Circuit Court for Worcester County
Case No. C-23-CV-18-000149

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 210

September Term, 2019

MARIA E. MENA, et al.

v.

COUNCIL OF UNIT OWNERS OF THE GARDEN CONDOMINIUM II AT SUNSET ISLAND, et al.

Fader, C.J.
Nazarian,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: December 16, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

We are called upon to analyze the role the Business Judgment Rule[1] plays in tort claims against condominium associations. Maria Mena and her mother owned a condominium unit at Garden Condominium II at Sunset Island in Ocean City, Maryland. The two filed suit against the Council of Unit Owners of the Garden Condominium II at Sunset Island ("Council"), as well as its affiliates Sunset Island Community Association, Inc. ("SICA") and Community Association Services, Inc. ("CAS").

The Menas claimed that the Council—and by extension, SICA and CAS—was negligent in agreeing to hold harmless NVR, Inc. ("NVR"), the builder and developer. The Menas asserted that the Council, SICA, and CAS were negligent in entering the agreement and in failing to pursue malpractice claims against their former legal counsel for the negotiation. The circuit court granted the defendants' motions to dismiss.

The Menas[2] present us with two questions on appeal, which we have rephrased:

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[1] We will explain the doctrine known as the "Business Judgment Rule" in our Discussion section.

[2] The Menas phrased their questions as follows:

> 1. Did the Circuit Court err in Granting the Council's Motion to Dismiss by holding that the Business Judgment Rule precluded Negligence Suits against a Condominium Association absent fraud, bad faith, self-interest, or self-dealing?
>
> 2. Did the Circuit Court err in granting CAS and Sunset Island CA's Motions to Dismiss without Analysis of the Allegations in the Complaint that they were Both Responsible for the Breaches of Duty[?]

1. Did the circuit court err by applying the Business Judgment Rule to the Menas' negligence claims absent any showing of fraud, bad faith, or self-interest?
2. Did the circuit court err by dismissing claims against SICA and CAS?

We answer both questions in the negative, and affirm the circuit court's judgment for the reasons discussed below.

FACTS AND LEGAL PROCEEDINGS

Shortly after NVR transferred the Garden Condominium II units to private parties, the Council learned of some design and construction defects, as well as various breaches of warranties. In 2010, the Council engaged legal counsel to assist with its claims against NVR for damages and defects concerning water infiltration issues in common elements of the condominium. Allegedly, the Council relied on the advice of its legal counsel in deciding to settle with NVR, the terms of which were included in a confidential agreement ("Settlement Agreement").[3] In the Settlement Agreement, the Council agreed to hold NVR harmless against all future claims, including any claims for latent defects or other unknown claims.

Unfortunately, more construction problems ensued in the years following the Settlement Agreement, and more repairs were necessary. The Council approved and issued a special assessment against all unit owners for the cost of the necessary repairs to the

[3] The Settlement Agreement is not in the record, and the parties did not disclose any terms or conditions other than characterizing it as a "general release" with a "hold harmless" provision. Counsel for the defendants advised the circuit court that they sought to keep it confidential.

common elements on December 1, 2017. The share of expenses assessed to the Menas was $11,307.36. The special assessment, as alleged in the complaint, was to "defray the costs of repair and remediation [of] a water encroachment problem in the stairwells of the condominium buildings caused by shoddy and inadequate construction" by NVR. The Menas believed that the special assessment was only the first in a series of planned assessments to correct the water encroachment problems.

Notwithstanding the additional defects, the Council decided not to pursue claims against its former legal counsel for negligence or malpractice stemming from the Settlement Agreement. Allegedly, before making its decision, the Council conducted a study analyzing potential claims against the former legal counsel. The allegations stemming from the study were absent from the Menas' complaint.

The Menas refused to pay the special assessment, so the Council mailed a demand and notice of intent to create a lien against their unit through legal counsel. In their initial complaint, the Menas outlined four counts: three pertaining to the lien and assessment, and one pertaining to the negligence of the Council, SICA, and CAS. The negligence claim asserted that the defendants were responsible for (1) an alleged joint decision to enter into the Settlement Agreement; and (2) the decision not to pursue negligence or malpractice charges against former legal counsel involved in making the Settlement Agreement.

On January 25, 2019, after a hearing, the circuit court granted the defendants' motions to dismiss as to all counts except for Count I, which challenged the special

assessment. The court ruled that the Business Judgment Rule applied to the negligence claim:

> [T]his is a case where the Business Judgment Rule I think does very clearly or very clearly would apply because the Council of Unit Owners did exactly what [it was] supposed to do. [It] may have done it in a negligent manner according to the Plaintiff, but the Business Judgment Rule even though it applies or it comes up usually in shareholder derivative suits, Maryland case law is clear that it does apply to these types of situations, does apply to [the] Council of Unit Owners discharging [its] obligations to protect or maintain and repair the common elements. And if that's going to be challenged, in that context there's a presumption that the Council of Unit Owners operated in good faith with fair dealing and in the interest of the unit owners. And there has to be a showing in order to rebut that presumption of bad fraud, bad faith, self-interest, or self-dealing.

Additionally, the court decided that the complaint did not make sufficient allegations against SICA and CAS, and that even if sufficient, any negligence claims were shielded by the Business Judgment Rule. The circuit court saw SICA and CAS as "ancillary players" to the claims.

The Menas later settled Count I with the Council. They agreed to pay outstanding fees to the Council to preserve their negligence claim. This appeal followed.

STANDARD OF REVIEW

Our review of the grant of a motion to dismiss is without deference. *See D.L. Sheppard Pratt Health System, Inc.*, 465 Md. 339, 350 (2019). As Judge Harrell wrote for the Court of Appeals:

> Considering a motion to dismiss a complaint for failure to state a claim upon which relief may be granted, a court must assume

> the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted. . . . The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice. . . . Upon appellate review, the trial court's decision to grant such a motion is analyzed to determine whether the court was legally correct.

RRC Northeast, LLC v. BAA Maryland, Inc., 413 Md. 638, 643–44 (2010).

DISCUSSION

Question 1: The Business Judgment Rule

Whether The Business Judgment Rule Applies

The Menas argue that the circuit court erred by applying the Business Judgment Rule to their claim for negligence against the Council. The Council counters that the court was correct to apply the Business Judgment Rule because the rule "applies to decisions made by homeowners and condominium associations." Both SICA and CAS agree that the Business Judgment Rule applies to condominium or homeowners' associations under Maryland law.

The Business Judgment Rule, originally applied in shareholder derivative suits against the directors of a corporation, creates a "presumption that directors of a corporation acted in good faith and in the best interest of the corporation." *Reiner v. Erlich*, 212 Md. App. 142, 156 (2013). Significantly for this case, the doctrine has expanded to apply to

decisions by the board of trustees of a condominium association. *See Black v. Fox Hills N. Cmty. Ass'n, Inc.*, 90 Md. App. 75, 81 (1992).

In order to rebut a Business Judgment Rule defense, "the party challenging the validity of a board's actions must produce evidence sufficient to rebut this presumption." *Wittman v. Crooke*, 120 Md. App. 369, 376 (1998) (cleaned up). The rule, "therefore, precludes judicial review of a legitimate business decision of an organization, absent fraud or bad faith." *Black*, 90 Md. App. at 82.

The Maryland General Assembly codified this standard for corporations and associations:

> (c) A director of a corporation shall act:
> (1) In good faith;
> (2) In a manner the director reasonably believes to be in the best interests of the corporation; and
> (3) With the care that an ordinarily prudent person in a like position would use under similar circumstances.

Maryland Code (1975, 2014 Repl. Vol.), § 2-405.1 Corporations & Associations ("C&A") Article. This codification also included the rule's presumption: "[a]n act of a director of a corporation is *presumed to be in accordance with subsection (c)* of this section." C&A § 2-405.1(g) (emphasis added).

We previously applied the Business Judgment Rule to a community association's refusal to enforce a covenant regarding a fence in *Black v. Fox Hills N. Cmty. Ass'n, Inc.* in 1992. The Blacks brought a claim against the Fox Hills North Community Association, Inc. ("FHNCA") for approving a proposed fence on another owner's property. *Black*, 90 Md. App. at 78. The Blacks claimed that the fence violated FHNCA's Declaration of

Covenants and Restrictions for all properties in the subdivision. *Id.* In filing their action, the Blacks "sought a declaratory judgment that FHNCA approved the [neighbor's] fence in error and that FHNCA breached its duties and obligations to them by failing to take any action to remedy the erroneous approval." *Id.* at 81. The court granted FHNCA's motion to dismiss. *Id.* at 78.

On appeal, we recognized the rule in Maryland that "courts will not interfere in the internal affairs of a corporation"—known as the Business Judgment Rule. *Id.* at 81. Although we had not previously applied this rule to the board of trustees of a community or condominium association, we relied on a New Jersey case that had done so:

> This rule requires the presence of fraud or lack of good faith in the conduct of a corporation's internal affairs before the decisions of a board of directors can be questioned . . . . If the corporate directors' conduct is authorized, a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review. This presents an issue of law rather than of fact . . . . Although directors of a corporation have a fiduciary relationship to the shareholders, they are not expected to be incapable of error. All that is required is that persons in such positions act reasonably and in good faith in carrying out their duties . . . . Courts will not second-guess the actions of directors unless it appears that they are the result of fraud, dishonesty or incompetence.

Black, 90 Md. App. at 81–82 (quoting *Papalexiou v. Tower West Condo.*, 401 A.2d 280, 285–286 (N.J. Super. Ct. App. Div. 1979)) (cleaned up).

Ultimately, we agreed with the circuit court that no cause of action was alleged because the challenged decision was protected by the Business Judgment Rule:

> The decision which the association made to approve the [neighbor's] fence was a decision which it was authorized to

> make. Whether that decision was right or wrong, the decision fell within the legitimate range of the association's discretion. As such, the association was under no obligation to proceed against the [neighbor] to remove the fence. There was no allegation in the complaint of any fraud or bad faith. Absent fraud or bad faith, the decision to approve the fence was a business judgment with which a court will not interfere. The complaint against FHNCA was properly dismissed.

Id. at 83.

Again, in 2013, we applied the Business Judgment Rule to a homeowner's association board of directors. *See Reiner*, 212 Md. App. at 156. *Reiner* involved a complaint against a homeowner's association and 16 individual homeowners in the community for "denial of a request to install a new roof on a home using materials not authorized by the bylaws of the associations." *Id.* at 145. The court granted a motion to dismiss for the individual homeowners and granted the association's motion for summary judgment. *Id.* The Reiners appealed the grant of summary judgment for the association. *Id.*

In their appeal, the Reiners argued that trust law, rather than the Business Judgment Rule, applied. *Id.* at 155. We disagreed:

> The Reiners also cite general principles regarding fiduciary duties and the law of trusts. On that basis, the Reiners urge us to disregard the corporate entity as an alter ego for homeowners acting independently, and apply the law of trusts rather than the business judgment rule. We are not persuaded by this argument, and see no basis for concluding that there was a pre-existing relationship that created independent fiduciary duties owed to the Reiners by other homeowners.
>
> In sum, we hold that the business judgment rule applies because this case falls squarely within the purview of *Black*.

> Here, the Association rendered a decision denying the Reiners' roof request. The Reiners—much like the plaintiffs in *Black*—sued because they disagreed with the Association's decision. The Reiners did not allege any fraud or bad faith on the part of the Association. Under *Black*, the business judgment rule, therefore, precludes judicial review of that decision.

Id. at 156 (cleaned up).

The Menas also argue that by granting the dismissal the circuit court wrongfully disregarded *Greenstein v. Council of Unit Owners of Avalon Court Six Condo., Inc.*, 201 Md. App. 186 (2011). In *Greenstein*, we addressed the claims of individual condominium owners against its Council of Unit Owners. *Id.* at 187–88. There, over a span of four years—1998 to 2002—seventeen different unit owners reported water infiltration problems to the Council. *Id.* at 193. It was not until June of 2002 that the Council's management board surveyed all unit owners about problems related to leakage. *Id.* And it was three more years before the Council, in September 2005, authorized an outside investigation. *Id.* at 193–94. Eight more months expired after the Council's receipt of the outside investigation before the Council filed a complaint against the builders. *Id.*

In its suit, the Council sought recovery for "the condominium building, units, and Common Elements [damaged] from water leakage, seepage, and deterioration that allegedly were caused by defects in design and construction." *Id.* at 195. The judge granted the builders' motion for summary judgment because the Council's claims were barred by the statute of limitations. *Id.*

This upset the unit owners, who filed a lawsuit against the Council for "the monetary damages that they suffered as a result of the Council's negligence." *Id.* at 195–96. The

negligence claims stemmed from the failure to "timely investigate the water infiltration problems" and for the failure to "bring a lawsuit against the developer within the period of the statute of limitations." *Id.* at 196. The unit owners argued that the Council's responsibility included the investigation, and that it had the sole and exclusive duty to bring legal action for the water infiltration problems. *Id.*

Before *Greenstein*, there was "no Maryland case involving the right of individual unit owners to initiate a negligence action against their condominium association for failing to maintain the common elements." *Id.* at 200. We held:

> [T]he duty to "maintain, repair and replace" the Common Elements, together with the exclusive right to initiate litigation regarding the Common Elements, creates a concomitant obligation on the part of the Council to pursue recovery from [the developer] on behalf of appellants for damage to the Common Elements caused by [the developer's] negligence, breach of contract, or violation of any applicable law.

Id. at 205. Overall, the Council had a duty to "properly pursue any claims . . . arising out of defects in design and/or construction of the Common Elements, and a breach of that duty gave rise to a cause of action for negligence . . . ." *Id.* at 207.

The Menas view their claim as analogous to *Greenstein* and say that the Business Judgment Rule is inapplicable. They maintain that the Council's failure "to sue [its] lawyers for their improper advice to release the builder or advise the unit owners of their action" was the crux of their action, and the circuit court's exclusive focus on "the decision to grant a release to the builder" was misguided. The Menas characterize their recovery sought as "a recoupment against monetary charges being levied against them by the

Council caused by the omissions of the Council in failing to sue its attorney, its failure to apprise its members of its actions, and the acts of the Council in entering into a release with the builder."

In their brief, the Menas acknowledge that part of their cause of action stems from the Council's decision to enter into a release with the builder, a claim that obviously is vulnerable to the Business Judgment Rule defense. But they seem to prefer a second theory of recovery—the Council's failure to sue former legal counsel who advised them regarding the release.[4] The Menas assert, both here and in the circuit court, that this theory circumvents the Business Judgment Rule and brings the case within the rationale of *Greenstein*. We disagree. This rationale is unavailing simply because *Greenstein* was not a Business Judgment Rule decision. The court, in its opinion, did not mention the Business Judgment Rule, and as far as we can determine, neither party argued it.[5] In short, *Greenstein* simply cannot be interpreted to stand for the proposition that homeowners may

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[4] The Menas also allege that the Council "failed to inform [unit owners] of [its] release of the builder for all future discovered and latent defects." The claim for failing to inform unit owners fails, because the condominium's bylaws authorizes the Council's Board of Directors "to enter into . . . agreements, releases . . . and other instruments as may be deemed necessary or desirable . . . ." The bylaws additionally provide that the individual unit owners "hereby ratify, approve and confirm all and whatsoever the Board of Directors shall lawfully do or causes to be done, in and about the premises, by virtue of the foregoing power of attorney . . . ." We see no merit in this argument.

[5] The unit owners in *Greenstein* made no mention of the Business Judgment Rule in their briefs. *See Greenstein v. Council of Unit Owners of Avalon Court Six Condo., Inc.*, 201 Md. App. 186 (2011). We were unable to obtain the Council's briefs to determine whether it discussed the Business Judgment Rule.

sue the directors of the condominium association in tort without regard to the Business Judgment Rule.

Without *Greenstein*, the Menas have no authority to support their claim that the Business Judgment Rule does not apply in negligence cases. Even were such an exception to exist, there is no factual allegation in the complaint to support the notion that the Council had a malpractice claim against its attorneys. The mere act of preparing a release or advising the Council to execute a release of the condominium developer is not, per se, malpractice. The release might have been demanded by the builder/developer as incident to its agreement to make repairs to the condominium. Under that circumstance, the Council may have considered the availability of construction firms who were willing to undertake repairs to a building recently constructed by someone else, as well as the cost of such work, and decided that asking the builder/developer to make the repairs was less costly and most efficient notwithstanding the demand for a release. In any event, the Council's decision to choose the best course of action when presented with alleged defects in the common elements clearly falls within the Business Judgment Rule.

Further, no specific facts were alleged that show that the release was negligently prepared by the Council's attorney or that the attorney knew facts to put him or her on notice of other defects not repaired by the builder/developer. The Menas only allege that "the Defendants became aware of additional construction defects causing water encroachment for which the cost of repair and remediation would cost millions of dollars" *after* signing the release. Allegation of this unfortunate event fails to support a cause of

action against an attorney without more specifics about circumstances showing attorney negligence or other tortious conduct.[6] The complaint here does not meet that standard. Although in retrospect the release may seem like an unfortunate business decision in that further defects were thereafter discovered, the Menas fail to allege facts indicating that the decision was fraudulent, made in bad faith, or self-interested—criteria for circumventing the Business Judgment Rule. *See Reiner*, 212 Md. App. at 155 (declining to review the business decisions of a homeowner's association absent a showing of fraud or bad faith).

The Menas try to salvage their cause of action by citing *Schuman v. Greenbelt Homes, Inc.*, 212 Md. App. 451 (2013)—a more recent case than *Greenstein*—for the proposition that the Business Judgment Rule does not apply to tort claims. In *Schuman*, the plaintiff brought a claim against Greenbelt Homes, Inc. ("GHI"), his cooperative housing association, "for breach of the implied covenant of quiet enjoyment and negligence" stemming from the association's failure to take action to prohibit his neighbor, Mr. Popovic, from smoking next door. *Id.* at 455. He also sued Popovic for injunctive and other relief.

[6] Even were we to view *Greenstein* as somehow impliedly involving the Business Judgment Rule, we agree with the motions court that the Menas failed to allege sufficient facts to bring this case within the purview of *Greenstein*. There, the Council failed to make appropriate claims against the developer within the statute of limitations when it had information about the building's defects for over four years, including almost eight months after the completion of an outside investigation. The Council's negligence in *Greenstein* was so obvious that the court could not in good conscience rule that its prolonged inaction might qualify as a reasonable business judgment.

We discussed the Business Judgment Rule in terms of Schuman's claim against the association for its failure to enforce the membership contract:

> If this were Schuman's only argument—that Mr. Popovic's smoking violates the membership contract—our review would essentially be over. GHI already interpreted the cooperative contract to permit Mr. Popovic's smoking. A court would not typically need to review that decision because it is protected by the business judgment rule.
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> ***
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> [W]e believe his claims against GHI and Mr. Popovic are really grounded, not in the meaning of nuisance in GHI's "authorized use of premises" clause, but in the common law of nuisance. GHI cannot decide whether something is a common law nuisance.
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> ***
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> As a result, we must do more than decide whether GHI properly interpreted the cooperative's contract; we still have to determine if Mr. Popovic's smoking is a common law nuisance.

Id. at 463–64. Thus, we concluded that a portion of Schuman's claim was barred by the Business Judgment Rule, but the portion that rested on common law nuisance could go forward, at least against Popovic. We said that GHI's only responsibility was to interpret the meaning of a clause in the membership contract in deciding whether to take action against Popovic. It had no responsibility to decide whether a common law tort had been committed. Ultimately, we also dismissed the claim for common law nuisance against Popovic on grounds that outdoor smoking in that neighborhood was not a common law nuisance.

The Menas' characterization of *Schuman* as parallel to their claim is inapposite. The *Schuman* Court actually decided that the Business Judgment Rule protected GHI and so to

the extent applicable, *Schuman* supports the Council and not the Menas. We agree with the Council, SICA, and CAS: regardless of how the Menas attempt to couch their claims—tort, contract, etc.—all the actions they complain of are business decisions made by the Council. Thus, we hold that the circuit court did not err in deciding that the Business Judgment Rule applied.

The Appropriate Business Judgment Rule Standard

The Menas' next argument is that even if the Business Judgment Rule applies, the circuit erred in failing to evaluate the level of good faith exercised and the Council's due diligence. They claim that the Council failed to act in good faith, while acknowledging "they did not specifically plead that the Defendant Council committed 'gross negligence' or failed to act in good faith" with the release.

This argument stands directly in contrast with the long-standing application of the Business Judgment Rule. In Maryland, "there is a presumption that directors of a corporation acted in good faith and in the best interest of the corporation." *Reiner*, 212 Md. App. at 156. Statutorily, "[a]n act of a director of a corporation is presumed to be in accordance" with actions in good faith, in a manner reasonably believed to be in the best interests of the corporation, and with the care that an ordinarily prudent person would use. C&A § 2-405.1.

A plaintiff bears the burden of proving fraud or bad faith to rebut the presumption of the Business Judgment Rule. *See Reiner*, 212 Md. App. at 155 ("The general rule under Maryland law is that decisions made by a homeowners association's board of directors will

not be disturbed unless there is a showing of fraud or bad faith."); *Black*, 90 Md App. at 83 ("There was no allegation in the complaint of any fraud or bad faith. Absent fraud or bad faith, the decision . . . was a business judgment with which a court will not interfere."). The circuit court directly acknowledged this requirement: "there has to be a showing in order to rebut that presumption [of good faith and fair dealing] of fraud, bad faith, self-interest or self-dealing." It found that "the inescapable conclusion [is] that the complaint is inadequate . . . and doesn't allege sufficient facts, i.e. fraud, bad faith, self-interest, or self-dealing, to overcome the presumption of the Business Judgment Rule."[7] We see no reason to reverse the circuit court's straightforward application of the Business Judgment Rule, and affirm its dismissal of the complaint against the Council.

Question 2: Dismissal Of SICA And CAS

The Menas argue that the circuit court dismissed SICA and CAS "without legal analysis" of the allegations against them. SICA asserts that the Menas failed to establish any evidence showing that SICA owed them a duty with respect to the Settlement Agreement, so the dismissal was proper. CAS agrees with SICA, asserting that the circuit court "fully and adequately explained why it was dismissing CAS from the case."

It is hornbook law that when reviewing a motion to dismiss, "bald assertions and conclusory statements by the pleader will not suffice." *RRC Northeast, LLC*, 413 Md. at

[7] The circuit court was under no obligation to grant the Menas leave to amend their inadequate complaint: "[t]he determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge." *Schmerling* v. *Injured Workers' Ins. Fund*, 368 Md. 434, 443–44 (2002). We see no abuse of discretion here.

644. In its dismissal, the circuit court determined that the Business Judgment Rule presumption "would apply to all three Defendants." The Menas, in their complaint, alleged that SICA and CAS were involved because the Council had authority to delegate its powers and duties to them, and SICA and CAS acted as its agents.

Not only do the Menas fail to allege any specific actions undertaken by SICA and CAS, but we cannot think of any facts they could allege, unless SICA and CAS acted outside the scope of their agency, that would circumvent the protection given to these entities by the Business Judgment Rule. The Maryland Condominium Act provides that "[t]he bylaws may authorize or provide for the delegation of any power of the council of unit owners to a board of directors, officers, managing agent, or other person for the purpose of carrying out the responsibilities of the council of unit owners." Maryland Code (1974, 2015 Repl. Vol.), § 11-109 Real Property ("RP") Article.

The Council's bylaws grant its Board of Directors the power "[t]o sue and be sued, complain and defend, or intervene in litigation or administrative proceedings on behalf of two or more Unit Owners, but only with respect to matters affecting the Condominium." The bylaws continue:

> The Board of Directors is hereby authorized to enter into, execute, acknowledge, deliver and record all agreements, releases . . . and other instruments as may be deemed necessary or desirable by the Board of Directors to effectuate the foregoing, and to . . . transact, negotiate . . . and finish all matters and things whatsoever relating to the foregoing, as fully, amply and effectually, to all intents and purposes, as each Unit Owner, if present, ought or might do personally.

It was the Council's responsibility to make claims against the builders or former legal counsel.

The Menas' initial complaint alleged:

> [T]he Council delegated to [CAS] and [SICA] the powers and duties of the Council to manage the Condominium, including the enforcement of claims against Builder/Developer by the Council for breaches of the warranties of the Builder/Developer and for design and construction defects caused by the Builder/Developer, and the hiring of legal counsel to assist in making such claims.

The complaint further alleged that the Council "acting individually and through its agents, [CAS] and [SICA], entered into a Settlement Agreement, wherein it 'held harmless' and/or released the Builder/Developer from liability for any future claims by the Council against the Builder/Developer, including liability for latent defects and other unknown claims." So, in effect, the Council settled with the builders. There are no allegations that SICA and CAS entered into this agreement through their *own, individual capacity*, or even that they had the authority to do so through a delegation from the Council.

The Menas assert that SICA and CAS both were involved in negotiating the release and deciding not to sue former legal counsel, but nothing beyond their bald assertions shows their involvement. The circuit court found that the Menas' allegations were truly "a dispute . . . between the unit owners and the Council of Unit Owners." We agree. Even if the allegations against SICA and CAS were sufficient to prove their involvement in the Settlement Agreement, it would make no sense to dismiss the claims against the Council, the primary actor, but hold SICA and CAS liable.

CONCLUSION

The circuit court appropriately applied the Business Judgment Rule, and we see no error in its analysis of the rule or dismissal of the Council, SICA and CAS. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.