

Circuit Court for Prince George's County
Case Nos. CAL11-33050, CAE12-02223,
CAL12-01449, CAE11-36191

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1659

September Term, 2017

COUNCIL OF UNIT OWNERS OF TREETOP
CONDOMINIUM ASSOCIATION

v.

MERRY WILEY, et al.

Wright,
Berger,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: January 17, 2019

*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.

On February 2, 2016, the Circuit Court for Prince George’s County issued a Declaratory Judgment and Order in an attempt to resolve all outstanding claims that appellees and cross-appellants Merry Wiley, Danielle Leflore, Ricky Ford, Nancy Ford, and Tina Dowdy-Nixon (the “plaintiffs”) brought against Treetop Condominium (“Treetop”), the appellant and cross-appellee in this case. Treetop appealed, and a panel of this Court dismissed the appeal because the Declaratory Judgment and Order was not a final judgment. *Treetop Condo. v. Merry Wiley, et al.*, No. 207, Sept. Term 2016, slip op. at 6 (filed April 24, 2017) (“*Treetop I*”). Presciently, the panel pondered remand for a separate reason—the trial court had failed to identify the facts and reasoning to support its conclusions, making appellate review “extremely difficult.” *Id.*, slip op. at 7.

Following dismissal of the appeal, the trial court heard additional arguments on September 5, 2017. On September 28, 2017, the court issued its Revised Declaratory Order (the “Revised Order”). Treetop noted its appeal on October 13, 2017, and the plaintiffs noted their cross-appeal on October 19, 2017. Treetop, as appellant, raises the following issues for our review:

1. Did the trial court commit reversible error, and/or abuse it [sic] discretion, by entering a declaratory judgment order (the Revised DJ) without identifying the specific findings of fact relied upon in entering the subject order, as well as by not defining the rights of the parties under the issues raised in the underlying litigation?
2. Did the trial court commit reversible error, and/or abuse it [sic] discretion, by declaring “that the liens imposed by the Treetop Condominium Council which form a part of this action are void and unenforceable?”
3. Did the trial court commit reversible error, and/or abuse it [sic] discretion, by declaring certain assessment(s) imposed by Appellant’s Boards to be void and unenforceable?

4. Did the trial court commit reversible error, and/or abuse it [sic] discretion, by declaring “that the Amended Bylaws of Treetop Condominium Council of Unit Owners are null and void as being improperly passed?”
5. Did the trial court commit reversible error, and/or abuse it [sic] discretion, by ordering Appellant to provide reimbursement for certain invalidated assessments?
6. Did the trial court commit reversible error, and/or abuse it [sic] discretion, by declaring “that the unit owners who had their vehicles towed due to unpaid assessments for any kind are due reimbursements for any towing or storage fees associated for such towing” and “that the affidavit presented herein present [sic] a fair and reasonable prima facia [sic] basis for the establishment of the above reference [sic] towing and storage fees?”
7. Did the trial court abuse its discretion in granting any of the relief identified in the Revised DJ in the absence of any expert testimony in support of [plaintiffs’] claims?
8. Did the trial court err and/or abuse its discretion by not applying the business judgment rule?
9. Did the trial court commit reversible error, and/or abuse its discretion, by declaring “that the Treetop Condominium Board during the time in question was improperly constituted to include non-unit access members?”
10. Did the trial court commit reversible error, and/or abuse its discretion, by imposing an adverse inference against [Treetop]?

Additionally, plaintiffs, as cross-appellants asks us:

11. Did the trial court err by denying [plaintiffs] their costs and attorneys’ fees where the Bylaws entitle the prevailing party to costs and attorneys’ fees?

As we shall explain, because the trial court declared that Treetop’s Amended Bylaws were null and void, there was no basis to support the court’s further declarations as set forth in its Revised Order. This alone warrants vacation and remand. To provide

guidance to the trial court on remand, we briefly address the purely legal arguments presented on appeal.

FACTS AND PROCEEDINGS

Because the trial court failed to make factual findings in issuing both of its declaratory judgments, we refer to the operative complaint to provide the background for this case.¹ On March 1, 2013, the plaintiffs filed their Third Amended Complaint for Declaratory Judgment, Injunctive Relief, and Damages (the “Complaint”). According to the Complaint, the plaintiffs in this case own condominiums at the Treetop Condominium complex in Prince George’s County. Treetop is managed by a board of directors (the “Board”), and at all relevant times used Legacy Investment & Management, LLC (“Legacy”) as its management company.

In the Complaint, the plaintiffs alleged that on October 17, 2011, Treetop served notices on each of them that it intended to file liens against their respective properties for failure to pay a net shortage assessment (the “special assessment”). Apparently, the special assessment stemmed from expenditures Treetop made through Legacy in 2008 when Treetop contracted to install electrical sub-meters in each condominium unit to measure the electrical usage of each building.

¹ Additionally, we note that the “Statement of Facts” section in Treetop’s brief reads like argument, baldly asserting things such as “the duly elected Boards acted within their authority and their actions are protected by the venerable business judgment rule” without clearly explaining the facts underlying the appeal. Rule 8-504(a)(4) requires an appellant to provide “A clear concise statement of the facts material to a determination of the questions presented[.]” This was not done here.

The plaintiffs claimed that Treetop improperly authorized the installation of the electrical sub-meters and the special assessments that followed. Specifically, plaintiffs alleged that they never received notice that a meeting would take place where the unit owners would decide whether to install the electrical sub-meters; that pursuant to the Maryland Condominium Act codified at Md. Code (1974, 2015 Repl. Vol., 2018 Supp.) §§ 11-101 et seq. of the Real Property Article (“RP”), as well as Treetop’s own bylaws, Treetop was required to provide plaintiffs with financial records, an accounting, and an audit to ensure the accuracy of the special assessments; and that Treetop’s Board violated its bylaws “if it indeed authorized the installation of electric meters in each unit without the approval of 51% of the Unit owners.”

Because plaintiffs refused to pay the special assessment incurred by the sub-metering project, Treetop filed liens against each of their properties at the complex. Additionally, Treetop allegedly began to improperly tow plaintiffs’ vehicles. In response, plaintiffs filed complaints, which were apparently consolidated into the operative Complaint.

In Count 1 of the Complaint, plaintiffs sought a declaratory judgment declaring that: (1) Treetop had improperly passed its Amended and Restated Bylaws of Council of Unit Owners of Treetop Condominium (the “Amended Bylaws”), that the Amended Bylaws were null and void, and that any action taken by Treetop pursuant to the Amended Bylaws be declared null and void; (2) the costs and expenses associated with the sub-metering project could not be charged to the plaintiff unit owners as a special assessment; (3) any general assessments imposed on the plaintiffs “are disputed” because plaintiffs could not

verify their accuracy without adequate accounting and an audit; (4) that plaintiffs were entitled to receive a budget, audit, and detailed accounting for “every common expenses [sic] incurred for each year in which such was not provided.”

Count 2 of the Complaint captioned “Injunction (Waste; Financial Audit)” sought injunctive relief. Specifically, plaintiffs sought: (1) that Treetop be ordered to open its records to an independent audit; (2) that Treetop prepare an accounting to explain all assessments charged against unit owners; (3) to accurately set forth the appropriate general and special assessments for unit owners; (4) to rescind prior actions by both Treetop’s Board and Legacy, and restore funds to the unit owners; (5) that Treetop and Legacy pay all costs and expenses associated with the Complaint; and (6) that Treetop and Legacy pay for plaintiffs’ attorneys’ fees. Count 3 of the Complaint reiterated the request for an accounting. Count 4 of the Complaint, captioned “Fraud (Legacy Investment and Management)” sought reimbursement from Legacy for the “improper towing of their vehicles” as well as costs associated with the denial of plaintiffs’ access to Treetop’s parking lot, as well as punitive damages for the fraudulent improper spending.

A seven-day trial took place from February 2 through 5, 2015, April 7 and 8, 2015, and July 23, 2015. After hearing closing arguments on July 23, the court invited the parties to submit post-trial briefs. Following the submission of both Treetop’s and plaintiffs’ proposed findings of fact and conclusions of law, the court held a hearing on January 21, 2016. At the hearing, the court issued its findings and conclusions, which were encompassed in its Declaratory Judgment and Order. That order concludes:

That the liens imposed by the Defendant Treetop Condominium Council, herein and the subject of this action are void and unenforceable and it is further

That the imposition of a special assessment by Treetop Condominium Council and the subject of this action is void and unenforceable; and further

ORDERED, that the Amended Bylaws of Treetop [C]ondominium Council of Unit Owners are null and void; and further

That the unit owner[s] of Treetop Condominium be refunded any costs or fees associated with the electrical sub-metering project; and it is further

Ordered, that the unit owners who had their vehicles towed due to alleged non-payment of the net or special assessment be reimbursed for any towing or storage fees; and it is further

ORDERED, that judgment be and is hereby entered in favor of the Defendant, Treetop Condominium Council for the FRAUD count; and it is further

ORDERED, that each party be responsible for their own attorney's fees.

As stated above, Treetop appealed. A panel of this Court dismissed the appeal, however, because the court's order did not resolve plaintiffs' claims against Legacy.

Treetop I, slip op. at 7. In the unreported opinion, this Court admonished the trial court:

But, in the interest of avoiding yet another remand of this case, we are compelled to comment that we may not have been able to address the merits of this appeal even if we were not faced with the lack of a final judgment. Although both parties provided the trial court with detailed proposed findings of fact, the court did not ever indicate which, if any, of the proposed findings it accepted. Nor did the court otherwise identify the testimony and non-testimonial evidence it was relying upon to reach the conclusions announced in open court on January 21, 2016, and in its written judgment entered on February 2, 2016. Without knowing the findings of fact that supported each of the conclusions embodied in the trial court's declaratory decree, it would be extremely difficult for an appellate court to evaluate the validity of those conclusions and decide whether the court appropriately resolved the legal

issues presented by the parties. In such a case, a remand pursuant to Maryland Rule 8-604(d) might be required.

Id. at 7.

Following additional briefings, the trial court held a hearing on September 5, 2017. At the hearing, the plaintiffs voluntarily dismissed their claims against Legacy, but the court received no additional evidence. On September 28, 2017, the trial court issued its Revised Order, which provides:

The court finds that the Treetop Condominium Board during the time in question was improperly constituted to include non-unit access members; and further

The court finds that the liens imposed by the Treetop Condominium Council which form a part of this action are void and unenforceable; and further

The court finds that the imposition of a special assessment by the Treetop [C]ondominium Council which form a part of this action are void and unenforceable; and further

The court finds that any such special assessment that was actually paid by a party herein is to be reimbursed forthwith; and further

The court finds that the Amended By laws [sic] of the Treetop Condominium Council of Unit Owners are null and void as being improperly passed; and further

The court finds that unit owners who had their vehicles towed due to unpaid assessments for any kind are due reimbursement for any towing or storage fees associated for such towing; and further

The court finds that the affidavit presented herein present[s] a fair and reasonable prima facia [sic] basis for the establishment of the above reference[d] towing and storage fees; and further

The court finds that [Legacy] served as an independent contractor for the Defendant, Treetop Condominium; and further

That consistent with the court's finding herein, the court finds that Treetop Condominium had a responsibility to keep and maintain records and further, the loss of any records that might affect the court's findings raises an adverse inference against Treetop [C]ondominium; and further

The court finds that unit owners who paid any net shortage special assessments are due a refund of those payments forthwith; and further

The court finds that the sub-metering project was improper and never should have been allowed to go forward; and further

The court finds that the unit owners are due a reimbursement, on percentage ownership basis for the costs attributable to the sub-metering project forthwith; and further

The court finds that improper payments were made to board members, that required notices didn't go out to unit owners and that improper efforts to charge unit owners for inspection of condominium documents were made; and further

The court finds that the Condominium Board spent condominium funds above and beyond what was budgeted; and further

The court finds that the general assessment for the years in question was improperly calculated due to failure of the Board to assure an audit and accounting; and further

The court finds that the liens referenced above are to be removed forthwith and that the condominium association be fined Five Hundred Dollars per day for each such lien not removed on or before September 18, 2017[,] until such lien is removed; and further

The court finds that the condominium Board is a fiduciary and charges as such when holding and or responsible for the money charged and collected pursuant to any assessment; and further

The court finds that each party be responsible for its own attorney's fees; and it is further

ORDERED, that this is a final judgment.

(Emphasis added). Notably, although the trial court held that Treetop's Amended Bylaws

were null and void, neither party introduced into evidence the original bylaws that were purportedly superseded by the Amended Bylaws.

Treetop appealed the Revised Order, and plaintiffs filed a cross-appeal.

DISCUSSION

I. Errors Within the Revised Order

On appeal, Treetop makes multiple sufficiency arguments, including: that there was insufficient evidence to invalidate the liens, that there was insufficient evidence to invalidate the assessments, that there was insufficient evidence to support the invalidation of the bylaws, and that there was insufficient evidence to support the finding that Treetop's Board was improperly constituted. We need not address these sufficiency arguments, however, because the trial court's invalidation of the Amended Bylaws, coupled with the fact that the original bylaws were never introduced into evidence, rendered the court's subsequent declarations and rulings baseless.

In their Complaint, the plaintiffs sought to have the Amended Bylaws declared null and void, but the plaintiffs also relied heavily upon the Amended Bylaws themselves in both showing that Treetop acted improperly, and in requesting declaratory relief. For example, the plaintiffs claimed: (1) that the special assessment was passed by a board improperly constituted pursuant to the Amended Bylaws; (2) that the Amended Bylaws required the board to prepare and approve a budget and an accounting; and (3) that the Amended Bylaws expressly permitted unit owners to access such financial records, especially as they pertained to the special assessment in this case. Put simply, plaintiffs' requests for declaratory judgment relied upon enforcement of the very Amended Bylaws

that plaintiffs also sought to have invalidated. Significantly, neither party introduced into evidence any prior version of the bylaws at trial.

As the parties acknowledged at oral argument, however, once the trial court declared the Amended Bylaws null and void, it had no basis to make the other determinations reflected in its Revised Order because the court had no prior bylaws (or any other governing documents) upon which it could rely in assessing the propriety of Treetop's actions. Accordingly, after invalidating the Amended Bylaws, the trial court could not subsequently rely on them to grant plaintiffs their requested relief.

Additionally, we note that the trial court provided scarce factual and legal bases in its Revised Order. Maryland Rule 2-522(a) states that, "In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages."

The Maryland Rules Commentary further provides that

In a case tried to the court without a jury, the court must make a decision and give its reasons for the decision in a form that is preserved on the record for review. The rule permits the decision to be either in writing and filed in the action or dictated by the judge into the record. In either instance, the court must give the reasons for its decision and the basis for determining the damages, if any. A failure to comply with this requirement may result in a remand.

Paul V. Niemeyer & Linda M. Schuett, Maryland Rules Commentary 573 (4th ed. 2014).

In order for appellate review to be possible, the trial court must explain the factual predicate and legal reasoning for its ultimate conclusions. A panel of this Court in *Treetop I* recognized similar deficiencies in the prior Declaratory Judgment and Order. Slip op. at 7.

As the parties recognized at oral argument, remand is required because the trial court relied on the Amended Bylaws to make various determinations even though it had declared—in the same Revised Order—that the Amended Bylaws were invalid. On remand, we presume that the court will heed *Treetop I*'s and our separate admonishments to make explicit and thorough factual findings concerning all issues necessary to resolve the action.²

II. Ordered Reimbursements for Towing and Vehicle Storage

Treetop next argues that the trial court erred in awarding reimbursements to “unit owners who had their vehicles towed due to unpaid assessments.” We agree because, in the Complaint, plaintiffs only pursued these claims against Legacy. Concerning the costs associated with towing, the Complaint requests “that Legacy be found liable for the actual expenses for the improper towing of [plaintiffs’] vehicles and \$250.00 dollars per day for each day access to the parking lot was denied to each [plaintiff] and/or that the [plaintiffs] were threatened to be denied[.]”

On September 5, 2017, at the hearing following this Court’s remand, plaintiffs’ counsel stated, “my clients [plaintiffs] will voluntarily dismiss [Legacy].” Because plaintiffs voluntarily dismissed their claims against Legacy, and because plaintiffs only

² The trial court failed to make sufficient findings even to support its declaration that the Amended Bylaws were null and void. It is not inconceivable that, with new evidence, the trial court could reach a different conclusion, thus changing the outcome of this case. Nothing in our opinion should be construed to restrict the trial court, in its discretion, from receiving new evidence on any issue presented, particularly because the trial judge has since retired and may not be available.

sought towing reimbursements from Legacy, there was no basis for the trial court to award these specific reimbursements following Legacy’s dismissal—especially against Treetop. Accordingly, the trial court erred in awarding relief based on a dismissed claim.

III. Expert Testimony

Treetop next argues that the trial court’s Revised Order must be vacated due to a lack of expert testimony. Treetop contends “There can be little dispute that the legal duties and responsibilities of a volunteer condominium board of directors and the corresponding analysis of [Treetop’s] actions in this case are not within the reasonable frame-of-reference of a layperson.”

Maryland Rule 5-702 states that “Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue.” The Court of Appeals has noted that “Expert testimony is *required* ‘only when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average layman [; it] is not required on matters of which the jurors would be aware by virtue of common knowledge.’” *Johnson v. State*, 457 Md. 513, 530 (2018) (quoting *Bean v. Dep’t of Health and Mental Hygiene*, 406 Md. 419, 423 (2008)). To support its argument, Treetop argues that

The issues raised at trial addressed specific issues arising from the management of community associations involving volunteer Boards being advised by both a professional property management company and general counsel. Two (2) of [plaintiffs’] three (3) claims asserted against [Treetop] are based on accounting and auditing issues. [Plaintiffs] presented no expert testimony to address any of these complex issues dealing with the different professions at issue.

Treetop does not clarify what inference at trial was beyond the ken of the average layman. Instead, Treetop seems to argue that the complexities of property management itself required expert clarification. This argument lacks merit. This case did not hinge upon the intricacies of Treetop’s accountings and budgets—it hinged upon allegations that Treetop’s board of directors acted inappropriately and outside the parameters of Treetop’s governing documents. We perceive no requirement for expert testimony here.

IV. Application of the Business Judgment Rule

Treetop also argues that the trial court erred in declining to apply the business judgment rule. Under the rule, “courts apply a presumption of disinterestedness, independence, and reasonable decision-making to all business decisions made by a corporate board of directors. The business judgment rule protects corporate directors from liability when the majority of directors act prudently and in good faith.” *Oliveira v. Sugarman*, 451 Md. 208, 221 (2017). To circumvent application of the business judgment rule, “[a] shareholder may ‘show either that the board or committee’s investigation or decision was not conducted independently and in good faith, or that it was not within the realm of sound business judgment.’” *Boland v. Boland*, 423 Md. 296, 329 (2011) (quoting *Bender v. Schwartz*, 172 Md. App. 648, 666 (2007)).

Because we are remanding this case, the trial court should consider whether the business judgment rule is applicable to the facts presented and make specific fact-findings and conclusions that are able to be reviewed on appeal.

V. Plaintiffs' Attorneys' Fees

Finally, plaintiffs, as cross-appellants, argue that the trial court erred in denying their request for attorneys' fees. In declining to award attorneys' fees at the January 21, 2016 hearing, the trial court stated "Given that, this is the difficult part, the problem was really created by Legacy, or much of it, and I'm going to decline to award attorneys' fees." Plaintiffs argue that "the trial court abused its discretion and erred by refusing [plaintiffs] the attorneys' fees which they are contractually entitled to pursuant to [the Amended Bylaws]." Because the trial court declared the Amended Bylaws "null and void," plaintiffs cannot rely on them to seek attorneys' fees. Nevertheless, because we vacate and remand the trial court's Revised Order, the trial court may revisit this issue on remand.

CONCLUSION

Because the trial court invalidated the Amended Bylaws, and because all subsequent declarations were based on the interpretation of those Amended Bylaws, we must vacate the trial court's Revised Order and remand. On remand, we admonish the trial court to make thorough factual and legal conclusions such that they may be reviewable on appeal. Finally, the trial court, in its discretion, may receive new evidence on any of the issues presented in this appeal.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY VACATED AND
CASE REMANDED FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION. COSTS TO
BE PAID BY APPELLEE.**