Circuit Court for Baltimore County
Case No. 03-C-16-003714

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1353
September Term, 2020

No. 0370
September Term, 2021

NANCY LEE KATHRYN THOMPSON

v.

ROBERT M. HORNE, ESQ., et al.

Fader, C.J.,
Zic,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: April 13, 2022

This case arises from a family dispute over funds used to acquire property and to construct a home on that property. Robert M. Horne and Jennifer Schenuit Horne sought to purchase unimproved property and to build a home. To acquire both the lot and the home, Mrs. Horne's mother, Nancy Lee Kathryn Thompson, provided funds in a series of transactions. Ms. Thompson later filed suit against the Hornes, alleging that Mr. Horne committed fraud and converted her money. After a bench trial, the Circuit Court for Baltimore County found in favor of Mr. Horne and Mrs. Horne. The court then awarded attorney's fees in favor of Mr. Horne. Ms. Thompson then appealed.

BACKGROUND

Nancy Thompson is the mother of Jennifer Horne and mother-in-law to Robert Horne, a Maryland barred attorney who practices civil law, including the practice of business law and trusts and estates. Ms. Thompson owns a business entity, Broadway Electric.[1] Mr. and Mrs. Horne separated in March 2016 and there is a pending divorce action in a separate case, which is not before us in this appeal.

Land Acquisition

In August 2012, Mr. and Mrs. Horne entered into a contract to purchase land at 33 A Brett Manor Court in Baltimore County. They purchased the property as tenants by the entirety for $396,000.00. The contract specified that the Hornes' ability to purchase the property was contingent on obtaining a loan of $220,000.00. Ms. Thomson is not listed

[1] While Ms. Thompson testified that Broadway Electric is a S corporation and that she is the sole shareholder, the court made no finding as to whether Broadway Electric is a S corporation or another type of business entity.

as a purchaser and the contract does not specify who is to provide the loan. The contract also detailed that there was a "Gift of Funds Contingency Addendum." That addendum states that the contract "is contingent on the ability of [Mr. and Mrs. Horne] to obtain a gift of cash" of $100,000.00. The addendum provides that Mr. and Mrs. Horne "shall provide [the] seller," within 30 days of executing the addendum, documentation of "Evidence of Receipt of Gift Funds" and "Statement from Lender." Documentation of the "Name of Gift Donor" and "Executed Gift Letter" are struck out without initials.

Concerned that someone else would still be able to purchase the lot, Mrs. Horne contacted the selling real estate agent on September 5, 2012 to inquire about the status of the lot. After that conversation, Mrs. Horne had a discussion with Ms. Thompson about securing the lot.

Mr. and Mrs. Horne jointly applied for a loan of $220,000.00 from Susquehanna Bank. On September 12, 2012, Susquehanna Bank requested a "[f]ully executed gift letter in the amount of $100,000, copy of cancelled gift check, and copy of deposit slip showing funds being deposited into an already verified account." Mr. Horne forwarded this information to Mrs. Horne in an email, stating:

> This is our fall back lender if your mom is unable to make the loan. They need the evidence of gift as well. We are not as pressed to provide them with the evidence, provided that your mom commits to the loan. Note that as indicate[d on] the prior email, we need a written loan commitment 45 days from Contract Acceptance (September 30th I believe). Thus the question is whether your mom will be willing to commit in writing on that date or if we must have our fall back lender in line by that date? [sic]

In a subsequent email to Mrs. Horne, Mr. Horne wrote that "[i]f we don't close, then we have $100,000 in the bank and have to work out with your mom what to do/how to treat it (whether it's a gift or a return of your capital investment, etc.)" and "[w]hat we are NOT going to do is get into the habit of repeatedly exchanging $100,000 with your mom (her to us, then us to her if stuff falls apart) and thereby begging for an IRS gift tax audit."

On September 14, 2012, Mr. Horne wrote to Susquehanna Bank, stating:

> I will have a copy of the checks (to be deposited) on Monday, however, I doubt that I will be able to obtain a gift letter (per my prior discussions with Robert Reilly[2]). These funds are not necessarily a 'gift' in the tax sense and we don't want to have a writing in place that could jeopardize a tax reporting position.

On that same day, Ms. Thompson wrote a personal check to Mrs. Horne for $100,000.00. The check was deposited on September 17, 2012.

On September 25, 2012, a Susquehanna Bank employee emailed Mr. Horne requesting a time to talk about sourcing the funds and that he did not believe that a gift letter was going to be a viable option. On October 23, 2012, Mr. Horne withdrew the Susquehanna Bank loan application.

On October 24, 2012, Mr. Horne emailed Myles Lichtenberg, an attorney hired to handle the settlement for the property. Mr. Horne sought clarification regarding the lender's duties at closing:

[2] Robert Reilly is an employee of Susquehanna Bank.

> [D]oes the Lender fund at Closing? Does the Lender (my mother-in-law) put money [e]scrow with you in advance, not to be released without her instruction? Are Closing documents held in [e]scrow until she funds? My mother-in-law has a prior engagement from which she cannot be diverted on the 30th (it arose after we selected the C[l]osing Date). Anything else she, as Lender, needs to be thinking about?

In later emails, Mr. Horne emailed Mr. Lichtenberg the contact information for Ms. Thompson and Broadway Electric. Mr. Horne also relayed that Ms. Thompson "would prefer to do a certified check" and asked whether she may write two checks, one from her personal account and one from her business account.

On November 10, 2012, Mr. Horne emailed Ms. Thompson a draft Non-Recourse Note, which provided that in the event of default, Ms. Thompson would proceed against the property and not the Hornes individually. The draft note specified that the Hornes owed Ms. Thompson $232,037.50. In the email, Mr. Horne stated the following:

> Please review the Note. If you have legal questions, you have to rely on someone other than me about them, as we are technically adverse in this transaction. I have tried to be fair . . . however, it is possible that if you were represented by counsel (S)he may insist on additional or more stringent terms than what I have drafted.

On November 12, 2012 at 10:10 a.m., Mr. Horne emailed Ms. Thompson a draft of the purchase money mortgage and another draft of the note that the Hornes intended to provide to her at closing. He asked her to "review the mortgage" and provided the same disclaimer as his November 10 email above. The draft mortgage identifies Ms. Thompson as the "lender" and contains a signature block for Ms. Thompson. The draft

also identifies Ms. Thompson as the "party secured" in the lender's oath. The Hornes are identified as "borrowers." The draft specified that the Hornes are indebted to Ms. Thompson in the amount of $232,037.50.

At 11:07 a.m. that same day, Mr. Horne emailed Mr. Lichtenberg a draft purchase money mortgage and note, asking him to "advise of any necessary changes." Both the draft note and the draft mortgage identified the Hornes as "borrowers" and Ms. Thompson as "lender" for $232,037.50. The 11:07 a.m. draft mortgage does not contain a signature block for Ms. Thompson and a blank line replaces Ms. Thompson's name as the "party secured" in the lender's oath.

At closing, multiple checks were presented. There is a cashier's check from Broadway Electric for $232,037.50 dated November 13, 2012; a check from Mr. Horne's personal account for $2,787.54 for the closing costs dated November 12, 2012; a cashier's check from Mrs. Horne for $170,000.00 dated November 13, 2012; and a cashier's check from Ms. Thompson for $6,000.00 dated November 13, 2012. Mr. and Mrs. Horne signed a purchase money mortgage on November 12, 2012, which was recorded (Liber 032830, folio 191). Similar to the draft mortgages, the Hornes are listed as "borrowers" and Ms. Thompson is listed as "lender." The purchase money mortgage specifies that the Hornes are to repay Ms. Thompson $232,037.50 "[a]s more fully set forth in the Non-Recourse Promissory Note." Roy Garfinkle, another settlement agent, is listed on the blank line as the secured party. The original copy of the purchase money mortgage was to be returned to Mr. Horne. The court found that there was no document

indicating that the $232,037.50 was to be a draw against Mrs. Horne's inheritance and found that there was no evidence of a written agreement between the Hornes and Ms. Thompson or between the Hornes and Broadway Electric.

House Acquisition

After the land was purchased, Mr. and Mrs. Horne sought to have a home built on the property. Architectural Design Works, Inc. ("ADW") sent the Hornes a proposal on January 18, 2013. Emails between Mr. Horne and an individual identified as "Pat"[3] indicate that there was a delay due to the Hornes needing "Construction Loan Apps" and other budgetary concerns. Mrs. Horne subsequently emailed Mr. Horne to "forget about doing anything" and that "mom agrees with me and is going to make the loan directly to me so we can proceed." Mrs. Horne further wrote that "I am going to sign the contract. [F]rom what you said you are making it look like we can't even afford the house and you have [al]ready set up a really bad relationship with him. [R]eally off to the right start so we either switch builders or I proceed alone."

On March 13, 2013, Ms. Thompson tendered a check to Colbert Matz Rosenfelt, Inc. for $3,000.00 for a property line issue. On March 19, 2013, Ms. Thompson also tendered a check from the Broadway Electric company account to ADW for $1,500.00.

The Hornes then signed an agreement with ADW on March 20, 2013 to build a house on the property. Ms. Thompson is not a party to the contract. On April 11, 2013,

[3] From our review of the record, "Pat" is likely Pat Hagan, from contractor Hagan and Hamilton.

Mrs. Horne emailed Ms. Thompson, which instructed Ms. Thompson to "delete" a message in regard to obtaining a check for Pat Hagan. The next day, on April 12, 2013, Ms. Thompson tendered a Broadway Electric check to Hagan and Hamilton[4] for $38,927.40. Ms. Thompson also signed a draw schedule as a lender; it is not signed by either of the Hornes.

On April 19, 2013, Mr. Horne emailed Mrs. Horne, Ms. Thompson, and Mr. Lichtenberg, asking whether a proposed pay off letter would suffice. On April 23, 2013, Mr. Horne forwarded an email to Mrs. Horne and Ms. Thompson about the "HUD for the Home Refinancing" for closing. That email also advised Mrs. Horne and Ms. Thompson that closing was on April 24, 2013 at Fraternity Federal Savings and Loan Association. Mr. Horne also emailed Ms. Thompson separately discussing the release for the purchase money mortgage, stating "FYI—I have not reviewed. If you want to run it by an attorney before you sign, please do."

On April 24, 2013, the Hornes executed a Construction Deed of Trust and borrowed $280,000.00 from Fraternity Federal Savings and Loan Association as a loan on the property. That same day, Ms. Thompson signed a Full Release of the purchase money mortgage, which was recorded (Liber 0033761, folio 247). The Full Release stated that the Hornes "paid the loan in full," which was the $232,037.50 set out in the purchase money mortgage. The Full Release further stated that, for consideration of

[4] From our review of the record, Hagan and Hamilton appears to be the general contractor for the building of the home.

$1.00, Ms. Thompson "grant[ed] and reconvey[ed] unto [the Hornes], all of the Property secured by the Mortgage, fully released and discharged from the aforesaid Mortgage."

The Hornes applied for a Uniform Residential Loan Application on December 22, 2013 from Fraternity Federal Savings and Loan Association, but they encountered issues in obtaining the loan. On March 30, 2014, Ms. Thompson sent an email to Hagan and Hamilton, stating that she and the Hornes "worked out [their] differences and [she] will be paying the remaining draws." In an undated letter to the Hornes, Ms. Thompson stated that she agreed to "honor her commitment" to the Hornes regarding the house and mentions a document for the Hornes to sign before moving into the house. No document was submitted into evidence and no witness testified to its existence.

On October 28, 2014, ADW tendered a reimbursement check to Mr. Horne for $420.00. On January 30, 2015, Lerch Brothers, LLC tendered a refund check to Mr. and Mrs. Horne for $7,700.00 for money left over from landscaping services. The court found that there was no written document detailing what Ms. Thompson was owed for landscaping the home.

Procedural History

Ms. Thompson filed a complaint in April 2016 against Mr. and Mrs. Horne, which was subsequently amended three times. In her Third Amended Complaint, Ms. Thompson alleged four counts: declaratory judgment (Count I), constructive trust (Count II), conversion (Count III), and violation of the Mortgage Fraud Protection Act (Count IV). Ms. Thompson, however, abandoned any claim to seek relief against Mrs. Horne,

specifying that Mrs. Horne was "added as a party solely because the relief sought will affect her interest in the property" and that Mrs. Horne "participated in none of [Mr.] Horne's fraudulent activities."

Count I alleged, as to the acquisition of the property, that Mr. Horne (1) fraudulently induced Ms. Thompson to loan $338,037.15 to finance the acquisition of the property, (2) fraudulently created documents stating that Ms. Thompson loaned $232,037.50 instead of $338,037.15, and (3) fraudulently induced Ms. Thompson to execute a release for the lower amount of $232,037.50. Ms. Thompson requested that the court declare the release null and void, declare that she has a mortgage on the property in the amount $106,000 plus interest, and direct the parties to execute documents to that effect.

As to the acquisition of the house, Count I also alleged that Mr. Horne fraudulently induced Ms. Thompson to loan more than $1.4 million to build a home on the property. Specifically, Ms. Thompson alleged:

> [S]he was induced to advance these funds based on the agreement that it would be documented; that the loan was a credit against [Mrs.] Horne's inheritance; that [Mr.] Horne would not have an interest in the property, and that his name would not be on the title if he did not sign a document securing the loan; that the property would pass to [Mrs.] Horne or her children if the couple divorced or if [Mrs.] Horne died; and that [Mr.] Horne would not receive any portion of the money [Ms.] Thompson put into the house if it was sold.

Ms. Thompson requested that the court declare that her $1.4 million advance was made pursuant to the terms above.

Count II alleged that Mr. Horne fraudulently induced Ms. Thompson to pay for the land and house and that he was unjustly enriched. That count also alleged that the deed and title to the property belongs to Ms. Thompson and her daughter, Mrs. Horne. Ms. Thompson requested that the court impose a constructive trust of 33 A Brett Manor Court and for Mr. Horne to convey all of his rights and interests in the property to Ms. Thompson.

Count III alleged that Mr. Horne fraudulently converted Ms. Thompson's money, specifically a $1,500.00 deposit to ADW, a $7,700.00 refund from Lerch Brothers, LLC for landscaping, and a $100 rebate from BGE for a washing machine. Count IV alleged that Mr. Horne violated the Mortgage Fraud Protection Act by creating a purchase money mortgage that contained deliberate misrepresentations and inducing Ms. Thompson to sign a release of the purchase money mortgage by making deliberate misrepresentations and misstatements.

A bench trial of approximately 30 days began in November 2017 and concluded in October 2020. The court granted the parties leave to file post-trial memoranda summarizing the points raised in closing arguments. Thereafter, Ms. Thompson and Mr. Horne each filed post-trial memorandum.

On January 6, 2021, the court entered a Memorandum Opinion[5] and accompanying order. The court dismissed Count II with prejudice and entered judgment in favor of Mr. and Mrs. Horne as to Counts I, III, and IV. On January 21, 2021, the court issued an Attorney's Fees Memorandum Opinion and accompanying order. Pursuant to Maryland Rule 1-341, the court found that Ms. Thompson "lacked substantial justification in bringing the action and that [she] maintained or defended the action in bad faith," which merited the assessment of attorney's fees and costs. In an amended order,[6] the court directed Ms. Thompson to pay Mr. Horne's attorney's fees and costs of $213,480.00.

[5] The parties disagree as to whether the court's opinion adopted portions of Mr. Horne's post-trial memorandum or if it adopted it in its entirety. In its opinion, the court made the following statements regarding Mr. Horne's post-trial memorandum:

- Before the factual findings section, the court stated: "The [c]ourt in review of Plaintiff and Defendant Robert Horne's Post-Trial Memorandum, adopts Defendant Robert Horne's analysis and findings and expounds further below."
- In its analysis of Count II, the court stated: "The [c]ourt, here, concurs with Defendant Robert Horne, and adopts same from Defendant Robert Horne[']s proposed Memorandum Opinion on page four (4) of same so said, Memorandum Finding, 'a constructive trust is an equitable remedy, not a cause of action in itself.'" (quoting *Chassels v. Krepps*, 235 Md. App. 1, 15 (2017)).
- In its analysis of Count IV, the court stated: "The [c]ourt adopts Defendant Robert Horne's analysis and findings here in on Pages 18 through 23 of Defendant's Proposed Memorandum."

[6] The court's January 21, 2021 order was amended due to a clerical error.

Ms. Thompson filed a motion to alter or amend the court's attorney's fee judgment, which was denied. Ms. Thompson then noted this appeal. Additional facts will be addressed as necessary.

QUESTIONS PRESENTED

Ms. Thompson presents the following four questions[7]:

1. Did the circuit court commit reversible error in sua sponte finding Broadway was the proper plaintiff?

2. Did the circuit court commit reversible error in finding that Mr. Horne acted "merely" as a son-in-law?

3. Did the circuit court commit reversible error in its findings on the purchase money mortgage?

4. Based on the nature and extent of the errors, should the Court order a new trial and reassignment?

We answer "no" to the first three questions and consequently do not reach the fourth question. In addition, we also address the following issue:

5. Did the circuit court err or abuse its discretion when it awarded Mr. Horne's requested attorney's fees?

We answer "yes" to this question. As discussed more fully within, we affirm the judgment of the circuit court, but reverse the circuit court's award of attorney's fees.

[7] Ms. Thompson's questions presented and argument contained in her briefs are not structured in regard to the elements of Counts I, II, III, and IV. Accordingly, we have framed this opinion based on her questions and not by the particular counts.

STANDARD OF REVIEW

Pursuant to Rule 8-131(c), this Court "will review the case on both the law and the evidence" when reviewing a circuit court's findings and judgment after a bench trial. We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous" and "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* "A trial court's findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings[.]'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (alteration in original) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). "When a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court." *Plank*, 469 Md. at 569 (quoting *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 475 (2019)).

DISCUSSION

I. BROADWAY ELECTRIC "FINDING"

Ms. Thompson contends that it was reversible error for the court "to sua sponte find Broadway was the proper plaintiff." At oral argument, Ms. Thompson qualified that this finding was not an explicit finding made by the court, but a logical conclusion of the court's references to Broadway Electric. She asserts that the court "departed from the adversary process" when it made such a finding and, in her view, "[t]here is no way to isolate this erroneous holding, based on fictional premises, from the trial court's overall view of the facts, the equities, and the parties' credibility." She claims that the court

"invented findings and defenses that permeated its view of the case" causing the court to determine, "in essence, that [Ms. Thompson] misappropriated Broadway funds."[8] In addition, she argues that Mr. Horne "did not assert [that] Broadway was the proper plaintiff or a necessary party."

The court did not find that "Broadway [Electric] was the proper plaintiff." And the court did not find that Ms. Thompson "misappropriated Broadway funds." Instead, its findings discussing Broadway Electric accurately identified the source of funds for various checks issued for the land and house acquisitions. Because there was no such finding, "there is no opportunity for the application of the clearly erroneous rule." *Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 116 (1985). There is nothing for us to review.

II. ATTORNEY-CLIENT RELATIONSHIP

Ms. Thompson next argues that a confidential relationship existed between her and Mr. Horne and that the court erred in finding that Mr. Horne acted "'merely' as a son-in-law" and not as her lawyer. She contends that an attorney-client relationship was formed because (1) Mr. Horne revised a contract for an "entity to be formed by Kathy Thompson and others" in a family enterprise where the Hornes and Ms. Thompson would buy an investment property in Dewey Beach in 2011; (2) Mr. Horne drafted and signed the

[8] Ms. Thompson further asserts that she was entitled to use Broadway Electric funds because it is a S corporation and "the income of a Subchapter S corporation is deemed to 'pass through' to the shareholders." (quoting *Comptroller v. Wynne*, 431 Md. 147, 154 (2013)).

purchase money mortgage twice—as a borrower and as an attorney—in November 2012; and (3) Mr. Horne's testimony was false, suspicious, and not credible.[9] She asserts that if Mr. Horne was Ms. Thompson's attorney "on at least one occasion, it is more likely he was her attorney on other occasions." She claims that the court misunderstood and overlooked evidence and that the court "did not address or appreciate the evidence of [Mr. Horne] acting as [Ms. Thompson]'s attorney." Namely, Ms. Thompson claims that the court was prejudiced against her and, consequently, the court's credibility determinations were tainted.[10]

To determine whether to impose a constructive trust,[11] the court considered whether there was a breach of a confidential relationship. *See Chassels v. Krepps*, 235

[9] Ms. Thompson additionally argues that an email, which purportedly documented "conversations where [Mr. Horne] manifested that he would advise [Ms. Thompson] on the resolution of her dispute" in a separate case involving litigation over Ms. Thompson's parents' estates, supports a finding of an attorney-client relationship. She claims that the court misread Rule 5-803(b)(6) and improperly excluded this evidence. *See* Md. Rule 5-803(b)(6) (business record exception to the hearsay rule). But because this hearsay issue is not sufficiently briefed, we decline to address it pursuant to Rule 8-504, and we do not consider this document because it was not admitted into evidence.

[10] Mr. Horne argues that the issue of a "confidential relationship" was not properly before the trial court because Ms. Thompson did not allege a breach of a duty arising from a confidential relationship in her Third Amended Complaint. Regardless of whether Ms. Thompson should have alleged the issue in her complaint, we address this issue because it was decided by the trial court. Md. Rule 8-131(a) ("[T]he appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

[11] The court dismissed Count II (constructive trust) because "[a] constructive trust is an equitable remedy, not a cause of action in itself," *Chassels v. Krepps*, 235 Md. App. 1, 15 (2017), but still considered the allegations in Count II in conjunction with Count I (declaratory judgment).

Md. App. 1, 15-16 (2017) ("A constructive trust may be imposed by the court where property was acquired through an improper method or a breach of a confidential relationship[.]"). A confidential relationship is "a relationship in which 'dominion or influence [is] exercised by one person over the other.'" *Id.* at 16 (alteration in original) (quoting *Midler v. Shapiro*, 33 Md. App. 264, 268 (1976)). While "a familial relationship may . . . give rise to a confidential relationship, . . . its 'mere existence . . . is not indicative of a confidential relationship.'" *Chassels*, 235 Md. App. at 16 (quoting *Orwick v. Moldawer*, 150 Md. App. 528, 538 (2003)). The formation of a confidential relationship within familial relationships is a question of fact. *Chassels*, 235 Md. App. at 16-17. When a party proves the existence of a confidential relationship, a presumption of undue influence arises; the burden then shifts to the opposing party to rebut that presumption and prove that the relationship is fair and reasonable. *Conrad v. Gamble*, 183 Md. App. 539, 551-52 (2008).

An attorney-client relationship is presumed as a matter of law to be a confidential relationship. *See Chassels*, 235 Md. App. at 16; *Thompson v. UBS Fin. Servs., Inc.*, 443 Md. 47, 70-71 (2015). The formation of an attorney-client relationship, however, is "implied from facts and circumstances of a given case." *Att'y Grievance Comm'n of Maryland v. White*, 448 Md. 33, 53 (2016). Such a relationship is created when:

> (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and . . .
>
> (b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services.

Att'y Grievance Comm'n of Maryland v. Agbaje, 438 Md. 695, 727 (2014) (quoting *Att'y Grievance Comm'n of Maryland v. Brooke*, 374 Md. 155, 174 (2003)). In other words, an attorney-client relationship "may arise by implication from a client's reasonable expectation of legal representation and the attorney's failure to dispel those expectations." *Agbaje*, 438 Md. at 728. "A key factor that courts look to is whether the purported 'client' sought legal advice." *Att'y Grievance Comm'n of Maryland v. Shoup*, 410 Md. 462, 489 (2009).

In its analysis of Counts I and II, the court was not persuaded that Ms. Thompson met her "burden of proof by clear and convincing evidence that a confidential relationship existed" between herself and Mr. Horne. "Although it is not uncommon for a fact-finding judge to be clearly erroneous when he [or she] is affirmatively PERSUADED of something, it is . . . almost impossible for a judge to be clearly erroneous when he [or she] is simply NOT PERSUADED of something." *Bricker v. Warch*, 152 Md. App. 119, 137 (2003); *see also Starke v. Starke*, 134 Md. App. 663, 680-81 (2000) ("Mere non-persuasion . . . requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard."). For instance, in *Figgins v. Cochrane*, 174 Md. App. 1 (2007), *aff'd*, 403 Md. 392 (2008), this Court concluded that the court was not clearly erroneous in finding that the appellant failed to rebut the presumption that a confidential relationship was fair and reasonable. *Id.* at 14-15. We explained:

> The burden was cast upon the appellant to rebut that invalidating presumption. [The court] found that "in no manner has she met that burden." [The court] was simply not persuaded, and there was evidence to support that non-persuasion. That there might also have been some evidence in the case pointing in the other direction is beside the point. It was clearly a question of fact for the fact finder. [The court]'s conclusion in that regard cannot, therefore, be said to have been clearly erroneous.

Id.

Similarly, the burden of persuasion initially fell on Ms. Thompson to prove that a confidential relationship existed before the burden could shift to Mr. Horne. In a case that rested on the respective credibility of Ms. Thompson and Mr. Horne, the court was not persuaded that an attorney-client relationship existed between the parties and instead found that the interactions between Ms. Thompson and Mr. Horne "were merely that of mother in law and son in law in nature." Importantly, "[i]n its assessment of the credibility of witnesses, the [c]ircuit [c]ourt was entitled to accept—or reject—*all, part,* or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011). In other words, even if there is a mountain of evidence on one side and a molehill on the other, the finder of fact is permitted to find in favor of the molehill when weighing the evidence and assessing the credibility of the witnesses.

There was evidence that Mr. Horne revised a contract in the failed family enterprise transaction in 2011 and that he drafted and signed the purchase money mortgage as an attorney. Ms. Thompson further testified that Mr. Horne was her

attorney, but she does not direct us to any evidence that she manifested an intent to Mr. Horne that he would provide legal services. Conversely, during Mr. Horne's deposition and testimony at trial, he disclaimed that he ever was Ms. Thompson's attorney. There were also emails admitted into evidence where Mr. Horne stated that Ms. Thompson should consult an attorney as they were "technically adverse in this transaction." Here, the court, acting as the factfinder, was permitted to weigh Mr. Horne's testimony as more credible than Ms. Thompson's testimony or other documentary evidence. While it could be possible for a different finder of fact to reach a different outcome, it is not this Court's function to "substitut[e] our assessment of witness credibility . . . and our weighing of the evidence for [the court's]." *Bricker*, 152 Md. App. at 138. Thus, the court's finding that there was no attorney-client relationship and no confidential relationship between Ms. Thompson and Mr. Horne was not clearly erroneous.

III. THE MORTGAGE FRAUD PROTECTION ACT AND FINDINGS ON THE PURCHASE MONEY MORTGAGE

In Count IV, Ms. Thompson alleged violations of the Mortgage Fraud Protection Act. Ms. Thompson claims that the court's "findings on the November 2012 mortgage were clearly erroneous and prejudicial." She further argues that the court erred by adopting the statutory analysis in Mr. Horne's post-trial memorandum, which misstated the law. Mr. Horne "acknowledges and apologizes for an incorrect citation and argument . . . concerning the language of the Maryland Mortgage Fraud [Protection] Act," but contends that "while the circuit court may have adopted counsel's errant citation of law in its decision, the court's independent factual determinations that no misrepresentation

occurred in any aspect of the 2012 Land Acquisition remain valid, unassailable and dispositive." We first address the court's misstatement of the law and then turn to Ms. Thompson's claims regarding the factual findings.

A. The Mortgage Fraud Protection Act

The Mortgage Fraud Protection Act states that "[a] person may not commit mortgage fraud." Md. Code Ann., Real Prop. § 7-402. Under the Act, "mortgage fraud" includes either knowingly making, creating, or using "any deliberate misstatement, misrepresentation, or omission during the mortgage lending process." Real Prop. § 7-401(d).[12] The statute defines "mortgage lending process" as "the process by which a person seeks or obtains a mortgage loan." Real Prop. § 7-401(e).

[12] Pursuant to § 7-401(d), "mortgage fraud" includes "any action by a person made with the intent to defraud," which involves:

> (1) Knowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
>
> (2) Knowingly creating or producing a document for use during the mortgage lending process that contains a deliberate misstatement, misrepresentation, or omission with the intent that the document containing the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
>
> (3) Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by

In turn, a "mortgage loan" has the same definition as set out in § 11-501 of the Financial Institutions Article, which defines "mortgage loan" as "any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a *dwelling* or *residential real estate* on which a dwelling *is constructed or intended to be constructed*." Md. Code Ann., Fin. Inst. § 11-501(l) (emphasis added); *see* Real Prop. § 7-401(f). "Residential real estate" is further defined as "any owner-occupied property located in Maryland on which a dwelling is constructed *or intended to be constructed*." Fin. Inst. § 11-501(p) (emphasis added). The General Assembly updated these definitions in 2009. 2009 Md. Laws ch. 4, (S.B. 269).

Prior to 2009, however, the Financial Institutions Article defined a "mortgage loan" as "any loan or other extension of credit that is . . . [s]ecured, in whole or in part, by any interest in residential real property in Maryland" and it defined "residential real property" as "any owner-occupied real property in Maryland, which property *has a*

> a mortgage lender, borrower, or any other party to the mortgage lending process;
>
> (4) Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1), (2), (3), or (4) of this subsection;
>
> (5) Conspiring to violate any of the provisions of item (1), (2), (3), or (4) of this subsection; or
>
> (6) Filing or causing to be filed in the land records in the county where a residential property is located, any document relating to a mortgage loan that the persons knows to contain a deliberate misstatement, misrepresentation or omission.

dwelling on it designed principally as a residence." Fin. Inst. § 11-501(k), (m) (2008) (emphasis added).

We agree with Ms. Thompson that the court erred when it found, in part, that the Mortgage Fraud Protection Act "does not apply." In its opinion, the court cited and applied the pre-2009 definition of "mortgage loan" and "residential real property." Based on the earlier version of the statute, the court determined that the Mortgage Fraud Protection Act does not apply because the alleged violations of the Act occurred before any home was constructed at 33 A Brett Manor Court and the property was not owner-occupied. The court explained that "33A Brett Manor Court was not 'residential real property'" and, consequently, "the 'mortgage loan' at issue . . . was not part of any 'mortgage lending process.'" Pursuant to the post-2009 definition, however, a "mortgage loan" includes a loan that is secured by a mortgage on "residential real estate on which a dwelling is . . . *intended to be constructed*." Fin. Inst. § 11-501(l), (p). Thus, the Mortgage Fraud Protection Act was applicable even though the home on 33 A Brett Manor was not yet constructed or occupied.

Despite the court's finding that the "statute . . . does not apply," the court still addressed the substance of Ms. Thompson's Count IV fraud claims, "as if [the statute] did." Thus, the court's misstatement of the law is not necessarily cause for reversal. We now turn to Ms. Thompson's claims regarding the court's factual findings.

B. Factual Findings Related to the Purchase Money Mortgage

Ms. Thompson argues that the court's "factual findings misunderstood the evidence and the parties' disputes" related to the November 2012 purchase money mortgage. It is unclear from Ms. Thompson's brief if she is contesting a specific finding made by the court or whether she is simply asserting that all findings related to the purchase money mortgage are clearly erroneous. She argues that there were several discrepancies between the evidence and the court's findings and that the "court gave no indication it considered these discrepancies in adopting [Mr. Horne]'s proposed findings on mortgage fraud."

In her brief, Ms. Thompson points to facts and evidence that the court did not address in its opinion. For instance, Ms. Thompson primarily takes issue with the chronology of the deletion of her signature block from the purchase money mortgage. She asserts that the court erred by not properly considering or recognizing that, on the day of closing, the draft purchase money mortgage that Mr. Horne emailed to Ms. Thompson at 10:10 a.m. included a signature block for her to sign as the lender, but the draft purchase money mortgage that Mr. Horne emailed to Mr. Lichtenberg at 11:07 a.m. removed Ms. Thompson's signature line and a blank line replaced her name in the lender's oath. Ms. Thompson further contends that the court did not address the fact that Mr. Horne never sent Ms. Thompson the 11:07 a.m. draft or that Mr. Horne knew Ms. Thompson had an all-day commitment the day of closing. She also points to evidence that Mr. Lichtenberg testified that he did not alter any documents that Mr. Horne

provided to him. In addition, she argues that Mr. Horne's testimony that he did not know how the blank line appeared was contradictory to documentary evidence that indicated that draft of the purchase money mortgage with the blank line was saved to his work computer. Based on the foregoing evidence, Ms. Thompson contends that it was prejudicial and error for the court to not address the importance of the 11:07 a.m. email in its findings in Count I and in Count IV.

We are mindful that when an appellate court reviews a court's factual findings under the clearly erroneous standard, we look to whether "*any* competent material evidence exists in support of the trial court's factual findings." *Plank*, 469 Md. at 568 (emphasis added) (quoting *Webb*, 433 Md. at 678). And, as we previously explained, it is "almost impossible for a judge to be clearly erroneous when he [or she] is simply NOT PERSUADED of something." *Bricker*, 152 Md. App. at 137.

In this case, the court found that that Ms. Thompson did not meet her burden of proving fraud or any misrepresentation by Mr. Horne for Counts I and IV. The court was not convinced that "merely creating a 'blank' in a document, without more, could constitute clear and convincing evidence of a deliberate misrepresentation" by Mr. Horne and there was evidence in the record to support the court's conclusion.

For instance, Mr. Lichtenberg testified that, at closing and the signing of the purchase money mortgage, he inserted Mr. Garfinkle's name as the agent for the secured party, Ms. Thompson, but that he errantly failed to identify Mr. Garfinkle as Ms. Thompson's agent. Mr. Lichtenberg explained that it was customary and industry

practice for "the title company who administers the funds in connection with the transaction . . . to act as agent for the lender to confirm that the funds were paid over." He explained that if the actual lender does not appear at closing, that "[i]t is custom and practice in the title industry . . . to list the official with the title company that can attest to the fact that the funds were deposited into the escrow accountant [sic] disbursed" and accordingly he "would list an official with the settlement agent as an agent for the party secured." Mr. Lichtenberg stated that at closing, Mr. Garfinkle, the agent responsible for the disbursement of funds, "attested that he received the funds and disbursed them according to the statement." Mr. Lichtenberg testified that he "would not have notarized a document if [Ms. Thompson's] name appeared if she hadn't personally appeared." In addition, Mr. Lichtenberg testified that if he had received the draft purchase money mortgage with Ms. Thompson's name still on it, he would have "told [Mr. Horne] to revise it" or he "would have stricken through the name and listed the agent for the party that did appear, if she wasn't present."

Moreover, there was also evidence that Mr. Horne emailed Ms. Thompson a draft note on November 10, 2012, which specified that the amount to be repaid was $232,037.50. Ms. Thompson testified that she "glance[d] at the note" and that she "saw the note was for [$232,037.50]." The draft notes emailed to Ms. Thompson and Mr. Lichtenberg on November 12, 2012 also stated the same amount. Similarly, the draft purchase money mortgages each listed the amount as $232,037.50. The $232,037.50 Broadway Electric check provided at closing was dated November 13, 2012. And while

the recorded purchase money mortgage is not signed by Ms. Thompson, she is still identified as the lender. Notably, Ms. Thompson signed a Full Release of the purchase money mortgage on April 24, 2013, which acknowledged that the Hornes repaid her the full amount of $232,037.50 set out in the recorded purchase money mortgage. During trial, Ms. Thompson further admitted that—between the time she received the November 10 draft note and funded the $232,037.50—she did not communicate to the Hornes or anyone else that the loan amount should have included the additional $106,000.00.

While Ms. Thompson identifies contradictory evidence and argues that the court misunderstood such evidence, we stress that it is not our function to reweigh the evidence or make our own credibility determinations when reviewing factual findings after a bench trial. *See Bricker*, 152 Md. App. at 138. It was the prerogative of the court, as the fact-finder, "to accept—or reject—*all, part,* or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka*, 417 Md. at 659. Furthermore, there was competent material evidence in the record to support the court's finding that the insertion of the blank line in lieu of Ms. Thompson's name does not evidence deliberate misrepresentation by Mr. Horne, and, accordingly, Ms. Thompson did not meet her burden of proof. And even though the court did not mention the timing of the emails containing the drafts of the purchase money mortgage, we do not believe this omission is indicative of prejudice as contended by Ms. Thompson. Trial judges "are not obliged to spell out in words every thought and step of logic" and do not need to "articulate each item or piece of evidence she or he has

considered in reaching a decision." *Meek v. Linton*, 245 Md. App. 689, 730 n.6 (2020) (first quoting *Beales v. State*, 329 Md. 263, 273 (1993); and then quoting *Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 504 (2013)). The court's findings related to the purchase money mortgage were not clearly erroneous.

IV. NEW TRIAL AND REASSIGNMENT

Ms. Thompson lastly contends that a new trial and reassignment is warranted due to the court's errors and prejudice. Because we conclude that the court did not err and affirm the merits of the court's judgment, we do not order a new trial and do not consider reassignment.

V. ATTORNEY'S FEES

In her brief, Ms. Thompson avers that "[t]he fee award drives home the circuit court's fundamental error" and that "[r]eversal of the merits judgment nullifies the fee award." She maintains that the court found that her claims were not colorable based on its sua sponte findings that "Broadway was the proper plaintiff" and that she "abandoned any claim to seek relief from [Mrs. Horne] whom, as a [m]atter of [l]aw, owned the property in question as [t]enants by the [e]ntirety with [Mr. Horne]." Ms. Thompson states that all parties agreed to this action "to decide questions for the Hornes' divorce action" and that the merits judgment did not raise the tenants by the entirety issue. She contends that the court's "finding[s] were baffling" because the court was awarding Mr. Horne's fees—not Mrs. Horne's—and that the "court's rationale primarily implicated her counsel's legal judgment."

We note that Mr. Horne's request for attorney's fees did not cite an applicable rule, but the court decided there was a pro forma request for attorney's fees under Rule 1-341.

Pursuant to Rule 1-341(a), a court may award attorney's fees when a party maintains an unjustified proceeding:

> In any civil action, if the court finds that the *conduct of any party in maintaining or defending any proceedings was in bad faith or without substantial justification*, the court, on motion by an adverse party, may require the offending party . . . to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

(emphasis added); *see also Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 18-20 (2018) (explaining that the purpose of Rule 1-341 is to deter abusive litigation without stifling legal claims and the development of the law). To award attorney's fees, a court must take two steps. *Christian*, 459 Md. at 20-21. First, a court must explicitly find that a party acted in bad faith or without substantial justification and "[t]his finding should be supported by a 'brief exposition of the facts upon which [it] is based.'" *URS Corp. v. Fort Meyer Constr. Corp.*, 452 Md. 48, 72 (2017) (second alteration in original) (quoting *Talley v. Talley*, 317 Md. 428, 436 (1989)). This finding is reviewed under a clearly erroneous standard. *Christian*, 459 Md. at 20-21. Second, the court must determine that the assessment of attorney's fees is warranted due to the acts committed in bad faith or without substantial justification. *Id.* at 21. This step is reviewed for an abuse of discretion. *Id.*

A party acts in bad faith when it acts "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Id.* at 21-22 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)). A claim lacks substantial justification "if the claim is not fairly debatable, not colorable, or not within the realm of legitimate advocacy." *URS Corp.*, 452 Md. at 72 (footnotes omitted). "It is legal error for a court 'to determine a lack of substantial justification from the vantage point of judicial hindsight because hindsight, judicial or otherwise, is always 20/20, irrespective of any astigmatism foresight may suffer.'" *Christian*, 459 Md. at 22 (quoting *Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. 214, 222 (1988)). A claim also lacks substantial justification if "a party has no evidence to support its allegations" or it is frivolous. *Christian*, 459 Md. at 23. Nevertheless, "the mere finding that testimony or evidence lacks credibility does not, in itself, create a basis for attorney's fees." *Id.* at 24.

Mr. Horne asserts that Ms. Thompson brought an action against Mr. Horne for the following purposes: (1) "to delay resolution of [the Hornes'] divorce, thereby extending . . . [Mrs. Horne]'s use and possession of Brett Manor," (2) "to obtain a 'second bite of the apple' as to Brett Manor's disposition," and (3) "to attempt to destroy [Mr. Horne] professionally . . . and to bankrupt him." Mr. Horne asserts that each of these purposes were made in bad faith and lacked substantial justification, justifying his attorney's fees award. At oral argument, Mr. Horne further argued that the timing of Ms. Thompson filing the suit against Mr. Horne (one month after the Hornes filed for divorce), supported

the court's finding that Ms. Thompson brought her claims in bad faith and lacked substantial justification. It is noteworthy, however, that none of these contentions are addressed or found by the court in its Attorney's Fees Memorandum Opinion.

Instead, the court made the following factual findings:

> The [c]ourt finds that [Ms. Thompson] lacked substantial justification for bringing this action against Defendant [Mr.] Horne.
>
> The [c]ourt finds [that] . . . [Ms. Thompson] sought to obtain a Judgment against Defendant [Mr.] Horne and Co-Defendant [Mrs.] Horne who own the home at issue [as] tenants by the entirety.
>
> The [c]ourt finds th[at] during the protracted trial, [Ms. Thompson] abandoned any claim against Co-Defendant [Mrs.] Horne.
>
> The [c]ourt finds that [Ms. Thompson] filed a Complaint against Defendant [Mr.] Horne seeking repayment for monies tendered to Defendants, in large part from a business entity owned by [Ms. Thompson], Broadway Electric.
>
> The [c]ourt finds that [Ms. Thompson] did not join Broadway Electric as a party within this action, but solely ple[]d the Complaint as a proper person.
>
> The [c]ourt finds that [Ms. Thompson] was aware of case law . . . that the claims sought as to Count III, Conversion, of [her] Third Amended Complaint was not a color[able] claim.[13]

[13] The court cites to *UBS Financial Services, Inc. v. Thompson*, 217 Md. App. 500 (2014), *aff'd*, 443 Md. 47 (2015). In *UBS Financial Services*, this Court concluded that the court erred by submitting a conversion claim to the jury on a motion for judgment. *Id.* at 517 We explained that appellees—who included Ms. Thompson—were not the owners of the insurance policy and consequently could not succeed on their conversion

. . . .

> The [c]ourt finds that . . . [Ms. Thompson] did not meet the burdens of proof in the trial of the merits of [her] Third Amended Complaint on all Counts.

As the basis for its conclusion that Ms. Thompson brought her claims in bad faith or without substantial justification, the court opined:

> Here, the [c]ourt finds that this case involves a Complaint that was amended three times. The [c]ourt finds that [Ms. Thompson] added Defendant [Mrs.] Horne after the proceedings against Defendant [Mr.] Horne began. [Ms. Thompson] later abandoned any request for Judgment against Defendant [Mrs.] Horne although there is a joint interest in the property.
>
> The [c]ourt affirmatively finds, in its first prong of its analysis that [Ms. Thompson] lacked substantial justification in bringing the action and that [Ms. Thompson] maintained or defended the action . . . in bad faith.
>
> The Proceedings showed [Ms. Thompson] abandoned any claim to seek relief from co-Defendant [Mrs.] Horne, whom as a Matter of Law, owned the property in question as Tenants by the Entirety with Defendant [Mr.] Horne.
>
> Further, as previously articulated in the Memorandum Opinion from the trial on the merits, [Ms. Thompson] did not have a color[able] claim seeking to recoup funds from Defendant [Mr.] Horne from funds to which were tendered to co-Defendants from a business account, namely Broadway Electric. Thus, there was no substantial justification to bring this action in [sic] and therefore, assuming arguendo this was unknown to [Ms. Thompson] at the time of filing the Third

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claim against appellants. *Id.* at 516. In the instant case, the court presumably suggests that Ms. Thompson's conversion claim was not colorable because the money was issued from Broadway Electric checks and thus Ms. Thompson could not prove "ownership or dominion" over the money allegedly converted. *Id.* at 514.

> Amended Complaint, there was, a lack of substantial justification in defending and maintaining actions as a Plaintiff without joining the proper party to same.

(citation omitted). As to the second prong of its analysis, the court stated: "The [c]ourt . . . affirmatively finds that the bad faith and/or lack of substantial justification merits the assessment of costs and fees."

We do not believe the court's explanation is sufficient to support a finding that Ms. Thompson lacked substantial justification or acted in bad faith in bringing her claims. As we already noted in Section I, the court never found that Broadway Electric was the "proper plaintiff" in its merits judgment. And while the court concluded that Ms. Thompson lacked substantial justification or pursued her claims in bad faith because Ms. Thompson abandoned any claim for relief against Mrs. Horne, this is not enough to justify an award of attorney's fees. Mr. Horne suggests in his brief that Ms. Thompson brought her claims to delay the Hornes' divorce, bankrupt Mr. Horne, or otherwise harm Mr. Horne professionally, but the court made no such findings and Mr. Horne does not point to any evidence in the record to support his reasoning. *See Talley*, 317 Md. at 438 (explaining that the bad faith component permits attorney's fees for only intentional misconduct, which "although sometimes difficult to prove, and more often than not provable only by inference from the surrounding circumstances, must nonetheless be proved").

Furthermore, "[w]hen considering whether a claim lacks substantial justification, the lack thereof cannot be found exclusively on the basis that 'a court rejects the

proposition advanced by counsel and finds it to be without merit.'" *Christian*, 459 Md. at 25 (quoting *State v. Braverman*, 228 Md. App. 239, 260 (2016)). Accordingly, the court's finding that Ms. Thompson failed to meet her burden of proof on all her claims does not necessarily support a finding that the claims lacked substantial justification. *See Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 684 (2003) ("[S]imply because a party does not prevail at trial does not necessitate a finding that a claim was brought in bad faith or without substantial justification."). Notably, the court did not find that Ms. Thompson's conversion claims were not colorable in its merits judgment; instead, it only made such a finding in its Attorney's Fees Memorandum Opinion, which was written ten days after the merits judgment. The court should not award attorney's fees in hindsight. *See Garcia*, 155 Md. App. at 684 ("[A] party's action is viewed at the time it took place, not with the benefit of judicial hindsight.").

Additionally, the "[s]urvival of motions for judgment may generate a presumption of substantial justification for claims." *Christian*, 459 Md. at 25 (citing *Havilah Real Prop. Servs., LLC v. Early*, 216 Md. App. 613, 630-31 (2014) (explaining that surviving motions for summary judgment and subsequent judgment at trial creates a presumption that a claim has substantial justification)). At the close of Ms. Thompson's case-in-chief, Mr. Horne moved for judgment, which the court reserved ruling on pursuant to Rule 2-

519.[14] At the close of all evidence, Mr. Horne renewed his motion for judgment, which the court again reserved ruling on. The court ultimately did not rule on the merits of the motions for judgment, but instead issued a final opinion and judgment and denied the motions for judgment as moot. This suggests that Ms. Thompson had substantial justification in bringing her claims. The finding that Ms. Thompson pursued her claims without substantial justification and/or in bad faith was clearly erroneous and the court erred in imposing attorney's fees.[15]

CONCLUSION

For the reasons stated above, we affirm the judgment of the Circuit Court for Baltimore County but reverse the award of attorney's fees to Mr. Horne.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND REVERSED IN PART. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY APPELLEE.

[14] Rule 2-519(a) provides, in pertinent part, that "[a] party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party." Rule 2-519(b) states:

> When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence.

[15] We do not disturb the court's fee award in favor of Ms. Thompson related to discovery sanctions.