/Relationship with Henry Porter, Braveboat, LLC and any Purported Transferees and/or Assigns.” This letter “reiterate[d] the recission by the Company and Members of their relationship with [Appellant] and Braveboat, LLC, including all rights, duties and obligations as set forth in June 21, 2017 Operating Agreement.” Appellees expressed that they considered their relationship with Appellant “*void ab initio* due to the Members [sic] recent discovery of the material misrepresentations and omission of information” by Appellant. Further, in order “to rescind all business relationships with [Appellant] and Braveboat, and/or any purported transferees or assigns” and “to restore [Appellant] to the *status quo ante*, less the amount it has taken to cure the problems created by [Appellant’s] fraud[,]” the letter included a check in the amount of \$109,251.89 for Appellant. The letter conditioned acceptance of the check on a full release of all claims and warned that a complaint would be filed against Porter and his mother if they refused to accept the check and the terms provided in the letter.

Notably, neither party invoked Section 11.3.3 of MaiTai’s Operating Agreement, which provides appraisal procedures. Appellees’ letter did not invoke or make any reference to Section 11.3.3. Additionally, Porter did not accept the recission or the tendered check, and did not raise Section 11.3.3.

PROCEDURAL BACKGROUND

On October 15, 2018, Jacobson, Piccin, Kopicki, SPRE 41 LLC, Florio 41 LLC, MaiTai 41 LLC, and Baltimore 41 LLC filed a Complaint for Declaratory Judgment, Rescission, Intentional Misrepresentation, and Fraudulent Concealment against Henry and

Margaret Porter and Braveboat, LLC. Henry Porter filed his Answer on December 17, 2018. Margaret Porter filed her Answer and a Counterclaim for Declaratory Judgment. Next, Henry Porter filed a Motion for Preliminary Injunction and his own Counterclaims. Both parties continued to amend their pleadings as the case proceeded. On July 8, 2020, the Circuit Court for Baltimore County denied Henry Porter, Braveboat, and Margaret Porter’s Motion for Preliminary Injunction. When this matter went to trial, the final operative pleadings were the Amended Complaint filed by Appellees, the “Third Amended, Verified Counterclaim of Henry Porter, Individually and for the Use of MaiTai 41, LLC, and Braveboat[,] LLC” and Margaret Porter’s Fourth Amended Counterclaim. This case went to trial for seventeen (17) days spanning June through August of 2021. The circuit court issued its opinion on December 29, 2021. The trial court’s Declaratory Judgment ordered that:

1. The actions taken by the Board of Managers of MaiTai 41, LLC (“MaiTai”) at the Board meeting on May 14, 2018, are valid and effective;
2. The Board of Managers reasonably determined that Henry Porter and Braveboat experienced a Disqualifying Event and Jeopardizing Act under the provision of the MaiTai Operating Agreement (Sections 1.18, 1.25(g), 1.26, 11.3);
3. Henry Porter and Braveboat experienced an Involuntary Withdrawal under the provisions of the MaiTai Operating Agreement (Sec. 1.25);
4. Henry Porter and Braveboat experienced a Triggering Event under the provisions of the MaiTai Operating Agreement (Sec. 11.3);
5. Henry Porter is deemed to have resigned his position on the Board of Managers of MaiTai (Sec. 10.3);
6. Henry Porter ceased to be a member of MaiTai at the Board meeting on May 14, 2018 (Sec. 11.3);

7. Braveboat ceased to be a member of MaiTai at the Board meeting on May 14, 2018 (Sec. 1.18, 1.25(g) and 11.3);
8. Following the Board meeting on May 14, 2018 Henry Porter and Braveboat, LLC were required to offer for purchase their Interest in MaiTai (Founders Units and Class A Units) to the Company (MaiTai) and then to the Class A and then to the Class B members (Sec. 11.3.1);
9. The purchase price for Henry Porter’s and Braveboat’s Interests in MaiTai is fair market value as of May 14, 2018 (Sec. 11.3.1, 11.3.3);
10. The combined fair market value of Henry Porter’s and Braveboat’s Interests in MaiTai as of May 14, 2018 is \$294,213;
11. In addition to the fair market value of Henry Porter’s and Braveboat’s Interests in MaiTai, MaiTai is obligated to Braveboat for its capital contribution of \$75,000;
12. Henry Porter’s attempts to transfer his Interest (Founders Units) and Braveboat’s Interest (Class A Units) in MaiTai to Margaret Porter were not Permitted Transfers under the provisions of the Operating Agreement, and were not valid and were ineffective (Sec. 11.4);
13. Margaret Porter was never a member of MaiTai and has no standing to assert the claims in her Fourth Amended Counter-Claim;
14. The Plaintiffs’ [Jacobson, et al.] claim for rescission of the Operating Agreement is Denied;
15. Baltimore 41, LLC is a subsidiary of MaiTai; and MaiTai is the sole member of Baltimore 41, LLC;
16. Neither Henry Porter or Braveboat have standing to bring derivative claims on behalf of MaiTai;
17. Margaret Porter does not have standing to file derivative claims on behalf of MaiTai;
18. All other claims asserted by the parties and not included in this Order are Denied.

Following the Declaratory Judgment, Appellees filed a Motion to Amend the Declaratory Judgment on January 6, 2022. Appellees asked the trial court to strike

paragraph 11 of the Judgment and not require MaiTai to return Braveboat’s capital contribution of \$75,000. The circuit court denied the motion on February 2, 2022. Henry Porter timely filed his notice of appeal to this Court on January 28, 2022. Further facts will be discussed as necessary.

STANDARD OF REVIEW

Maryland Rule 8-131(c) provides:

When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court in the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of witnesses.

In effect, “if any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Webb v. Nowak*, 433 Md. 666, 678 (2013). On appeal, we view the evidence “in a light most favorable to the prevailing party.” *MAS Associates, LLC v. Korotki*, 465 Md. 457, 475 (2019) (quoting *Geo. Bert. Cropper Inc. v. Wisterco Invests., Inc.*, 284 Md. 601, 620 (1979)). As for legal questions, we “review these determinations without deference to the trial court.” *MAS Assocs., LLC*, 465 Md. at 475 (citations omitted). “Where a case involves the application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.” *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 338 (2017) (citations omitted).

DISCUSSION

Porter’s Motion To Withdraw Or Seal Record Material

Before turning to the merits of the appeal, we address a collateral matter raised by motion during the pendency of this appeal. In October 2025, Appellant Henry Porter moved in the Circuit Court for Baltimore County to withdraw from the record, or alternatively to seal, all portions of the record containing excerpts of his deposition transcript. There are four such portions: Plaintiffs’ Exhibit 195—the entire transcript as admitted at trial—pages of the transcript attached to Porter’s own summary judgment filings, other motion exhibits containing deposition excerpts, and the deposition extract included in the Joint Record Extract. The circuit court declined to rule on the merits, concluding that the record is with this Court. Appellees oppose the motion. We deny it.

The circuit court entered a Confidentiality Order on March 28, 2019. The Order required that a “CONFIDENTIAL” designation be made only upon a good-faith belief, following reasonable inquiry, that the material was genuinely sensitive. It further required that any exhibit bearing a “CONFIDENTIAL” designation be filed under seal if offered into evidence. Porter designated his deposition transcript as “CONFIDENTIAL” during discovery.

Following the eighteen-day trial before Judge Stringer, the parties exchanged exhibit binders and met in the courtroom to review each proposed exhibit individually. On November 24, 2021, all parties—including Porter—joined in a “Joint Motion Requesting the Admission of Evidence,” asking the court to confirm that the exhibits on the attached lists were admitted into evidence. Plaintiffs’ list identified Exhibit 195 as “Highlighted portions of H. Porter’s deposition.” Despite that description, Appellees lodged the entire transcript—without highlights and without sealing it—as Exhibit 195. The joint motion

was granted on November 30, 2021, and the transcript became part of the publicly available record.

The joint admission of Exhibit 195 was not the first time the transcript appeared in the public record without a seal. In November 2020, Porter himself filed twenty pages of his own “CONFIDENTIAL” deposition transcript as an exhibit to his Motion for Partial Summary Judgment, without sealing the transcript or otherwise complying with the Confidentiality Order’s requirements. Nor was it the last: when Porter’s team compiled the Joint Record Extract for this appeal, the transcript was included at E. 2380–2408 without highlights and without objection when Appellees’ counsel indicated it should be included.

Porter’s treatment of the transcript was consistent with his handling of confidentiality designations throughout the litigation. Porter designated the vast majority of documents he produced as “CONFIDENTIAL,” including items that were publicly available—among them a Cornell University rowing roster available on Cornell’s website, his FINRA Letter of Acceptance, Waiver and Consent publicly available on FINRA’s BrokerCheck website, and his curriculum vitae. Of 173 Plaintiffs’ exhibits admitted at trial, 42 bore a “CONFIDENTIAL” designation; of 95 Defendants’ exhibits, 15 bore a “CONFIDENTIAL” designation. Not one was filed under seal by any party. Not one drew an objection from Porter for having been admitted without prior sealing.

Porter states that he did not learn until October 2025 that the full transcript, rather than the highlighted portions only, had been lodged as Exhibit 195. By that point the transcript had been publicly available for more than four years, and Appellees represent that at least one law firm has obtained a certified copy for use in related litigation.

We acknowledge at the outset that Porter’s position is not without foundation. His deposition was properly designated as confidential, and the Confidentiality Order required it to be filed under seal when offered into evidence. Appellees did not seal it. And the exhibit was listed in the joint motion as “highlighted portions”—not the full transcript that Appellees actually filed. Porter is not wrong that something procedurally irregular occurred on Appellees’ side. What forecloses relief is Porter’s own conduct.

Maryland Rule 2-517(a) provides that “[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.” The rule promotes the orderly administration of justice and prevents a party from sitting on an objection while reserving it for post-judgment use. *Davis v. State*, 189 Md. 269, 273 (1947).

Porter did not merely fail to object to the admission of Exhibit 195—he affirmatively joined the motion requesting its admission. He had reviewed the exhibit binders before signing the joint motion, participated in the post-trial courtroom review of each exhibit, and himself introduced twenty pages of the same transcript in the public record a full year before trial. Whatever he understood the listed exhibit to encompass, he had the means and the obligation to ascertain what was actually in the binder before consenting to admission. That obligation is not diminished by the discrepancy between the exhibit label and what Appellees filed—if anything, any such discrepancy was ascertainable at the time of the joint motion and was not raised.

The waiver is reinforced by Porter’s independent abandonment of the Confidentiality Order’s protections throughout the litigation. In *Elkton Care Ctr. Assocs.*,

Ltd. P'ship v. Quality Care Mgmt., Inc., 145 Md. App. 532 (2002), this Court adopted a multi-factor intermediate test for determining whether inadvertent disclosure during discovery results in waiver of attorney-client privilege. The Court examined five factors: (1) the reasonableness of precautions taken to prevent disclosure; (2) the number of disclosures; (3) the extent of the disclosure; (4) any delay and remedial steps taken; and (5) whether the interests of justice favor relief. *Id.* at 544–45.

Although *Elkton Care* addressed inadvertent disclosure of privileged documents in discovery—a somewhat different procedural context—its analytical framework translates readily to the question of whether a party has forfeited the protections of a confidentiality order through a course of non-compliance. The underlying inquiry is the same: did the party claiming protection act in a manner consistent with maintaining it? Applied here, and adapted to the trial-exhibit context, all five factors favor denial.

As to precautions, Porter secured the Confidentiality Order and promptly ceased to comply with it. Unlike the inadvertent production of a single privileged document from a box in discovery—the scenario *Elkton Care* addressed—Porter's non-compliance was systematic: he over-designated documents on a wholesale basis without good-faith inquiry as the Order required, then raised no objection as sixty confidentially-designated exhibits were admitted into evidence without sealing throughout the trial. He himself introduced his own deposition pages unsealed in his summary judgment filing. A party who has behaved in this manner cannot credibly claim to have taken reasonable precautions to preserve the confidentiality he now seeks to enforce.

The remaining factors are equally clear. The number of disclosures was not one but sixty, plus Porter’s own submissions. The extent of the disclosure is complete: the transcript has been publicly accessible for more than four years, is embedded in the appellate record, and has been obtained by a third party. The delay in seeking relief exceeds four years—the inverse of *Elkton Care*, where failure to raise the issue before trial was itself held fatal because it deprived the trial court of the opportunity to enter a protective order. Here, timely action before or during trial would have permitted enforcement of the Confidentiality Order’s sealing requirement; four years later that remedy is gone. And the interests of justice do not favor withdrawing or sealing a document that forms part of the evidentiary record on which this appeal must be decided, and that has been publicly available long enough to be obtained and used by third parties in related litigation.

Porter contends that the Confidentiality Order must be evaluated on its own terms rather than by reference to court-developed waiver doctrine. He is correct that the Order’s own provisions govern its enforcement—but he points to no provision of the Order that would preserve confidentiality rights notwithstanding his personal violation of its sealing requirements. To the contrary, the Order’s good-faith designation requirement cuts against him. A party who designates a publicly available FINRA enforcement letter and a Cornell rowing roster as “CONFIDENTIAL” without reasonable inquiry—in express violation of the Order’s terms—has imperfect standing to demand strict enforcement of that same Order’s protections.

Even if waiver and forfeiture did not apply, sealing at this stage would be futile. Porter has not identified any specific confidential information in the transcript or explained

the concrete harm that flows from its continued public availability. A sealing order entered now cannot reach copies already obtained outside the court’s files. It would impose administrative burden and disturb the integrity of the appellate record without providing meaningful protection.

Porter’s Motion to Withdraw or Seal Record Material is **DENIED**.

I. PORTER’S PURPORTED TRANSFER OF HIS INTERESTS IN MAITAI.

Appellants’ first contention is that that all the requirements of the Operating Agreement¹⁵ to transfer Porter’s interest to his mother were satisfied. Porter asserts that under Section 11.4 of the Operating Agreement, he could transfer Braveboat’s interest to himself at any time because it was an Affiliate.¹⁶ Next, the purported transfer was to his

¹⁵ The relevant provision of the Operating Agreement is Section 11.4, which states: 11.4 Permitted Transfers – Any Transfer of an Interest by a Member pursuant to the Section 11.4 shall be deemed a permitted transfer (each a “Permitted Transfer”). Notwithstanding anything to the contrary contained in this Agreement, a Transfer by a Member of any Interest in the Company to (a) an Affiliate of such Member; (b) the equity owners or partners of such Member; (c) any member of such Member’s family (only if such Member is an individual and not a legal entity), or (d) any trust for the benefit of such Member and/or such Member’s family members (collectively, a “Permitted Transferee”), for estate planning purposes, shall not be subject to the provision of Section 11 hereof; provided however that any subsequent Transfer by a Permitted Transferee to another party that is not a Permitted Transferee shall be subject to the provisions of Section 11 hereof. For any Permitted Transfer by a Permitted Transferee under this Section 11.4 to be effective, the Permitted Transferee must agree to be bound by the terms and conditions of this Agreement.

¹⁶ Section 1.2 of the Operating Agreement defines Affiliate as: [W]ith respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. “Control”, when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the

mother as a member of his family as contemplated by the Operating Agreement. Porter asserts that the purpose of the contemplated transfer was for estate planning purposes in the event of his death. Finally, Porter asserts that the transfer was completed before the final Board Meeting on May 14, 2018, either through a “final phone call” between Porter and his mother in late April or the executed written agreements.

In response, Appellees assert that the circuit court correctly found that “Mr. Porter did not complete a transfer of his membership interests to his mother prior to the Board Meeting on May 14, 2018, when Mr. Porter was removed from the Company.” Appellees also contend that the purported transfers to Porter’s mother were not “undertaken for estate planning purposes.” Appellees argue that we only need to reach the question of the purpose of the transfer if we first conclude that there was a transfer that occurred before the Board Meeting.

The circuit court ruled that Porter attempted to transfer his interest to his mother “for repayment of loans and not for estate planning purposes.” The circuit court further found that Porter’s recitation of the transfer “was convoluted, confusing and flies in the face of common sense.” The court continued:

Moreover, rather than prove that he did finalize the transfer, his actions raised doubts about whether Henry had completed the transfer before the board meeting: Henry attended the Board Meeting, not Mrs. Porter; Henry voted at the meeting, which he could not do if he had transferred his interests in the Company; Henry did not inform other Board Members at the beginning of the meeting or when given an opportunity to respond, that he had already transferred his interest to his mother; it was not until after the meeting that

ownership of voting securities, by contract or otherwise, and the terms “controlling,” “controlled by” and “under common control with” shall have correlative meanings.

Henry moved to transfer his shares (according to the testimony of Mr. Jacobson and Mr. Piccin), or that Henry informed the others that he had transferred his interest to his mother (according to Henry’s testimony), either way, Henry did not broach the subject until after the meeting; Henry did not present the transfer documents at the Board Meeting; after the Board meeting, Henry attempted to Fed Ex the transfer documents to his mother in Portland, Oregon for her signature. Mrs. Porter signed the transfer documents and agreed to the terms and conditions of the Operating Agreement on May 18th, four (4) days after the Board Meeting when Mr. Porter had already been removed as a member of the Company. Margaret Porter did not need to fly to New York from Oregon on May 17, 2018, three (3) days after the Board Meeting, to sign transfer documents if the documents had already been signed. The Court finds that Mr. Porter did not complete a transfer of his membership interests to his mother prior to the Board Meeting on May 14, 2018 when Mr. Porter was removed from the Company.

Maryland applies “the objective interpretation of contracts.” *Cochran v. Norkunas*, 398 Md. 1, 16 (2007) (internal citations omitted). “If the language of a contract is unambiguous, we give effect to its plain meaning and do not contemplate what the parties may have subjectively intended by certain terms at the time of formation.” *Id.* (citing *Dennis v. Retirement System*, 390 Md. 639, 656-57 (2006) (internal citations omitted)). We focus our analysis of the meaning of a contract to the four corners of the agreement. *Id.* at 17 (citing *Walton v. Mariner Health*, 391 Md. 643, 660 (2006)).

The trial court concluded that Porter “did not complete a transfer of his membership interests to his mother” either through an oral agreement from a telephone conversation in April 2018 or through the various written agreements prior to the Board Meeting. In Appellants’ conception of the facts, Porter executed the transfer documents on May 12 and 13. “Then, on the morning of May 14, before the Board Meeting, Henry e-mailed the latter two agreements to Margaret, who countersigned, scanned, and e-mailed them back to Henry before the Board Meeting began.” Appellants contend that this constituted “mutual

assent to the essential terms of the agreements.” As recounted above, the trial court made factual findings that no transfers were completed before the Board Meeting. On appeal, these factual findings about the events that transpired are entitled to deference under the clearly erroneous standard. *See Webb*, 433 Md. at 678. Therefore, we conclude that the trial court did not commit any clear error and we hold that no transfers occurred prior to the Board Meeting.

We agree with the trial court that Porter’s actions following the Board Meeting contradict his argument that a transfer had been made. To recount, Porter attended the meeting and voted. It was not until after the meeting concluded that Porter brought up transferring his shares to his mother. Furthermore, in the days following the meeting, Porter undertook “convoluted [and] confusing” actions to get his mother’s signature on the transfer documents that demonstrate that he did not believe the transfer was completed. The trial court is best situated to weigh the credibility of witnesses and resolve the competing facts. *See Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000) (citations omitted). The trial court found that the facts showed that no transfer occurred, and we agree.

Even if we assume that a transfer did occur, it is unclear whether that transfer would adhere to the parameters of § 11.4 of the parties’ Operating Agreement. The trial court ruled that the attempted transfers were for “repayment of loans and not for estate planning purposes.” The evidence at trial showed that Porter’s parents had loaned him in excess of

\$500,000 from 2015 to 2018.¹⁷ The evidence also showed that Margaret Porter was very anxious to receive repayments of these loans from her son.

¹⁷ The trial court recounted the relevant communications between Henry Porter and his parents concerning loaning money with special attention to the language that the parties used to refer to the money.

- 10/27/2015 Email From Henry to Mrs. Porter: “I need to once again borrow money.”
(Plaintiff’s Ex. 19)
- 10/30/2015 Email From Mrs. Porter to Henry: “We are uncomfortable enabling a large debt with you that may be difficult for you to pay back.”
(Plaintiff’s Ex. 19).
- 11/28/2015 Email From Henry to Mom and Dad: Refers to the “already extensive loans you have provided me”
(Plaintiff’s Ex. 22)
- 11/29/2015 Email From Mrs. Porter (aka Gretchen Rath) to Henry: “as much as you have borrowed so far...”
(Plaintiff’s Ex. 25)
- 02/29/2016 Email From Henry Porter to Gretchen Rath: “I am again finding myself needing to borrow money from you guys.”
(Plaintiff’s Ex. 25)
- 12/12/2016 Email From Henry porter to Mom and Dad: “You both have been very generous in lending me an enormous amount of money... I am asking to borrow an additional \$20,000 to pay my credit card bill...”
(Plaintiff’s Ex. 38)
- 12/14/2016 Email From Gretchen Rath (aka Margaret Porter) to Henry: Refers to “past loans” and asking for a “repayment schedule”
(Plaintiff’s Ex. 38)
- 12/14/2016 Email From Henry Porter to his mother: “Subject: Re: Loan”
(Plaintiff’s Ex. 38)
- 06/15/2017 Email From Gretchen Rath to Henry Porter: “Since you borrowed \$50,000 ostensibly as a loan for a year...”
(Plaintiff’s Ex. 58)
- 06/16/2017 Email From Gretchen Rath to Henry Porter: Refers to “previous loans, \$200,000,” “total loan, \$394,000,” a bridge loan on [sic] \$134,000”, and a “loan of \$60,000 to relieve credit card debt.” Mrs. Porter stated, “also

To analyze whether any purported transfer occurred, we must examine the parameters for “permitted transfers” under § 11.4 of the Operating Agreement. In relevant part, § 11.4 states:

[N]otwithstanding anything to the contrary contained in this Agreement, a Transfer by a Member of any such Interest in the Company to (a) an Affiliate of such Member; (b) the equity owners or partners of such Member; (c) any member of such Member’s family (only if such Member is an individual and not a legal entity), or (d) any trust for the benefit of such Member and/or such Member’s family members (collectively, a ”Permitted Transferee”), for estate planning purposes shall not be subject to the provision of Section 11 hereof[.]

At oral argument, Appellants argued that under the Operating Agreement a member can transfer their interest for any reason. Or in the alternative, if the operative phrase “for estate planning purposes” modifies each subsection, then Porter satisfied this condition. Appellees ask this Court to affirm the trial court’s ruling that there “was no estate planning

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- need document that transfers ownership of Henry’s share in partnership to MRP in the even that something happens to Henry.” This loan would be for a term of 1 year at 20% interest.
(Plaintiff’s Ex. 59)
 - 08/29/2017 Email From Henry Porter to Mom and Dad: “I would like to request a loan for \$60,000 at an interest rate of 5%” to pay off his three (3) credit card bills and pay legal bills.
(Plaintiff’s Ex. 68)
 - 11/13/2017 Email Email from Henry Porter to his mother: “Subject: Laon” to pay down his credit card debt. “Total loan request: \$71,044.”
(Plaintiff’s Ex. 77)
 - 04/07/2018 Email Email from Henry Porter to Mom: “I need a loan... I would like to borrow \$100,000...”
(Plaintiff’s Ex. 103)
 - 04/08/2018 Email Email from Henry Porter to his mother: “Subject: Re: Loan...I’ve discussed the money I borrowed to invest in the Maryland Dispensary as being from Dad...”

purposes for the transfers.” Subsections (a) and (b) are set apart by a semicolon but a comma follows subsection (c) along with the disjunctive “or.” The trial court ruled that “transfers of interest to a Member’s family under subsection (c), to be limited for ‘estate planning purposes.’” As the Supreme Court of Maryland stated, “[w]hen the qualifying clause is set apart by a comma, it is clear that it modifies every element within the list.” *Kane v. Bd. of Appeals of Prince George’s Cnty.*, 390 Md. 145, 164 (2005).

Looking at the language of § 11.4, the usage of semicolons versus commas in subsections (a) through (d) is inconsistent. As a result of this inconsistency, these provisions seem open to varying interpretations. One interpretation is as the trial court authored, specifically, that the qualifying phrase “for estate planning purposes” modifies subsection (c). We agree with the trial court’s interpretation of the plain language of § 11.4 of the Operating Agreement. As such, for there to be a valid transfer to a family member, the Operating Agreement mandates that the purpose be for estate planning.

As stated above, the trial court concluded that Porter attempted to transfer his interests in MaiTai to repay loans to his parents and not for estate planning reasons. The trial court heard the testimony and competing evidence in this matter for a total of seventeen days. Appellate courts grant deference to the trial court’s factual determinations. As Appellants point out, even instances where there are mixed questions of fact and law but the issue “has a heavier factual component”, we apply the clearly erroneous standard. *Martin v. TWP Enterprises, Inc.*, 227 Md. App. 33, 49 (2016) (quoting *Farmer Bank of Maryland v. Chicago Title Ins. Co.*, 163 Md. App. 158, 188 (2005) (internal citations omitted)). “Under the clearly erroneous standard, [we] do not sit as a second trial court,

reviewing all the facts to determine whether an appellant has proven his case.” *L.W. Wolfe Enterprises, Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (internal citations omitted).

Porter’s purpose for the transfer given the competing evidence was fundamentally a factual question. The trial court did not endeavor to answer the question of whether the purported transfer was legally sufficient to effectuate a formal plan for Porter’s estate. Instead, after hearing all the competing evidence in the case, the trial court made a factual determination as to the purpose that Porter attempted to transfer his interest to his mother. The trial court’s conclusion is therefore given deference and we hold that there was evidence in support of its conclusion that there was no estate planning purpose in the attempted transfer. Porter’s parents had loaned significant money to him for both personal and business purposes. Margaret was very apprehensive to receive money back in some form from her son.¹⁸ Facing this pressure, Porter attempted to transfer his interests to his mother to accomplish this goal and pay down some of his financial obligations to his parents.

Ultimately, the trial court was not clearly erroneous in its conclusion that Porter did not complete a transfer of his membership interests to his mother before the Board Meeting on May 14, 2018.

¹⁸ As the trial court stated, “[i]n her deposition, Margaret Porter testified that when discussing the transfer of Henry Porter’s interest in MaiTai to her, she told Henry that ‘I want it in my name and I want it **now**...’ (Depo. T. of Margaret Porter, p. 106)” (emphasis in original).

II. BREACH OF THE DUTY OF CANDOR AND ENTIRE FAIRNESS BY THE MAITAI BOARD.

Appellants contend that the other MaiTai board members, Jacobson and Piccin, breached their duties of candor and entire fairness to Porter. They argue that the remaining MaiTai board members “omitt[ed] material facts and ma[de] materially false statement about the purpose of the May 14 Board Meeting.” Leading up to the board meeting, Jacobson and Piccin purposely did not reveal that the purpose of the meeting was to confront Porter about his FINRA ban. After numerous requests for the purpose of the meeting from Porter, the MaiTai Board eventually told him that the purpose “was to address some general business activities.” Appellants argue that this constitutes a breach of their fiduciary duty of candor. In a similar vein, Appellants also posit that these actions run afoul of the entire fairness doctrine. As a remedy for these breaches, Appellants ask this Court to void the transactions and order an accounting for Porter to assess his damages.

Appellees contend that the terms of the Operating Agreement did not contain any notice requirements for the purpose of meetings. They further argue that Porter was aware of his own “Disqualifying Events and Jeopardizing Acts” and cannot provide any reasons for why the actions of the board were unfair to him. Next, Appellees posit that the Entire Fairness Doctrine does not apply in this matter because there is no basis in the law or in the parties’ Operating Agreement for its application. Finally, Appellees argue that based on the trial court’s opinion, Porter’s claims are barred by the doctrine of unclean hands.

The Maryland Limited Liability Company Act (“LLC Act”) contained in Maryland Code Corporations and Associations Article (“CA”), Title 4A governs LLCs in Maryland.

The LLC Act was enacted “to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.” *Plank v. Cherneski*, 469 Md. 548, 570 (2020) (quoting CA § 4A-102(a)). The guiding document in an LLC is the Operating Agreement, which governs “[t]he members’ relationship with one another, the affairs of the LLC, and the conduct of the LLC’s business.” *Id.* (citing CA § 4A-101(p)). Furthermore, the Operating Agreement establishes “how the LLC ‘shall be managed, controlled, and operated’; the manner in which members share profits and losses; the manner in which new members may be admitted; procedures for assignment of membership interests; and meeting and voting procedures.” *Id.* at 571 (quoting CA § 4A-402(a)(1)-(8)).

The relevant provisions in the parties’ Operating Agreement to this issue on appeal are contained in Sections 10.5, 10.7, and 10.9. Section 10.5 states:

A majority (in number) of the members of the Board of Managers shall constitute a quorum for the transaction of business at any meeting of the Board of Managers, provided that if less than a majority of such number of members of the Board of Managers are present at said meeting, a member of the Board of Managers present at such meeting may act solely to adjourn the meeting without further notice. The act or affirmative vote of a majority (in number) of the members of the entire Board shall be the act of the Board of Managers, unless the act of a greater number is required by this Agreement.

Whereas Section 10.7 states:

The members of the Board of Managers may participate in and act at meetings of the Board of Managers through the use of a conference telephone or other communications equipment or system by means of which all persons participating in the meeting can hear each other (“Electronic Participation”). Participation in such meeting shall constitute attendance in person at the meeting of the person or persons so participating.

Finally, Section 10.9 provides that:

Meetings of the Company shall be held on ten (10) days' notice or on such shorter notice as may be mutually agreeable to the Members on the call of the Board of Managers or the call of an affirmative vote of at least thirty three and 1/3 percent (33 1/3%) or more of the outstanding Units (Founders, Class A, and Class B) in the Company. Notice of the time and place of each meeting shall be given in writing by the Board of Managers to each Member.

The combination of these three provisions forms the MaiTai members' agreement as to how their meetings should proceed. In these sections, the parties did not include any provision that mandates prior notice of the subject matter of meetings to each individual Board Member. Section 10.9 provides that each member receives ten days' notice of the meeting itself but is silent on the subject matter. Appellants attempt to take the parties' obligations outside the parameters of the Operating Agreement and into the common law duty of candor.

Appellants point out that under the Operating Agreement the MaiTai group was not obligated to convene a Board Meeting to remove Porter.¹⁹ However, the Board decided to convene the Board Meeting on May 14, 2018, under the terms of the Operating Agreement. Porter received at least ten days' notice of the meeting and choose to attend the meeting electronically. Furthermore, a majority vote of the Members removed him from the MaiTai group.

¹⁹ As the trial court noted in its opinion, “under the terms of the Operating Agreement, a majority of the Board could have taken the same action by written consent without a Board meeting. (Operating Agreement Section 10.6, Mr. Wender testimony T. Aug 19, p. 93).”

As the Supreme Court of Maryland stated, “[t]o establish a breach of fiduciary duty, a plaintiff must demonstrate: (1) the existence of a fiduciary relationship; (2) breach of the duty owed by the fiduciary to the beneficiary; and (3) harm to the beneficiary.” *Plank*, 469 Md. at 559. Dispensing with a discussion of the first two factors, we are not persuaded that Porter suffered any harm or prejudice by the Board Meeting. To summarize, Porter was well aware of his personal circumstances that amounted to a Disqualifying Event and Jeopardizing Act before the meeting. Porter was notified of the meeting within the ten-day period prescribed by the Operating Agreement. At the Board Meeting, Porter was given an opportunity to respond. And following the meeting, Porter was supplied the writing determinations of the Board and did not challenge them at that time. We conclude that Porter is unable to meet the harm factor and conclude that there was no breach of the duty of candor.

Next, Porter contends that the entire fairness standard should apply in this matter. Appellees respond that the entire fairness test does not apply in this case. The trial court concluded that there was no provision included in the MaiTai Operating Agreement to trigger the application of the entire fairness doctrine. Edward Wender, who testified at trial as Appellees’ expert, co-authored an article entitled, “Representing Minority Members of an LLC in Negotiating an LLC Agreement.” The article expressed that “[i]f the minority members do not have the right to approve interested transactions, the operating agreement should, at a minimum, specify that an ‘interested transaction’ must be ‘entirely fair’ to the LLC and its members.” Elizabeth S. Fenton, Carmen Fonda, Marshall B. Paul, Edward L. Wender, *Representing Minority Members of an LLC in Negotiating an LLC Agreement*,

Business Law Today, Feb. 2, 2021, at 4. As Appellants concede, Maryland appellate courts have not applied this doctrine to managers of an LLC. We conclude that the entire fairness doctrine does not apply in this matter because there is no entire fairness provision in the Operating Agreement.

Finally, the trial court ruled that the doctrine of unclean hands barred Porter from seeking equitable relief. Specifically, the court noted:

Mr. Porter asks this Court to invalidate the Board’s actions to oust him because he believes the Board failed to disclose the reason for the meeting, when the reason for the meeting was his own failure to disclose to the Board, the Commission, and the MaiTai investors the facts regarding his termination from Goldman Sachs, his FINRA investigation and sanction, and the extent of his employment at Columbia Care.

“The unclean hands doctrine states that ‘courts of equity will not lend their aid to anyone seeking their active interposition who has been guilty of fraudulent, illegal, or inequitable conduct in the matter with relation to which he seeks assistance.’” *Dickerson v. Longoria*, 414 Md. 419, 455 (2010) (quoting *Hlista v. Altevogt*, 239 Md. 43, 48 (1965)). Appellees argue that Porter’s conduct precludes this Court from granting him equitable relief. We agree with the trial court’s reasoned analysis on the doctrine of unclean hands. Despite Appellants’ contention that “the only improper conduct was that of Jacobson and Piccin,” Porter failed to inform his partners of various personal details that seriously endangered the approval of the MaiTai application to the Commission. He failed to disclose important information to his partners, which directly led to his removal as a member. His attempts to complain as to the Board’s omissions or failures are barred by the doctrine of unclean hands.

Therefore, the circuit court’s conclusion that Appellees did not breach any fiduciary duty in relation to the Board meeting was not erroneous.

III. BALTIMORE 41 IS A SUBSIDIARY OF MAITAI.

Appellants argue that Baltimore 41 was not a subsidiary of MaiTai, such that Porter could not have experienced a Disqualifying Event under the terms of the Operating Agreement. They contend that “there is no written document” that reflects a transfer of ownership by the three members of Baltimore 41 to MaiTai. Furthermore, Porter asserts that other evidence that the trial court relied on to find that Baltimore 41 was a subsidiary was not signed by him or is insufficient.

Appellees assert that the evidence below clearly shows that MaiTai was a subsidiary of Baltimore 41. They further argue that Porter expressly consented to the assignment of Baltimore 41’s membership interests to MaiTai in June of 2017. Appellees point to various pieces of evidence that document the status of Baltimore 41 as a subsidiary of MaiTai, including a letter that Porter wrote to his parents, the Subscription Agreements sent to investors, and representations in the parties’ Stage II application to the Commission.

Section 1.18 of the Operating Agreement stated that a “Disqualifying Event...shall mean a circumstance or event involving a Member... which may prohibit or disqualify the Company and/or its subsidiary or subsidiaries from obtaining, maintaining, and/or renewing a license to cultivate process, and/or dispense cannabis in the State of Maryland.”

Section 1.33 of the Operating Agreement defined “Subsidiary” as:

[O]f the relevant date of determination, with respect to the Company, a corporation, limited partnership, limited liability company or other entity of which more than fifty percent (50%) of the voting power of the outstanding

voting equity securities or more than fifty percent (50%) of the outstanding equity interest is held, directly or indirectly, by the Company.

On this issue, the trial court reasoned that “in order for a Disqualifying Event to occur Baltimore 41 must be subsidiary of MaiTai” “[b]ecause MaiTai did not apply for the license, and does not hold the license.” As the trial court noted, Porter conceded below that both Piccin and Jacobson transferred their interest in Baltimore 41 to MaiTai. The trial court found that based on this concession, Baltimore 41 is a subsidiary of MaiTai under the parties’ own definition of subsidiary contained in Section 1.33 of the Operating Agreement.

Appellants argue that “[f]or Baltimore 41 to become a ‘subsidiary’ of MaiTai 41, its three members needed to transfer their membership interests in Baltimore 41 to MaiTai.” Just as the trial court noted, Appellants “cite no authority for this statement.” The trial court interpreted Section 1.33 of the Operating Agreement to mean that “only two of the three members of Baltimore 41, constituting 67 percent of the voting power or equity interest in Baltimore 41, needed to convey their interest in Baltimore 41 to MaiTai.” Viewing the evidence in the light most favorable to the prevailing party below, we find no error with this analysis and agree with the trial court. Even if all the members needed to assent to their transfer to MaiTai, the trial court made factual findings concerning the references in the record where Porter characterized Baltimore 41 as a subsidiary.

At trial, Counsel for Porter did not object to the opposing party’s characterization of Baltimore 41 as a “wholly owned subsidiary of MaiTai 41.” In various parts of the Stage II Application, the MaiTai group identified MaiTai as owning 100% of Baltimore 41 such

as in Porter’s individual Exhibit 7(a), Exhibit 1(f), Exhibit 9, and Exhibit 17.²⁰ Furthermore, at the trial stage, all Appellants admitted that “MaiTai is the sole member of Baltimore 41 LLC.” Finally, the Operating Agreement for Baltimore41, LLC sets forth that: “[MaiTai 41 LLC] shall be conclusively deemed, and hereby is, the sole member of [Baltimore 41, LLC].” The summation of all this evidence shows that the trial court was not clearly erroneous in its determination that Baltimore 41 is a subsidiary of MaiTai.

IV. ADVANCEMENT OF ATTORNEY’S FEES & THE MOTION TO COMPEL INFORMATION

Prior to trial, Appellants moved for a preliminary injunction and requested that the trial court enjoin the MaiTai Board from advancing any fees to its members for the purpose of paying for any expenses connected to this litigation. Similarly, Appellants also moved to compel the MaiTai Board to provide relevant information on the advancement of fees. The trial court denied both of these motions without a hearing. At trial, Henry Porter and his mother, Margaret Porter, sought counterclaims that alleged derivative claims for corporate waste.

Appellants ask this Court to conclude that the circuit court erred and that the MaiTai Board was not entitled to the advancement of fees. In response, Appellees contend that this argument is moot. Alternatively, the trial court properly concluded that the advancement of legal fees was acceptable.

²⁰ Appellants argue that Porter only reviewed the Stage II Application to the Commission and the documents are ultimately only initialed by Jacobson. Although this is true, Porter was given the opportunity to review these documents before they were submitted to the Commission and never objected to the notation that MaiTai is the 100% owner of Baltimore 41.

First, we turn to the parties’ Operating Agreement, which contains provisions that detail the protocol for indemnification. Section 16.3 states:

Company Indemnification. To the fullest extent permissible by applicable law, the Company shall indemnify each Member if Member was, is or is threatened to be made a party to or participant in any proceeding, against all expenses, judgments, fines and amounts paid in settlement, actually and reasonably incurred by the Member in connection with such proceeding if the member acted in good faith and in a manner for which they are not liable pursuant to Section 16.2 above.

Whereas Section 12 of the Operating Agreement says:

INDEMNIFICATION. The Company shall indemnify the Managers, and such other persons as are identified by the managers by written instrument executed by the Managers as entitled to be indemnified under this Section, for all costs, losses, liabilities, and damages paid or accrued by the Manager(s) or any such other person in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of Maryland. In addition, the Company may (upon the affirmative vote of a majority of the Board of Managers) advance costs of defense of any proceeding against the Manager(s) or any such other person upon receipt by the Company of an undertaking by or on behalf of the Man[a]ger(s) or such other person to repay such amount if it shall ultimately be determined that the Manager(s) or such other person is not entitled to be indemnified by the Company.

As for Margaret and Henry Porter’s derivative claims for corporate waste, the circuit court ruled that under CA § 4A-802 “[n]either Henry Porter nor Margaret Porter were members at MaiTai at the time this action was brought.” Therefore, because CA § 4A-802, mandates that the Plaintiff in a derivative action must be a member at the time the action is brought, the trial court ruled that Margaret and Henry Porter lacked standing.

We conclude that the circuit court’s ruling on the Preliminary Injunction is moot because Appellants failed to note an appeal from these interlocutory orders. As to the circuit court’s conclusion that Margaret and Henry lacked standing to file derivative claims,

we agree with the trial court pursuant to CA § 4A-802 (“The Plaintiff in a derivative action shall: (1) Be a member at the time the action is brought...”). We also conclude that the circuit court did not err in denying Appellants’ Motion to Compel Information Related to the Advancement of Fees.

V. FAIR MARKET VALUE OF MAITAI.

Section 11.3.3 of the MaiTai 41 LLC Operating Agreement establishes a multi-step procedure for determining the purchase price of an Affected Member’s interest following a Triggering Event. The parties must first attempt to agree on a price. If they cannot reach mutual agreement within sixty days after the Acceptance Period expires, the purchase price defaults to the fair market value of the Affected Member’s interest as determined by a jointly selected qualified appraiser, chosen within twenty days. If the parties cannot agree on a single appraiser, each side selects its own within thirty days, and the purchase price is the average of the two appraisals, provided the higher appraisal does not exceed the lower by more than ten percent. If the two appraisals diverge by more than ten percent, a third appraiser is selected within ten days, and the purchase price equals the average of the two closest appraisals among the three. Section 11.3.3 also provides that “[i]f a party fails to appoint an appraiser as required by this subsection the other appraiser or appraisers so appointed shall act alone, and his, her or their decision shall be binding on all parties hereunder.”

Following the Board Meeting on May 14, 2018, Jacobson, on behalf of MaiTai, wrote a letter addressed to Porter that purported to “schedule a time to discuss a mutually acceptable fair market value for th[e] Class A Units and Founders Units.” Porter did not

respond to that letter and a meeting never occurred. Porter never appointed an independent appraiser pursuant to Section 11.3.3. Similarly, through the course of the litigation and seventeen days of trial, Appellants did not present any expert testimony as to their view of the fair market value of Porter’s interests. The trial court found that “neither party engaged an appraiser within the time periods provided under Section 11.3.3.” Left with only one appraisal in the record, the trial court accepted Appellees’ expert opinion that “the combined fair market value of Henry Porter’s and Braveboat’s interest in MaiTai as of May 14, 2018[,] is \$294,213.”

At the outset, we reject Appellees’ contention that this issue “is not properly before the Court.” Pursuant to Md. Rule 8-131(a), we will only consider an issue if “it plainly appears by the record to have been raised in or decided by the trial court.” This issue was squarely decided by the trial court in its opinion under the subsection entitled “Purchase Price,” where the court discussed Section 11.3.3 in detail. The issue is properly before us.

Before turning to the merits, we pause to identify the correct standard of review, which is outcome-determinative here. The interpretation and application of an LLC operating agreement presents a question of law subject to *de novo* review. *Plank*, 469 Md. at 569-71; *MAS Assocs., LLC.*, 465 Md. at 475. The factual determination of fair market value, when properly before a court, is reviewed for clear error. *Mercy Med. Ctr, Inc. v. United Healthcare of the Mid-Atlantic, Inc.*, 149 Md. App. 336, 354–55 (2003). The predicate question—whether the circuit court was empowered to make a factual valuation determination at all, rather than directing the parties to implement the Section 11.3.3 procedure—is itself a question of law, reviewed *de novo*.

Appellants argue that the circuit court short-circuited the contractual valuation process by relying on Appellees’ litigation expert in place of the independent appraisal mechanism the parties had negotiated. Appellees’ implicit response rests on three premises: (1) the trial court had discretion to determine fair market value as an incident of its equitable jurisdiction; (2) there was no clear error in accepting Appellees’ expert valuation; and (3) Appellants forfeited any challenge by failing to offer a competing expert at trial. We address each premise in turn.

The Maryland Limited Liability Company Act was enacted “to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.” *Plank*, 469 Md. at 570 (quoting CA § 4A-102(a)). Section 11.3.3 is not a general aspiration or a permissive framework. It is a mandatory, detailed procedure with specific timelines, sequential steps, party-selection mechanisms, averaging rules, and cost allocations. Its structure reflects a deliberate choice by sophisticated parties to entrust valuation to an independent appraisal process rather than to litigation. A court of equity, having taken jurisdiction of a dispute, may resolve all issues necessary to do complete justice between the parties—but that principle does not authorize a court to rewrite the parties’ contract. Equity enforces contracts that courts of law cannot adequately remedy; it does not override them. Permitting the circuit court to bypass Section 11.3.3 entirely would not “do equity”—it would eliminate a contractual right the parties had negotiated.

Appellees are correct that the *amount* of fair market value, once properly before a court, is a factual finding reviewed for clear error. But this conflates the standard of review for a factual finding with the threshold question of whether the court had authority to make

that finding in the first place. Whether the circuit court was empowered to determine purchase price outside the Section 11.3.3 procedure is a question of contract interpretation reviewed *de novo*. Clear-error review presupposes that the court was entitled to reach the question. A well-supported answer to the wrong question remains the wrong answer.

Appellees’ most practically compelling argument is that Appellants, having failed to present a competing expert valuation at trial, cannot now challenge the result. But this also misconceives Appellants’ objection. Appellants do not contend that the court found the wrong number; they contend that the court should not have found *any* number—that Section 11.3.3, not judicial factfinding, was the contractually mandated mechanism for determining the purchase price. A party who challenges a tribunal’s authority to decide an issue need not present evidence on the merits of that issue in order to preserve the legal objection. To hold otherwise would force a party to participate in proceedings it contends are unauthorized—and risk being bound by adverse factual findings generated in those proceedings—as the price of preserving a legal challenge to the proceedings’ legitimacy.

The record establishes that neither party ever implemented the Section 11.3.3 appraisal process, and that both parties abandoned it before litigation commenced. Appellees made an initial attempt to engage the process when, after the Board meeting, they invited Porter to discuss fair market value. Porter’s counsel responded on May 23, 2018 by repudiating the Triggering Event entirely and asserting that Porter and Braveboat had no units to offer for sale. Appellees in turn pivoted away from the buyout framework. On July 17, 2018, they sent Porter a rescission demand declaring the entire Operating Agreement relationship *void ab initio* and tendering a *status quo ante* payment. That letter

did not invoke Section 11.3.3 and did not designate an appraiser. This is therefore not a case where one party prevented the other from using the contractual process. Neither party attempted it. Section 11.3.3 itself provides a remedy for a party’s failure to appoint an appraiser: “the other appraiser or appraisers so appointed shall act alone, and his, her or their decision shall be binding on all parties hereunder.” Appellees did not invoke that provision—they presented a litigation expert instead.

We hold that the circuit court’s acceptance of Appellees’ litigation expert as a substitute for the Section 11.3.3 appraisal procedure was error. The Operating Agreement’s valuation mechanism is a contractual term entitled to enforcement. *Plank*, 469 Md. at 569-71; *MAS Assocs.*, 465 Md. at 475. We remand with instructions that the parties implement the Section 11.3.3 appraisal procedure. Because neither party made a good-faith attempt to invoke the process before litigation commenced, both parties stand on equal footing on remand: the sixty-day mutual-agreement period shall run from the date of the mandate. If no agreement is reached, the parties shall proceed through the sequential appraiser-selection steps within the timeframes the Operating Agreement prescribes. Section 11.3.3’s express default provision—that if a party fails to appoint an appraiser, the other party’s appraiser acts alone and that determination is binding—remains operative and enforceable on remand. The circuit court shall retain jurisdiction to resolve any disputes over the parties’ participation in the process.

VI. THE RETURN OF BRAVEBOAT’S CAPITAL INVESTMENT.

Cross-Appellants filed an appeal asking this Court to conclude the trial court erred by ordering MaiTai to return Braveboat’s capital contribution of \$75,000.00 on top of the

fair market value. They argue that “the separate return of Braveboat’s capital contribution of \$75,000...would effectively give Braveboat a windfall that is contrary to what MaiTai’s members bargained for in the Operating Agreement.” Cross-Appellees argue that trial court properly ordered for the return of Braveboat’s capital contribution. They assert that the trial court’s reasoning was sound and supported by the evidence.

As noted *supra*, after the trial court issued its ruling, Cross-Appellants filed a Motion to Amend the Court’s December 29, 2021 Declaratory Judgment. On February 26, 2022, the trial court denied the motion and stated: “[t]he Court found Mr. Seigneur’s opinion reliable, but also believes it is on the conservative side of what is reasonable. Therefore, the Court believes its decision to order MaiTai to pay the Defendant the amount of its capital contribution is fair, reasonable and supported by the evidence.”

After reviewing the arguments of both parties on this issue, we are not persuaded that Cross-Appellees are entitled to the return of Braveboat’s capital investment. First, on an independent review of the parties’ Operating Agreement, we do not find any provisions that mandate the return of a capital investment under the subsection for the purchase of an affected member’s interest or elsewhere in the document. Next, the trial court did not include a discussion of its decision to order the return of the capital investment. The trial court simply noted in its Order Denying the Motion to Amend that it believed Mr. Seigneur’s opinion to be conservative and concluded that the return of the investment was fair. The trial court did not provide support from the Operating Agreement or any other basis within the law that “obligated” the return of this money.

Given that the trial court did not ground this award from the Operating Agreement or any other source within the law, we review this legal conclusion under a *de novo* standard. While the trial court may have rationalized this decision by stating that the fair market value figure was conservative, this determination does not demonstrate how MaiTai was legally obligated to return the investment. Furthermore, common sense seems to suggest that the capital investment should not be returned. Porter and his LLC, Braveboat, invested \$75,000.00 in the joint dispensary venture in June of 2017, shortly after the group separated with Pack and before the parties entered into the Operating Agreement. In return for this investment, Braveboat was issued 29,999 Class A Units, constituting a 33.33% interest in the company. Following the removal of Porter, the involuntary sale of these interests is what entitles Porter to receive their fair market value. If we would conclude that Braveboat’s initial capital investment should be returned that would entitle Porter to receive the fair market value of the shares that he received for his investment and that very same investment returned. This would effectively entitle Porter and Braveboat to “a windfall that is contrary to what MaiTai’s members bargained for in the Operating Agreement.”

Therefore, we conclude that the trial court erred by ordering the return of Braveboat’s capital contribution in addition to awarding Appellants the fair market value of Porter and Braveboat’s interests in MaiTai.

CONCLUSION

Accordingly, we affirm the decision of the Circuit Court for Baltimore County in the Declaratory Judgment of December 29, 2021, in all aspects except as to the issues of

MaiTai’s fair market value (Issue V) and Braveboat’s capital investment (Issue VI). We reverse the circuit court’s valuation determination on Issue V and remand for implementation of the Section 11.3.3 appraisal procedure as described above. We also reverse the circuit court’s conclusion that “MaiTai is obligated to Braveboat for its capital contribution[,]” and remand the case to the circuit court with instructions to enter a declaratory judgment that MaiTai is not obligated to return Braveboat, LLC’s capital contribution of \$75,000.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED
IN PART; REVERSED AND REMANDED
IN PART. CASE REMANDED TO THE
CIRCUIT COURT FOR BALTIMORE
COUNTY. COSTS TO BE EVENLY SPLIT
BY THE PARTIES.**