Circuit Court for Anne Arundel County
Case No. C-02-CV-15-000283

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 208

September Term, 2016

FOX CHASE HOA, INC.

v.

SHAHAIRA DAVY

Kehoe,
Berger,
Leahy,
JJ.

Opinion by Kehoe, J.

Filed: March 21, 2017

This appeal arises out of a dispute between Fox Chase HOA, Inc. ("Fox Chase") and Shahaira Davy, the owner of a townhouse in that community. Fox Chase claimed that Ms. Davy owed it $1,999.38, consisting of unpaid and accelerated assessments, late fees, attorneys' fees, and other expenses, which Fox Chase sought to collect by establishing a lien on her property pursuant to the Maryland Contract Lien Act ("MCLA"), Md. Code Ann., § 14-201 *et seq.* of the Real Property Article ("RP"). To this end, Fox Chase delivered a notice of intent to file a lien to Ms. Davy on January 2, 2015. Ms. Davy filed a complaint in the Circuit Court for Anne Arundel County challenging Fox Chase's right to establish the lien. *See* RP § 14-203(c).

Eventually, the dispute reached the Honorable Stacy W. McCormack. The issue before the court was whether Fox Chase met its burden of showing that there was probable cause to establish the lien. *See* RP § 14-203 (d) and (g). After a court trial, Judge McCormack issued a thorough and well-reasoned memorandum opinion in which she concluded that, as of January 2, 2015, Ms. Davy did not owe $1,999.38, as claimed by Fox Chase, but rather $14.[1] The court interpreted the Fox Chase Declaration of Covenants, Conditions and Restrictions (the "Covenants") to allow a lien to be established only if there was an overdue assessment, and the court found that her January, 2015 assessment, which was due on January 1, was not sufficiently late to trigger the

[1] There was evidence before the court that, on December 1, 2015, Ms. Davy was several months in arrears in her $58 monthly assessments and owed late charges as well. Ms. Davy testified that she paid a total of $293 in December 2015 to pay all past due assessments and late fees. Judge McCormack found that Ms. Davy had paid all but $14 of her obligations.

imposition of a lien. Based on these findings, the court found that Fox Chase had failed to meet its burden to demonstrate that there was probable cause to establish a lien against Ms. Davy's townhouse unit. Judge McCormack denied Fox Chase's request for attorney's fees but awarded Ms. Davy $5,000 in fees pursuant to MCLA's fee-shifting provision, RP § 14(i)(2).

To this Court, Fox Chase argues that that the circuit court erred in denying the lien and in granting Ms. Davy an award of attorney's fees. We do not agree.

Article IV, § 1 of the Covenants provides that unpaid assessments become liens against a unit when they are delinquent for 30 days or more. Ms. Davy was late in paying her December 2014 assessment. It was due on December 1, with the late fee accruing on December 10. However, she made two payments in December which brought her current but for a portion of the December late fee. Ms. Davy's obligation to pay her January 2015 assessment accrued on January 1. Thus, as of January 2, 2015, there was nothing that Ms. Davy owed Fox Chase that was 30 days past due. Therefore, Fox Chase had no right to initiate lien proceedings. This is dispositive of all of Fox Chase's appellate contentions as to whether Judge McCormack erred on the merits. We turn to the award of attorney's fees.

Ms. Davy was acting pro se when she filed her complaint challenging Fox Chase's right to file a lien. She filed an amended complaint (the "first amended complaint") before she obtained counsel. After he entered his appearance, her lawyer filed a paper

titled: "Line of Amendment By Interlineation and Notice that Plaintiff Will Seek Reasonable Attorney's Fees and Costs." In that paper, Davy stated that she:

> hereby notifies Defendant that because she now has retained counsel, she amends her *ad* damnum clause to seek reasonable attorneys fees and costs incurred in this matter[.]

Fox Chase argues that the amendment by interlineation was inadequate as a matter of law because Md. Rule 2-703(b) provides that, in cases in which a party may recover attorney's fees by law, a party who seeks such fees must assert the claim in "in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arose." Fox Chase asserts that the court paper that amended Ms. Davy's first amended complaint did not constitute a "pleading," as that term is defined in Md. Rule 1-202(u).

The fatal difficulty with this argument is that the first amended complaint was indisputably a pleading and, as noted above, the court paper explicitly stated that it was amending the prayer for relief in that complaint to add a request for attorney's fees. In our view, when the court paper are read in conjunction with one another, as they were clearly intended to be, they constituted a pleading, specifically, a second amended complaint. Her claim for attorney's fees was timely because Ms. Davy had no right to such relief until she had a lawyer. *Frison v. Mathis*, 188 Md. App. 97, 106 (2009).

THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.