UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0603

September Term, 2015

DARYL ANN DOANE, ET AL.

v.

GABBRIEL FRIGM, ET AL.

Graeff,
Berger,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 1, 2016

Although it is commonly said that good fences make good neighbors, the construction of a fence in this case had the opposite effect. This appeal arises from orders of the Circuit Court for Prince George's County entering judgment in favor of Gabbriel Frigm ("Frigm"), Pedro Medina ("Medina"), and the Montpelier Community Association ("MCA"), appellees (collectively, "the Appellees"). Frigm and Medina had sought permission from the MCA to construct a six-foot fence on their property. After receiving approval from the MCA, Frigm and Medina constructed the fence. Following the construction of the fence, Daryl Ann Doane and John L. Doane (collectively, "the Doanes") filed the complaint giving rise to the instant appeal, which alleged various wrongdoing on the part of Frigm, Medina, and the MCA and sought injunctive relief. Finding no merit to the Doanes' claims, the circuit court denied their request for injunctive relief.

On appeal, the Doanes present five questions[1] for our review, which we have

[1] The questions, as presented by the Doanes, are:

> 1. Whether the Circuit Court for Prince George's County committed reversible error when sua sponte entering Judgment for Appellees Gabbriel Frigm and Pedro Medina as to all claims given that the Appellees Gabbriel Frigm and Pedro Medina did not move for judgment on all claims.
>
> 2. Whether the Circuit Court for Prince George's County committed reversible error in finding that the Appellees Gabbriel Frigm and Pedro Medina did not breach the Covenants in light of the weight of the evidence to the contrary.

(continued...)

consolidated and rephrased as follows:

1. Whether the circuit court erred by entering judgment in favor of Frigm, Medina, and the MCA rather than by submitting the case to the jury when the Doanes' complaint sought only equitable relief.

2. Whether the circuit court erred by entering judgment in favor of Frigm and Medina on the breach of covenants and private nuisance claims.

3. Whether the circuit court erred by declining to grant attorney's fees to the Doanes.

4. Whether the circuit erred by determining that the MCA's

[1] (...continued)

3. Whether the Circuit Court for Prince George's County committed reversible error in finding that the Covenants and/or Bylaws did not provide for attorney fees for the enforcement of Covenant violations against a member of the association.

4. Whether the Circuit Court for Prince George's County committed reversible error in finding that decisions by Appellee MCA were protected by the Business Judgment Rule and therefore, not subject to judicial review.

5. Whether the Circuit Court for Prince George's County committed reversible error in entering judgment for Appellee Montpelier Community Association on motion by Appellee MCA when it is Appellee's burden of proof to show that it did not breach its fiduciary duty owed to the Appellants Dr. Daryl Ann Doane and Dr. John L. Doane.

> decision to approve the six-foot fence was protected by the business judgment rule and by entering judgment in
>
> favor of the MCA with respect to the breach of fiduciary duty/gross negligence claims.

We shall affirm.

FACTS AND PROCEEDINGS

Medina and Frigm, a married couple with a young child, are next-door neighbors of the Doanes. They reside in the Montpelier Community, which is organized under and governed by the MCA. Medina and Frigm purchased their home, located at 12502 Raven Way, in Laurel, Maryland, on August 2, 2011. Medina and Frigm sought to construct a six-foot fence on their property. Pursuant to the MCA Articles of Incorporation, Covenants, and Bylaws, homeowners were not permitted to construct fences above four feet tall without obtaining prior approval from the MCA or its subsidiary, the Architectural Control and Compliance Committee ("ACCC"). With respect to fences, the Covenants provide:

> No fabricated fence shall be erected anywhere on the Lot except in the Rear Yard, not made of material other than wood or chain link and higher than four (4) feet. However, special exceptions to location and/or height may be granted by the Board of Trustees or its designated Committee in cases of swimming pools, creeks, and public roads or developments abutting the Lot or in other special situations where safety, security, protection, and privacy are clearly involved.

Pursuant to the guidelines issued by the ACCC, a homeowner requesting a change involving external building or property modifications is required to obtain "signed concurrences from

all affected neighbors" and submit the concurrences along with a written request to the ACCC. The decision to approve or deny a request, however, is vested in the ACCC and subject to review by the MCA Board of Directors ("the Board" or "the MCA").

In October 2011, Medina and Frigm presented an approval form to the Doanes as "an affected neighbor." The approval form described the fence Medina and Frigm wished to build as a "6' x 8' stockade fence panel." John Doane, as well as a second neighbor, signed the approval form. Susan Habig, a third neighbor of Medina and Frigm, did not sign the approval form. Medina and Frigm submitted their request to the ACCC for consideration at a November meeting.

An ACCC meeting was held on November 3, 2011. Frigm attended the meeting and explained why she believed that a six-foot fence was needed for safety, security, protection, and privacy. Frigm explained that she had a small child, that her property backed to a wooded area and public park where strangers often congregated, and that unknown persons parked their cars on the street in front of Medina and Frigm's home in order to enter a pathway into the wooded area. Ms. Habig, the neighbor who had not originally signed the approval form, attended the meeting as well. Ms. Habig had bamboo growing along the edge of her property and wanted to ensure that the bamboo was removed before the fence was constructed. Ms. Habig explained that she had been fighting against the invasive bamboo for over thirty years. She commented that she was unable "to give a

straight[-]forward approve or don't approve" of the fence proposal at that time because she wanted to make sure that the bamboo would be removed properly in advance of the fence construction because the installation of a fence would inhibit her ability to remove the bamboo in the future. Following the hearing, the ACCC approved Medina and Frigm's fence request on November 9, 2011. In the approval letter, the ACCC commented that an exception to the Covenants was "granted for a 6 foot fence for privacy and protection from a public pathway to the park adjacent to" Medina and Frigm's house.

Within weeks of the ACCC approval, Ms. Habig rented a backhoe to remove bamboo from the backyards of the two properties. Medina and Frigm contributed $150.00 to the rental of the backhoe. In February 2012, Frigm contacted various agencies for clearance before beginning construction on the fence, including Miss Utility, the Washington Suburban Sanitary Commission, and the Prince George's County Department of Licensing and Permits. The fence was constructed in November 2012. The completion date was November 17, 2012.

Following the completion of the fence, the Doanes contacted Robert Derrick, president of the MCA Board, voicing their concerns about Medina and Frigm's fence. On December 11, 2012, the Doanes expressed that they wished to withdraw their concurrence for the fence and lodge an official complaint with the ACCC. The Doanes explained that they believed that Medina and Frigm has misrepresented the plans for the fence on the

approval form. The Doanes further asserted that the fence application submitted to the ACCC differed from that which was presented to the Doanes for their approval. The Doanes also raised various issues related to the fence, including that the construction did not begin within six months of approval, that construction was not substantially complete within twelve months, and that the circumstances relating to privacy, protection, security, and safety had not been demonstrated sufficiently to permit an exception to the Covenants. The MCA referred the matter to the ACCC for investigation.

On January 12, 2013, the ACCC issued a letter to Medina and Frigm informing them that the fence was in violation because it had not been substantially completed within twelve months. The ACCC informed Medina and Frigm and they needed to "either (1) reapply to the ACCC for approval; or (2) remove the fence." In the meantime, the ACCC instructed Medina and Frigm that "[a]ll work on the fence must cease immediately."[2] On January 18, 2013, MCA President Robert Derrick and ACCC Chairman Michael Boddie met with Frigm and obtained copies of various paperwork relating to the approval and construction of the fence.[3] Following the meeting attended by Derrick, Boddie, and Frigm, Frigm sent an email

[2] The ACCC was apparently unaware that fence construction had already been completed at this point.

[3] The Doanes characterize the meeting between Derrick, Boddie, and Frigm as a "secret visit" which "did not allow for any of the affected stakeholders . . . to weigh in on the site visit."

to Derrick and Boddie thanking them "for taking the time to come by [her] property today to inspect [the] completed fence." Frigm wrote:

> As discussed, I have attached copies of the P.G. county permit, WSSC letter, Miss Utility clearance letter, etc. We have satisfactorily addressed and shown full compliance with each point of concern on the letter sent by Mr. Boddie via priority mail dated January 12, 2013. We will look for your written ack[n]owledgement letter stating your visit today, witnessing the completed fence and that it is not necessary to reapply or remove.
>
> Again, we thank you both for your time and committment [sic] to this community.

The issue surrounding the fence was considered by the ACCC at its February 2013 meeting. Frigm and the Doanes attended and spoke at the hearing. At the hearing, the Doanes raised various concerns, including that the original grant of approval in November 2011 was improper because it was granted "without any due diligence at all" by the ACCC. The Doanes further expressed that the fence interfered with the view from their sunroom and that the fence was unattractive because it was built "inside out."[4] At the close of the hearing, the ACCC unanimously found that the Doanes' complaint was without merit. The Doanes appealed to the full MCA Board.

[4] The fence was constructed with the cross-pieces on the exterior of the fence, rather than facing the interior. According to the Doanes, this resulted in the "nice side" facing toward the inside of the Medina/Frigm property rather than outward toward the Doanes' property. The Doanes described the fence as "very ugly." Frigm explained that having the cross-pieces on the exterior fence helped to prevent her son from climbing out of the yard.

The matter was considered at the MCA Board meeting on February 12, 2013. Again, each party who wished to express his or her views on the fence issue was permitted to speak. Each speaker was allotted ten minutes. The Doanes reiterated their concerns about the timing of the construction of the fence and argued that construction had not begun within the required six-month time frame, nor was it completed within twelve months. Frigm responded that it took some time after the ACCC's approval to resolve the bamboo issue, have a boundary survey completed, obtain clearance from Miss Utility, investigate an easement, and obtain building permits. At the close of the meeting, the MCA Board voted unanimously to uphold the ACCC finding which permitted the fence to remain.[5]

On January 24, 2014, the Doanes filed the complaint giving rise to the instant appeal in the Circuit Court for Prince George's County. The Doanes alleged Breach of Covenants and Private Nuisance against Medina and Frigm and Breach of Fiduciary Duty and Gross Negligence against the MCA. The Doanes sought injunctive relief against Medina and Frigm, asking that the court order that the fence be taken down. The Doanes further sought

[5] Several members of the Board acknowledged that they were not aware of the time frame for construction of fences and that the time frame had not been an issue in the past. One member of the Board commented specifically, "I didn't even know there was a time frame quite frankly. I mean, it's never been brought up before in the ten years that I've been on the committee. It's never been." Another member of the Board commented that it was incumbent upon the Board to enforce the time frame and that the homeowners should not be punished for the Board's ignorance.

injunctive relief against the MCA, asking that the court prohibit the MCA from approving a fence on the Medina and Frigm property in the future.

A jury trial occurred from April 27, 2015 through May 4, 2015. On May 4, 2015, the circuit court ruled that the issues were properly before the court, and not before the jury, because the Doanes sought only injunctive relief and had not pled any damages. The circuit court entered judgment in favor of the MCA, Medina, and Frigm on all claims.

This timely appeal followed.

STANDARD OF REVIEW

The parties disagree with respect to the standard of review which is applicable to this appeal. The Doanes urge us to apply a *de novo* standard of review, which they argue is appropriate because the case below was decided on a motion for judgment. *See Thomas v. Panco Management of Maryland, LLC*, 423 Md. 387, 394 (2011) ("An appellate court must review the grant or denial of a motion for judgment by conducting the same analysis as the trial judge.").

The Appellees respond that although the *de novo* standard generally applies to appellate review of a circuit court's grant of a motion for judgment in a jury trial, this case differs because the remedy sought was injunctive relief and, therefore, there was no right to a jury trial. *See Mattingly v. Mattingly*, 92 Md. App. 248, 255 (1992) ("If a claim is brought that historically would have been filed on the law side of the court and a jury trial is properly

demanded, a jury will hear the case. *Equitable claims will be decided by the court without a jury*.") (emphasis in original) (internal quotations and citations omitted). As we shall explain, the complaint in this case sought only equitable relief. Accordingly, the claim was to be decided by the court rather than a jury. As such, the clearly erroneous standard of review applies. Md. Rule 8-131(c) ("When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It 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.").

DISCUSSION

I.

The Doanes' first assertion that the circuit court improperly entered judgment in favor of Frigm, Medina, and the MCA rather than submitting the case to the jury. They assert that a jury could have reasonably concluded that the elements of the various claims had been proven at trial. The circuit court concluded that because the Doanes sought only injunctive relief, the matter was properly before the court rather than before the jury. We agree with the circuit court.

As we touched upon briefly when setting forth the applicable standard of review, there is no right to a jury trial for equitable claims. *Mattingly*, *supra*, 92 Md. App. at 255. Certain cases "involving inexorably intertwined questions of law and equity requir[e] a jury

trial." *Benjamin v. Erk*, 138 Md. App. 459, 473 (2001). However, it is "only in cases where the claim for legal relief is distinctly available ***in addition to*** a claim for equitable is the trial court required to preserve the right to a jury trial." *Id.* (Emphasis in original.) We explained:

> "[T]he equitable claim is solely within the province of the court in the exercise of its equitable jurisdiction . . . . It is only where the ultimate relief sought is equitable and there are collateral legal issues or a plaintiff is entitled to equitable relief which is compatible with and recoverable in addition to legal relief that the trial court must narrowly exercise its discretion [to] preserv[e] the right to jury trial . . . ."

Id. (quoting *Merritt v. Craig*, 130 Md. App. 350, 364 (2000)). "***[T]he determinative factor on the issue of entitlement to a jury trial is the nature of the relief sought.***" *Id.* at 474 (quoting *Merritt*, *supra*, 130 Md. App. at 363) (emphasis added in *Benjamin*).

In the present case, the relief sought by the Doanes was solely equitable in nature. With respect to Count I, titled "Nuisance/Breach of Covenants (Medina/Frigm)," the Doanes sought the following relief:

> 1. That [the circuit court] issue a final injunction requiring Medina/Frigm to remove the fence and prohibiting Medina/Frigm from erecting a fence or any part of a fence in the future that is not approved and in compliance with the MCA covenants;
>
> 2. That [the circuit court] order the violating homeowners, Medina/Frigm, to pay Drs. Doanes' legal fees and administrative and expert witness costs;

> 3. Any and all other relief that [the circuit court] deems appropriate.

With respect to Count II, titled "Gross Negligence (Breach of Fiduciary Duty) (MCA)," the Doanes sought the following relief:

> 1. That [the circuit court] issue a final injunction requiring the MCA to act in a reasonably prudent manner in making business decisions and in ensuring compliance with the MCA covenants and bylaws;
>
> 2. Any and all other relief that [the circuit court] deems appropriate.

The complaint did not seek any damages. Pursuant to Maryland Rule 2-305, a complaint "shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought." If a party seeks a money judgment, the party is required to set forth the amount of damages sought if the money judgment sought does not exceed $75,000. *Id.* If a demand for money judgment exceeds $75,000, the demand "shall include a general statement that the amount sought exceeds $75,000." In this case, the Doanes did not seek any money judgment or set forth any specific amount of damages sought.

Because the Doanes sought only equitable relief, there was no right to a jury trial and the matter was properly before the court rather than the jury. *See Benjamin*, *supra*, 138 Md. App. 473-74. The Doanes attempt to analogize to *Higgins v. Barnes*, 310 Md. 532 (1987), in unpersuasive. In *Higgins*, Higgins filed a claim seeking the equitable remedy of specific

performance of a contract and Mr. and Mrs. Barnes filed a counter-complaint for breach of contract, seeking money damages. *Id.* at 534-35. With Higgins's answer to the counter-complaint, she included a demand for a jury trial. *Id.* at 535. Because the initial complaint sought only equitable relief, the trial court denied Higgins's demand for a jury trial. *Id.* at 536. The Court of Appeals held that the trial court erred by refusing Higgins's jury trial demand on the issue of breach of contract. *Id.* at 551. The Court explained:

> The issues of whether Barnes had breached the contract by failing to construct the new building in accordance with the plans and specifications, and of the amount of damages suffered for any breach found, were clearly the type of legal issues historically subject to trial by jury. Moreover, the issues were common to the claim and counterclaim.

Id. at 551-52.

The Doanes assert that, pursuant to *Higgins*, a jury demand is proper when a jury is required to answer questions of law regarding a claim before a court can determine whether equitable relief is proper. This is a misstatement of the law. The *Higgins* Court held that the trial court erred in denying the jury trial demand specifically because one party had *sought damages*. Indeed, as discussed *supra*, when considering whether a party is entitled to a jury trial, the issue is not whether there are questions issues which a jury could properly determine, but rather, the "***determinative factor on the issue of entitlement to a jury trial is the nature of the relief sought.***" *Benjamin*, *supra*, 138 Md. App. at 474. Accordingly, because the Doanes sought only equitable relief, we hold that there was no right to a jury

trial. As such, the circuit court properly ruled upon the merits of the Doanes's claims rather than submitting them to the jury.

II.

Turning to the merits of the Doanes' claims, we next consider whether the circuit court improperly entered judgment in favor of Frigm and Medina on the breach of covenants and private nuisance claims.

A. Breach of Covenants

The circuit court expressly found the following with respect to the breach of covenants claim:

> Ms. Frigm and Mr. Medina completed the application to build a fence, they informed the plaintiffs of the request, received the concurrence of the plaintiffs and presented their plan to the MCA and the ACCC. The fence was approved by Miss Utility, the county and WSSC. They completed the fence in a timely manner in accordance with the Covenants and the Bylaws of the MCA. The fence was approved.
>
> After the Doanes' objection and additional inspection by the county, Mr. Medina and Ms. Frigm made the necessary corrections and the fence was re-approved. There was an appeal. I'm going to note the appeal was determined that the fence could continue. As members of the community, Mr. Medina and Ms. Frigm followed all the required procedures pursuant to the Bylaws in building their fence.

The circuit court's findings were not clearly erroneous. The circuit court, having had the opportunity to observe witness testimony and assess the reliability of various witnesses,

reasonably concluded that Frigm and Medina complied with the relevant covenants and bylaws when applying for and constructing their fence.

In their brief, the Doanes raise multiple factual arguments relating to the timing of the construction of the fence, whether the fence was actually required for protective, privacy, security, and safety, and whether the fence remained in a state of disrepair following its construction. Whether a reasonable fact-finder could have reached a different conclusion on the breach of covenants issue is not the question properly before us. Critically, as discussed *supra* in Part I, the issue was before the court rather than the jury. Accordingly, it was for the court to determine whether or not the Doanes had established a breach of covenants claim.

Furthermore, to the extent that Frigm and Medina may have breached the covenants in various ways during the approval process for the fence, the court could have reasonably found that any breaches had been cured and that no breaches existed by the time of trial. For example, even if a fact-finder could have concluded that Frigm and Medina breached the covenants by failing to begin construction within six months after approval or by failing to complete the fence within twelve months,[6] the fact-finder could have concluded that the

[6] We do not insinuate that Frigm and Medina did, in fact, breach the covenants by violating the six-month or twelve-month time requirements. Indeed, MCA President Robert Derrick testified that he did not believe the eight-day delay in completion was fatal because the fence was "substantially completed" within the one-year construction requirement. Furthermore, a reasonable fact-finder could have concluded that by clearing bamboo, (continued...)

breach was cured by meeting with representatives of the MCA and ACCC and providing the MCA and ACCC with various documentation. Moreover, the Doanes point to no authority which would support their assertion that the remedy for any alleged breach of covenants by Medina and Frigm is to require the removal of the fence.[7] The circuit court was in the best position to weigh the evidence presented with respect to the breach of covenants claim and the relative persuasiveness of various witnesses. We will not second-guess the conclusions of the circuit court on appeal.

B. Nuisance

The Doanes further assert that the circuit court erred by entering judgment in favor of Medina and Frigm on the nuisance claim because, according to the Doanes, a jury could have reasonably concluded that Medina and Frigm were liable for nuisance. As discussed *supra*, the court, and not the jury, was the proper fact-finder in this case. Accordingly, the question is not whether a jury could have reasonably concluded that Medina and Frigm were liable for nuisance, but whether the circuit court's finding was clearly erroneous.

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[6] (...continued)
investigating utilities, and obtaining permits, the construction process had begun within the six-month period. A fact-finder could have similarly concluded that the fence was substantially complete within twelve months.

[7] Indeed, MCA President Derrick testified that Covenant violations are dealt with in any way the Board deems appropriate, such as through the imposition of fines or letters of reprimand. Derrick further testified that remedies for covenant violations are imposed at the discretion of the MCA Board and its committees.

A private nuisance is "a nontrespassory invasion of another's interest in the private use and enjoyment of land." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 408, *on reconsideration in part*, 433 Md. 502 (2013) (internal quotation omitted). The Court of Appeals explained:

> Not every interference with a plaintiff's use and enjoyment of land, however, will support a cause of action for nuisance. To succeed on a nuisance claim, a plaintiff must establish an unreasonable and substantial interference with his or her use and enjoyment of his or her property, such that the injury is of such a character as to diminish materially the value of the property as a dwelling and seriously interfere with the ordinary comfort and enjoyment of it.

Id. and 408-09 (citations and quotations omitted).

Based upon the evidence presented at trial, the circuit court reasonably concluded that the fence did not constitute an unreasonable and substantial interference with the Doanes' use and enjoyment of their property. While explaining why an injunction was not warranted, the circuit court observed that "the fence may not be a perfect fence [and] it certainly is not the most expensive fence that could have been built." The court commented, however, that there were "other fences in th[e] neighborhood that are inside out," there were "fences that are six feet" in height, and "there are some that are stockade." The court found that the Doanes "ha[d] failed to demonstrate any unreasonable conduct, interference or injury administered by Mr. Medina and Ms. Frigm that would warrant the removal of the fence." The court noted that it based this conclusion on its "opportunity to hear the testimony of the

parties and the witnesses [and] to review the evidence and images of the fence." There was ample evidence to support the circuit court's conclusions, and the circuit court's factual findings were not clearly erroneous. Accordingly, we will not disturb the conclusions of the circuit court on appeal.

III.

The Doanes' next allegation of error is that the circuit court erred by denying their request for attorney's fees. The Doanes acknowledge, as they must, that Maryland law "generally adheres to the common law, or American rule, that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome." *Friolo v. Frankel*, 403 Md. 443, 456 (2008). The Doanes argue, however, that they were entitled to attorney's fees pursuant to the MCA Bylaws and, specifically, Article X, Section 1(g) of the Bylaws, which provides that "[a]ll legal and administrative costs associated with enforcement of this section shall be borne by the homeowner in violation." Medina and Frigm respond that although the Bylaws provide for the Board to recover fees from a violating homeowner, the Bylaws cannot be read to permit recovery of attorney's fees by another homeowner.

In this appeal, we need not address whether or not the Bylaws do, in the abstract, allow for recovery of attorney's fees in a private action brought by one homeowner against another homeowner. Even if we were to assume *arguendo* that Article X, Section 1(g) would permit recovery of fees by a homeowner, no recovery is appropriate in this case

because the Doanes failed to prevail on their claim. Simply put, the Doanes failed to persuade the MCA or the circuit court that Medina and Frigm were "in violation" of the MCA Covenants and Bylaws. As we have explained, the circuit court's conclusion that the Doanes failed to establish a breach of covenant claim was not erroneous. Accordingly, the Doanes were not entitled to recovery of legal and/or administrative costs from Medina and Frigm.

IV.

The Doanes' final contention is that the circuit court erred by determining that the MCA's decision to approve the six-foot fence was protected by the business judgment rule and by entering judgment in favor of the MCA with respect to the breach of fiduciary duty/gross negligence claims. We are unpersuaded.

With respect to the Doanes' claim against the MCA, the circuit court found as follows:

> The plaintiffs have failed to show evidence of fraud, lack of good faith, self-dealing or unconscionable conduct by the MCA or the ACCC that would justify judicial review. The MCA found that Mr. Medina and Ms. Frigm completed the appropriate paperwork, received approval from all the correct sources, began working on the fence within six months of approval and substantially completed the fence as required. The plaintiffs have failed to demonstrate that the defendants acted outside of the scope of their discretion as outlined by the Bylaws and presented no evidence of inappropriate actions by the MCA or the ACCC.

The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company. Absent an abuse of discretion, that judgment will be respected by the courts." *Boland v. Boland*, 423 Md. 296, 328 (2011) (internal quotations and citations omitted). "The burden is on the party challenging the decision to establish facts rebutting the presumption." *Id.*

We have previously applied the business judgment rule in a very similar factual context, in which a property owner brought an action against an adjoining property owner as well as a community association. *Black v. Fox Hills North Community Association, Inc.*, 90 Md. App. 75 (1992). The Blacks brought suit against the Kupersmiths and Fox Hills North Community Association ("the Association"), alleging that the Association had improperly approved the Kupersmiths proposed fence and seeking an injunction ordering the removal of the fence. *Id.* at 78. The circuit court dismissed the Blacks' complaint for failure to state a claim, and we affirmed, holding that the business judgment rule precluded judicial review. *Id.* at 81-85. We explained that the Association's decision "to approve the Kupersmiths' fence was a decision which it was authorized to make" and commented that, regardless of "[w]hether that decision was right or wrong, the decision fell within the legitimate range of the [A]ssociation's discretion." *Id.* at 83. Because the Blacks had not

alleged "any fraud or bad faith," we held that the complaint against the Association was properly dismissed. *Id.*

In the present case, the circuit court expressly found that the Doanes "failed to show evidence of fraud, lack of good faith, self-dealing or unconscionable conduct by the MCA or the ACCC that would justify judicial review." Indeed, this was not a determination made by the circuit court at the motion to dismiss stage, as in *Black*, *supra*, but after a full trial on the merits. The circuit court was presented with the opportunity to evaluate the credibility of witness testimony and the persuasiveness of various experts.[8]

Although the Doanes may believe that the MCA Board of Directors and the ACCC should interpret and enforce the Covenants and Bylaws differently, the decision to approve Medina and Frigm's fence was within the Board's discretion. Although the Doanes, had they been members of the Board, may have decided the fence issue differently, that does not render the Board's actual decision improper. As the circuit court observed, the Board "investigated [the Doanes' concerns and] held multiple hearings at which each neighbor addressed the [B]oard." The circuit court further found that "[n]either [the] ACCC nor the MCA dismissed or disregarded the [Doanes'] objection" to Medina and Frigm's fence. Rather, the court found, "[a]fter careful review, [the MCA and the ACCC] concluded that

[8] As discussed *supra*, because the Doanes' complaint sought only injunctive relief, the evaluation of the merits of the Doanes' claims was properly before the court rather than a jury.

the complaint was without merit and approved or re-approved the fence." The circuit court's factual findings were not clearly erroneous. Accordingly, we do not disrupt the circuit court's conclusions on appeal.[9]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[9] The circuit court found no merit to the substantive claim against the MCA and ACCC. On appeal, the MCA asserts that, under Maryland law, the independent tort of breach of fiduciary duty does not exist. This issue was not addressed by the circuit court, which disposed of the claim against the MCA on the basis that the Doanes had failed to demonstrate any improper conduct on behalf of the MCA or ACCC and concluded that the MCA and ACCC acted within the scope of their discretion as provided by the Bylaws. Accordingly, we need not address the legal issue of whether Maryland recognizes a tort for breach of fiduciary duty on appeal.