Circuit Court for Howard County
Case No. 13-C-17-110850

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 650

September Term, 2018

COLUMBIA ASSOCIATION, INC.

v.

THE STILL POINT WELLNESS CENTERS, LLC, ET AL.

Berger,
Friedman,
Gould,

JJ.

Opinion by Berger, J.

Filed: September 5, 2019

The appellees, The Still Point Wellness Centers, LLC and TSP at Haven on the Lake, LLC (collectively "Still Point") filed suit in the Circuit Court for Howard County, seeking to prevent Columbia Association, Inc. ("Columbia Association"), appellant, from collecting unpaid rent and initiating eviction proceedings. After the circuit court granted Columbia Association's dispositive motion,[1] Columbia Association filed a petition seeking reimbursement of its attorney's fees pursuant to a provision in the parties' lease agreement.[2] On April 12, 2018, the circuit court denied the request for attorney's fees.

On appeal, Columbia Association poses a single question, which we set forth *verbatim*.

> Did the circuit court err when it summarily denied Appellant's Application for Attorneys' Fees?

For the reasons explained herein, we reverse and remand the case for further proceedings consistent with this opinion.

[1] Columbia Association filed a motion to dismiss Still Point's complaint, but the circuit court treated it as a motion for summary judgment.

[2] Still Point appealed the grant of Columbia Association's dispositive motion to this Court. On April 30, 2019, we affirmed the circuit court's ruling in an unreported opinion. *See The Still Point Wellness Centers, LLC v. Columbia Association, Inc.*, No. 1433, Sept. Term 2017 (filed Apr. 30, 2019). Still Point then filed a petition for certiorari in the Court of Appeals. On August 23, 2019, the Court of Appeals denied Still Point's petition for certiorari.

FACTS AND PROCEEDINGS

The issue raised in this appeal requires a brief overview of the business relationship between Columbia Association and Still Point. We draw from our recent opinion to outline the relevant factual and procedural history.

> Columbia Association, Inc. is a social welfare organization, which enjoys tax-exempt status pursuant to Internal Revenue Code, § 501(c)(4). It provides utilities, services, and facilities for residents of Columbia, Maryland. In December 2012, Columbia Association entered into a contact with Clover Acquisitions, LLC by which Columbia Association leased real property at 10275 Little Patuxent Parkway in downtown Columbia. Four months later, Columbia Association published a proposal seeking a commercial tenant to sublease a portion of the leased premises to operate a mind and body wellness retreat.
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> Still Point, which operates several health and wellness centers throughout Maryland, responded to Columbia Association's proposal, setting in motion an exchange of communications to negotiate a commercial lease agreement. Those extensive negotiations, which are discussed later in this opinion, resulted in the execution of a commercial lease agreement (hereinafter, the "Lease") signed in December 2013.
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> The Lease provides that Still Point, as "Lessee," will lease 4,309 square feet of space (the "Lease Premises") from Columbia Association to operate a "mind-body wellness center" beginning on September 1, 2014, for an initial two-year period. The Lease was subject to renewal for three additional three-year terms, at Still Point's option, as long as Still Point had not defaulted on any obligation it had under the Lease.
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> The Leased Premises was designed around the needs of Still Point. Pursuant to Article 1.2 of the Lease, Columbia Association, at its own expense, agreed to "construct the Leased Premises to suit [Still Point's] requirements … in accordance with plans and specifications prepared by [Columbia Association]." These improvements included drywall, lighting, flooring, painting, and cabinetry. Still Point's

occupancy of the Leased Premises constituted acceptance of the improvements and an acknowledgement that Columbia Association had complied with its obligations under Article 1.2. The cost of any additional improvements required by Still Point after it commenced its occupancy of the Leased Premises would be paid equally by the parties. Additionally, both parties were responsible for purchasing furniture, fixtures, and equipment as specified in schedules to the Lease, for the Leased Premises, subject to Columbia Association's approval.

Article 3 of the Lease covered the rent structure for the Leased Premises. Still Point did not pay rent for its first year of tenancy. Rather, Columbia Association made two payments of $25,000 to Still Point during the first year. In the second year of the tenancy, Still Point was obligated to pay $35,000 in annual rent to Columbia Association, to be paid in monthly installments. If the Lease was renewed for a first three-year term, Still Point was obligated to pay $106,000, $176,000, and $247,000 each year, respectively, for the next three years. For any subsequent renewal terms, the yearly rent would increase by 3% annually.

Still Point was also required to pay a "percentage rent" to Columbia Association for the initial term and any renewal terms. The percentage rent was to be calculated based on Still Point's gross monthly revenues, in the amounts of 0%, 2.2%, 4.6%, and 5.9% for the first four years, respectively, and 6.7% for the fifth year and any subsequent years.

The Lease also contained provisions for Columbia Association to provide Still Point with eight hours per month of "marketing support," which included promoting the new spa and wellness center in Columbia Association's own activities guide, website, bulletin boards, television show, and messaging advertisements. Columbia Association charged Still Point for additional marketing support over the eight hours per month at a rate of $500 per hour.

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>
> Still Point was obligated to provide to Columbia Association employees up to eight hours per month of training in "best practices for providing customer service in mind-body wellness environment." For any additional training, Columbia Association would be charged at a rate of $500 per hour.
>
> [Under Section 9.1], Still Point would be deemed in default if, after receiving thirty-days' notice from Columbia Association, it failed to: pay rent when due, comply with the reasonable rules and regulations of Columbia Association, or perform its duties and obligations under the Lease.

The Still Point Wellness Centers, LLC, slip op. at 1-4. Further, in the event of a default, "Article X" of the Lease provided several remedies that Columbia Association could seek. Namely, under Section 10.7, Columbia Association could recover attorney's fees if it prevailed in the litigation of certain disputes:

> 10.7 Dispute - In the event that either party gives the other Notice of default hereunder and the default is disputed by the other party, the parties may agree to mediate or arbitrate the dispute. Should no agreement to mediate or arbitrate be possible, either party may bring suit in Howard County, Maryland, in an attempt to resolve the dispute. If mediation is chosen, each party shall bear its own expenses, including attorney's fees, and fifty percent (50%) of the cost of the mediator. In the event that the parties agree to arbitrate or that litigation ensues, the prevailing party shall be entitled to an award of all costs, including all attorney's fees actually incurred.

Additionally, under Section 10.1, Columbia Association could terminate the agreement and recover possession of the property after providing notice.

> The Lease was amended twice. First, on February 28, 2015, the parties amended the Lease regarding the consulting, training, and marketing services. On January 11, 2016, the

> Lease was amended a second time to correct the legal name of the "Lessee" from "The Still Point Wellness Center, LLC" to "The Still Point at Haven on the Lake, LLC." Additionally, the January 2016 amendment added a $50 late fee for past due rent payments.
>
> Still Point opened its doors on December 4, 2014. In January 2017, Columbia Association sent a notice of default to Still Point. The default notice indicated that Still Point had defaulted on its rent obligations and would be subject to eviction if it did not pay the balance. [O]n February [13, 2017], Columbia Association sent another notice to the same effect.

The Still Point Wellness Centers, LLC, slip op. at 4-5.

In the February notice, Columbia Association's counsel advised Still Point as follows:

> Pursuant to Section 9.1 of the Lease, Lessee is currently in default of the Lease for failing to provide the profit and loss statements since October 2016. Lessee is further in default of the Lease for failing to make the forgoing delineated payments due under the Lease. **The total amount due is $52,897.90, plus the Percentage Rent for the months of October, November, December 2016 and January 2017.** If Lessee fails to provide the profit and loss statements, as well as all unpaid amounts owed under the Lease within thirty (30) days, including all Percentage Rent accrued, Lessor will terminate this Lease and commence an action to recover possession of the Premises. Lessor will further commence proceedings to recover all amounts due under the Lease, plus attorneys' fee[s], interests and costs.

(emphasis in original).

> Before Columbia Association could initiate eviction proceedings, Still Point filed an eight-count complaint against Columbia Association in the Circuit Court for Howard County. In addition to declaratory and injunctive relief, the complaint asserted claims for breach of contract, unfair competition, fraud, breach of a duty of loyalty, breach of duty of care, and an accounting. Permeating all eight counts is Still Point's

> assertion that the Lease is invalid because, in reality, the parties entered into a partnership agreement for the operation of the spa and wellness center.

The Still Point Wellness Centers, LLC, slip op. at 5. Thereafter, Still Point filed a motion for a temporary restraining order. In its motion, Still Point sought to enjoin Columbia Association from terminating the Lease or initiating eviction proceedings. Columbia Association's January 2017 and February 2017 default notices were appended to the motion.

> Columbia Association filed a motion to dismiss the complaint. Columbia Association argued that Still Point's cause of action failed for three reasons: (1) Still Point had no property interest in the Leased Premises independent of the Lease, (2) any alleged partnership agreement would be unenforceable pursuant to the Statute of Frauds, and (3) the integration clause in the Lease prohibited introduction of any evidence demonstrating the existence of a partnership agreement. Columbia Association attached the Lease and its two amendments as an exhibit to its motion.
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> * * *
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> In an opinion delivered from the bench, the circuit court concluded that no partnership agreement existed, reasoning that "most of the references to the alleged oral partnership agreement really sound more in negotiation and an interest in developing a partnership." The circuit court ruled that the Lease:
>
> > [I]s fully integrated and would negate parol evidence from before the lease agreement's execution.
> >
> > The lease itself is clear and unambiguous and clearly designates the roles of the parties as landlord and tenant. And also describes a percentage rent based on gross returns. And, of course, that's expressed in the exception to the

> profit sharing presumption of a partnership formation.
>
> So all counts hinge on there being a partnership based on this oral agreement. And, of course, the Plaintiffs have signed a lease which does not conform with Plaintiff's alleged understanding of the oral discussions on a partnership.

Elaborating on the parol evidence and the Statute of Frauds issues, the circuit court concluded:

> [T]he communications and the conduct before the lease execution may have begun to resemble a partnership, but it becomes parol evidence upon the execution of the lease. In addition, the Statute of Frauds, … these oral discussions at least speak in terms of a 10-year or five to 10-year term. Obviously it can't be completed within one year. I think Statute of Frauds is applicable and would require a writing.

Turning to the unfair competition and fraudulent misrepresentation claims, the court concluded that they were "not pled with sufficient specificity as would be required." The court concluded:

> The rest of the counts hinge on the existence of a partnership and would fail without one. This lease, the fully integrated lease I think makes clear ... [that] this is a landlord-tenant case with original exclusive jurisdiction in the District Court of Maryland.
>
> And for that reason I am signing an order granting the motion to dismiss as transmuted by the court to a motion for summary judgment to consider the lease referenced in the complaint. And that is with prejudice.

The Still Point Wellness Centers, LLC, slip op. at 6-9.

After the circuit court entered its order, Columbia Association filed a motion seeking reimbursement of its attorney's fees. Columbia Association asserted that it was entitled to recover attorney's fees pursuant to Section 10.7 of the Lease because it prevailed in the underlying litigation. On November 3, 2017, the circuit court held a hearing on Columbia Association's motion, and on April 12, 2018, the court denied the motion. This timely appeal followed.

STANDARD OF REVIEW

Columbia Association challenges the circuit court's denial of its motion for attorney's fees. Ordinarily, we review an award of attorney's fees for abuse of discretion. *SunTrust Bank v. Goldman*, 201 Md. App. 390, 397 (2011). Nevertheless, when a "provision in the parties' contract plainly states that the prevailing party 'shall be entitled to receive reasonable attorney's fees from the other party' … the trial court [does] not have discretion to refuse to award fees altogether." *Myers v. Kayhoe*, 391 Md. 188, 207-08 (2006). Accordingly, the trial court's interpretation of such a provision is reviewed for legal correctness. *Weichert Co. of Md., Inc. v. Faust*, 419 Md. 306, 317 (2011) (citing *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 448 (2008)). Moreover, "[a] determination of prevailing party status is a question of law[.]" *Maryland Green Party v. State Bd. of Elections*, 165 Md. App. 113, 128 (2005).

To determine whether the trial court's interpretation was legally correct, "we give no deference to the trial court findings and review the decision under a *de novo* standard of review." *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018). Further, we examine the contract and the disputed provisions under the "objective theory." *Weichert*, *supra*,

419 Md. at 324 (citing *Nova Research*, 405 Md. at 447-48). In doing so, "we look to the entire language of the agreement, not merely a portion thereof." *Id.* (citations omitted). "When interpreting a contract's terms, we consider 'the customary, ordinary and accepted meaning of the language used.'" *Id.* (quoting *Atlantic v. Ulico*, 380 Md. 285, 301 (2004)).

DISCUSSION

Columbia Association contends that the circuit court erred by denying its petition for attorney's fees because it was contractually entitled to fees under Section 10.7 of the Lease.[3] Section 10.7 provides, in pertinent part:

> In the event that either party gives the other Notice of default hereunder and the default is disputed by the other party, the parties may agree to mediate or arbitrate the dispute … In the event that the parties agree to arbitrate or that litigation ensues, the prevailing party shall be entitled to an award of all costs, including all attorney's fees actually incurred.

Columbia Association asserts that its January 2017 and February 2017 letters constitute a "Notice of default hereunder." Thirty-one days after Columbia Association sent the February notice, Still Point filed a complaint alleging, among other things, that the rent and eviction provisions of the Lease were not enforceable. Accordingly, Columbia Association argues that Still Point's complaint demonstrates the existence of a dispute and that it prevailed in litigating the dispute when its dispositive motion was granted, thus triggering Section 10.7 of the Lease.

[3] In the alternative, Columbia Association argues that it is entitled to attorney's fees pursuant to the indemnification provision in Section 8.1 of the Lease.

Still Point responds that it filed the complaint to establish the existence of an oral partnership agreement, and not to dispute the January and February notices. Further, Still Point maintains that Section 10.7 could only be triggered if one of the parties attempted to terminate the agreement under Section 10.1 or Section 10.6. Finally, Still Point avers that Columbia Association was not a "prevailing party," and even if it was, Columbia Association is not entitled to attorney's fees because Still Point initiated the underlying litigation.

To resolve this issue, we must interpret Section 10.7 and the Lease. In our view, under Section 10.7, Columbia Association is entitled to attorney's fees if: (1) Columbia Association provided Still Point with notice that Still Point defaulted; (2) Still Point disputed the alleged default; and (3) Columbia Association prevailed in litigating or arbitrating the dispute. We will review each requirement in turn.

I. Columbia Association Provided Still Point with Notice of Default.

Columbia Association contends that it notified Still Point that Still Point had defaulted on the Lease twice: first in January 2017, and second in February 2017. Section 9.1(a) provides the following definition of a default:

> Lessee shall be deemed to be in default of the provisions of this Agreement … [w]hen Lessee shall fail, for thirty (30) days after notice from CA, to pay, when due, any payment required to be made by Lessee to CA under the provisions of this Agreement[.]

On February 13, 2017, Columbia Association's counsel notified Still Point, in writing, that "pursuant to section 9.1(a) of the Lease that Lessee has failed to pay, when due, amounts due by Lessee to Lessor under the provisions of the Lease." Counsel for

Columbia Association then listed the amounts owed and further advised Still Point that if Still Point failed to make the payments within thirty days, Columbia Association would "terminate this Lease and commence an action to recover possession of the Premises." In our view, the February 2017 letter clearly demonstrates that Columbia Association provided Still Point with notice that it had defaulted.

II. Still Point Disputed the Default by Filing the Complaint.

We next address whether Still Point disputed the February 2017 notice of default. Columbia Association asserts that Still Point contested the alleged default in both its complaint and its motion for a temporary restraining order. Accordingly, Columbia Association maintains that Still Point disputed the default in accordance with Section 10.7. We agree. Indeed, the complaint contains several allegations disputing the validity of the Lease and the amounts owed.

For instance, in its complaint, Still Point specifically referenced Columbia Association's February 2017 notice and stated that "no rent is due[.]" *See* Still Point's Complaint ¶ 107. In addition, in Count I of the complaint, Still Point sought a declaratory judgment that the Lease is not binding, that the rent provisions of the Lease are not enforceable, and that the Lease does not permit Columbia Association to initiate eviction proceedings. In Count II, Still Point sought to enjoin Columbia Association from "demanding rent pursuant to the terms of the allocation agreement, and causing the removal of Plaintiffs from the Lease Premises[.]" Further, in Count III, Still Point alleged that Columbia Association "falsely represented to Plaintiffs that they had violated lease terms

and were therefore subject to removal from the premises when, in fact, [] Still Point and CA did not agree to rent payments[.]"

Moreover, Still Point filed a motion for a temporary restraining order and sought to enjoin Columbia Association from evicting Still Point. Still Point appended both the January and February notices to its motion, and further attached an affidavit of its co-owner, Tori Paide. In the affidavit, Ms. Paide averred that "[n]either [] Still Point nor TSP owe CA 'rent'" and that the "threat of imminent removal … hangs over [] Still Point and TSP every day." If there was any question that Still Point was contesting the alleged default, Still Point's counsel clarified its position at the circuit court hearing on the motion for attorney's fees. Critically, counsel for Still Point stated:

> We were seeking per the TRO to stop them from following up on the threats that were contained specifically in the February 13th, 2017 notice because they were going to then pursue action to evict us. And we were clearly trying to stop it.

Nevertheless, Still Point maintains in this appeal that it filed the complaint to establish the existence of an oral partnership, and not to dispute the alleged default. We disagree. Although one of Still Point's objectives for filing the complaint may have been to demonstrate the formation and subsequent breach of a partnership agreement, the complaint nonetheless contains several allegations that contest the alleged default. *See, e.g.*, *Dispute*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "dispute" as a "conflict or controversy, esp. one that has given rise to a particular lawsuit"). In short, Still Point may not evade the plain language of Section 10.7 by simply noting that its complaint served

more than one purpose. We, therefore, hold that Still Point disputed its alleged default in the underlying circuit court proceedings.

III. Columbia Association Prevailed in Litigating the Dispute.

Finally, we must determine whether Columbia Association is a "prevailing party" under Section 10.7 of the Lease. "In the context of an award of attorney's fees, a litigant is a 'prevailing party' if he succeeds 'on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'" *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 457 (2008) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). To achieve "prevailing party" status, however, a party need not obtain a monetary judgment. *See, e.g., Stratakos v. Parcells*, 172 Md. App. 464 (2007) (affirming an award of attorney's fees to the defendants who were granted summary judgment in the circuit court proceedings). Rather, a litigant is a prevailing party if the circuit court rules in her favor "on the core claims that formed the basis of the dispute between the parties[.]" *Royal Inv. Grp.*, *supra*, 183 Md. App. at 458.

In our view, Columbia Association is the prevailing party under Section 10.7. Indeed, on July 11, 2017, the circuit court granted Columbia Association's dispositive motion as to all eight counts of Still Point's complaint. Further, on April 30, 2019, we affirmed the circuit court's ruling in an unreported opinion. Because Columbia Association successfully defended "the core claims that formed the basis of the dispute between the parties," Columbia Association is entitled to reasonable attorney's fees. *Royal Inv. Grp.*, *supra*, 183 Md. App. at 458; *see also Kollsman v. Cohen*, 996 F.2d 702, 706 (4th Cir. 1993)

(stating that the "dismissal of an action, whether on the merits or not, generally means that the defendant is the prevailing party").

In its attempt to avoid the effect of Section 10.7, Still Point raises several arguments that are without merit. First, Still Point contends that "ensuing litigation did not occur pursuant to a 'Notice of default hereunder'" because Columbia Association did not commence the litigation. In essence, under Still Point's reading of the Lease, a tenant would never be liable for attorney's fees -- despite agreeing to the contrary -- so long as the tenant is the first to dispute the default in court. We decline to adopt this strained interpretation of Section 10.7. Indeed, Still Point has not presented us with any authority to support the proposition that fee-shifting provisions in lease agreements are only triggered when the non-defaulting party files suit first.

Still Point further asserts that "the parties did not meet as required by Section 11.12," and as a result, "renewal pursuant to the terms of the purported lease could not have occurred and the rent and percentage provisions for Renewal Year 1 could not have come into effect."[4] Still Point essentially maintains that it did not owe rent for "Renewal Year 1" and, therefore, the February 2017 notice of default could not trigger Section 10.7. Still Point's argument is unavailing. Indeed, the alleged rent owed for "Renewal Year 1" served only one basis for the notice of default. Notably, in the February 2017 letter, Columbia Association advised Still Point that it had defaulted on obligations that predated the renewal

[4] The Lease expired on January 5, 2017, but Still Point allegedly exercised its option to renew the Lease on January 27, 2017. Sections 3.1 and 3.2 of the Lease contain the terms for renewal.

period.[5] Moreover, we observe that Still Point continues to dispute that it owes rent, thereby undermining its primary contention that it has never contested the alleged default.

We lastly address Still Point's assertion that Columbia Association may only obtain attorney's fees when a notice of termination is issued pursuant to Sections 10.1 or 10.6. Sections 10.1 and 10.6 provide that if one of the parties fails to remedy a default within thirty days of receiving notice, the non-defaulting party may terminate the Lease after giving ten additional days' notice. According to Still Point, because the parties used the word, "hereunder" to describe a notice of default in Section 10.7, the parties must have intended for the fee-shifting provision to extend only to the notices of termination or eviction described in Article X. For this proposition, Still Point relies on the Court of Appeals' holding in *Weichert Co. of Md., Inc. v. Faust*, 419 Md. 306 (2011).

We are not persuaded by Still Point's narrow reading of the Lease. Section 10.7 outlines the procedure for disputing a "Notice of default." That provision allows the defaulting party -- after receiving notice of a default -- to dispute an alleged default in mediation, arbitration, or the circuit court. The party that prevails in the dispute is then entitled to reasonable attorney's fees. Contrary to Still Point's contention, Sections 10.1 and 10.6 deal primarily with notices of *termination*, not notices of default. Critically, Section 10.7 does not include the word, "termination" or refer to Sections 10.1 or 10.6 in any manner. Indeed, the parties would have cross-referenced the three sections had they

[5] Renewal Year 1 allegedly commenced on January 6, 2017. In the February 2017 letter, Columbia Association stated that Still Point was in default for failing to make payments that were due in 2016.

intended for Section 10.7 to extend only to termination actions. Furthermore, if Section 10.7 applies only to notices of termination, the defaulting party would have no contractual ability to dispute a notice of default. Such an interpretation would yield an unreasonable and troubling result. In short, we "will not displace an objective reading of the contract with [Still Point's] subjective understanding." *Pinnacle Grp., LLC v. Kelly*, 235 Md. App. 436, 456 (2018) (citations omitted).

Moreover, Still Point's reliance on *Weichert* is misplaced. In that case, a company sued its former employee for breaching an implied duty of loyalty and a non-solicitation clause in the employment agreement. 419 Md. at 312. Ultimately, the company prevailed on the breach of loyalty claim, but not on the non-solicitation claim. *Id.* Thereafter, the employee filed a petition for attorney's fees pursuant to a fee-shifting provision in the employment agreement. *Id.* at 314. The company opposed the petition, arguing that the fee-shifting provision covered all actions that arose under the employment agreement, and the employee, therefore, could only seek attorney's fees if she prevailed on both claims. *Id.*

On appeal, the Court of Appeals first looked at the specific language of the fee-shifting provision. *Id.* at 326-27. The Court observed that the employment agreement contained twenty-two paragraphs, but only the last paragraph -- the non-solicitation clause -- was broken into subsections. *Id.* at 326. The eight subsections, "lettered (A) through (H) establishe[d] the parties' rights and obligations under the non-solicitation clause, as well as the mechanism for enforcement of the non-solicitation obligation." *Id.* Subsection H set forth the fee-shifting provision:

> If COMPANY brings any action(s) (including an action seeking injunctive relief) to enforce its rights ***hereunder*** and a judgment is entered in the COMPANY'S favor, then MANAGER shall reimburse COMPANY for the amount of the COMPANY'S attorney fees incurred in pursuing and obtaining judgment. If MANAGER prevails in such a suit, then COMPANY shall reimburse MANAGER for the amount of MANAGER's fees incurred in the same.

Id. at 326-27 (emphasis added).

The Court of Appeals observed that "hereunder" generally means under or "in accordance with this document." *Id.* at 325 (quoting *Hereunder*, BLACK'S LAW DICTIONARY (8th ed. 2004)). Nevertheless, the Court held that under the unique circumstances of the case, "the term 'hereunder' refer[red] only to the specific rights in Paragraph 22" because the non-solicitation clause was, in essence, a separate agreement. *Id.* at 327. Notably, the Court observed that its holding would have likely "been different if the Fee Provision were its own paragraph, [and not] merely an appurtenance to Paragraph 22." *Id.* (citations and quotations omitted). Accordingly, the Court concluded that the fee-shifting provision was limited to litigation arising from the non-solicitation clause. *Id.*

In our view, the agreement in *Weichert* is readily distinguishable from the Lease in the instant case. As discussed, *supra*, in *Weichert*, the fee-shifting provision was contained in a subsection of the non-solicitation clause, which was the only portion of the agreement that had subsections. By contrast, here, the fee-shifting provision in Section 10.7 is its own paragraph. Critically, Section 10.7 does not contain any subsections and it does not expressly reference any other provision. We, therefore, hold that the language in Section

10.7 -- "Notice of default hereunder" -- refers to the definition of default and the notice obligations contained in Section 9.1 of the Lease.

In sum, because Columbia Association provided Still Point with notice of an alleged default and because Columbia Association prevailed in litigating the subsequent dispute of the default, Columbia Association is entitled to reasonable attorney's fees pursuant to Section 10.7 of the Lease. We, therefore, hold that the circuit court erred in denying Columbia Association's petition for attorney's fees. Accordingly, we reverse the circuit court's denial of the petition, and remand the case for the circuit court to determine the amount of fees that Columbia Association is entitled pursuant to Maryland Rule 2-705(f) and Maryland Rule 2-703(f).[6]

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[6] In light of our holding that Columbia Association is entitled to attorney's fees under Section 10.7, we need not consider Columbia Association's alternative argument that it may obtain fees pursuant to the indemnification provision in Section 8.1 of the Lease.