Circuit Court for Prince George's County
Case No. CAE-14-29260

CONSOLIDATED

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2252

September Term, 2017

No. 319

September Term, 2018

LUJUAN F. MARTIN

v.

FREDDIE L. WINSTON, JR.

Berger,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 8, 2019

The saga of the tangled litigation underlying the current appeal began in 2006 when LaJuan Martin ("Appellant") and Freddie Winston ("Appellee") formed Winston Martin Holding Group, LLC ("WMHG") to develop a restaurant on a parcel of real property in Prince George's County (the "Property") that they purchased for $900,000. That company has been defunct since 2011 when Inglewood Restaurant Park Association ("Inglewood") foreclosed on the Property to recover a lien for $30,000 based on association assessments that WMHG failed to pay. Winston, in his individual capacity, then bought the Property at a foreclosure sale. The Circuit Court for Prince George's County, in an order issued by the Honorable Thomas P. Smith on January 16, 2014, ratified the foreclosure sale over exceptions that Martin (individually) filed as an intervenor. Martin's appeal of that order (the "*Inglewood* action") was eventually dismissed for failure to post a supersedeas bond. Inglewood issued Winston the deed to the Property in fee simple on May 14, 2014.

Martin then instituted the underlying action against Winston in the Circuit Court for Prince George's County on October 29, 2014, asserting that Winston breached duties owed as a member of WMHG. The circuit court dismissed his claims, deciding that they were barred by *res judicata* based on his participation in the *Inglewood* action. This Court, in a 2016 opinion authored by the Honorable Glenn T. Harrell, reversed and remanded, ruling that Martin's personal claims against Winston were not barred by *res judicata* because they were not claims that could have been brought in the *Inglewood* action. *Martin v. Winston*, No. 915, September Term, 2015 (filed on August 11, 2016) (unreported) ("*Martin I"*).

On remand, Martin filed a second amended complaint in the underlying action on behalf of himself and WMHG. Prior to trial, the circuit court granted Winston's motion to

dismiss WMHG from the complaint because the LLC has been defunct since 2011 and was not represented by counsel as required by Maryland law.[1] The court granted summary judgment in Winston's favor on two other claims, and the case proceeded to trial from November 28 to 29, 2017, on two claims: (1) a breach of duty of loyalty and care and (2) fraud/misrepresentation. At the close of the plaintiff's case, the circuit court granted Winston's motion for judgment on both remaining counts and awarded fees to Winston because, the court ruled, Martin lacked substantial justification to bring his claims. Martin's appeal from that judgment presents five questions for our review:

I. "Whether the trial court erred in sustaining the objection of the Appellee that Appellants failed to satisfy the notice of a foreign law requirement under Judicial Proceedings Article § 10-504?"

II. "Whether the trial court erred in ruling that Appellants, individually as trustee and member of WMHG, was precluded from asserting claims on behalf of WMHG?"

III. "Whether the trial court erred in ruling that Appellants had not established fraud?"

IV. "Whether the trial court erred in sustaining the objection of Appellee that the amended order to docket foreclosure in CAE11-02632 was not relevant to proving counts 2 and 3 of the complaint?"

V. "Whether the trial court erred in finding Appellants' lawsuit frivolous and imposing attorney's fees in the amount of $22,862.50?"

[1] Last year, in a separate appeal we dismissed another related action that Martin brought on behalf of the now-defunct WMHG in which he asserted standing to pursue claims on WMHG's behalf. *Martin v. Winston*, No. 2874, September Term, 2015 (filed May 29, 2018) (unreported).

Seeing no merit in Martin's contentions on appeal, we affirm the circuit court's judgment, including its imposition of attorney's fees against him for bringing an action without substantial justification.

BACKGROUND

The relevant background concerning Martin, Winston, and WMHG was set out by Judge Harrell in our 2016 opinion ordering a remand in the underlying action:

> Martin and Winston were business partners and sole members with equal ownership of WMHG, a commercial development company organized under the laws of the District of Columbia. In June 2006, WMHG bought a parcel of land located at 9620 Lottsford Court (the "Property") in Prince George's County, Maryland, with plans to build a restaurant. The Property was purchased for $900,000 with the "intent and understanding of Martin and Winston that each would personally contribute to [WMHG] 50% of the purchase price to reflect their respective co-equal, 50% ownership interests in [WMHG]", as alleged by Martin in his Complaint in the present litigation. According to the circuit court, the purchase price of the Property was handled in the following manner:
>
> > The record in this case and the consolidated cases would show, [WMHG] acquired the subject property on or about June 22, 2006 for the sum of $900,000.00; $500,000.00 of this sum was borrowed from the Industrial Bank of Washington. While legal title to the property was in the name of the LLC, Martin personally negotiated and obtained the loan from Industrial Bank. As a result of an error, the Deed of Trust securing this loan was in the name of the individual Winston and not [WMHG].
>
> The titling error became the basis of a lawsuit, *Industrial Bank v. Winston-Martin Holding Group, LLC*, CAE 13-04739, brought in the circuit court in 2013 to correct the mistake. The case was settled purportedly by the litigants without further action by the court, other than its dismissal later in 2013. There was no apparent disclosure on the record of the terms of the settlement.
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> **A. The Fenwick Action**
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> Between 2006 and 2008, WMHG (with Martin handling its managerial duties) began to move on the development of the Property. Jason Fenwick was hired as CEO of WMHG to work on the restaurant concept.

When WMHG decided to discontinue its pursuit of the restaurant and Fenwick's employment ended, Martin issued a confessed judgment promissory note for $75,000 to compensate Fenwick for the work he had completed. When payment under the note was not made, Fenwick obtained, in 2008, a monetary judgment against WMHG and a lien on the Property. A foreclosure action was initiated by Fenwick. He bought the Property at a Sheriff's sale. WMHG filed exceptions, which were denied, and, after ratification of the sale, WMHG appealed the decision. In deciding the appeal in Fenwick, this Court, in an unreported opinion filed 18 June 2012, reversed the circuit court's ratification of the sale to Fenwick (because it was determined that the Sheriff posted the wrong property for sale), set aside the deed to Fenwick, and remanded the case.

B. The *Inglewood* Action

Before the *Fenwick* appeal was decided, [Inglewood][2] filed in the circuit court an Order to Docket Foreclosure, requesting the right to auction and sell the Property to enforce a lien to recover assessments owed by WMHG and Fenwick. Fenwick filed a Motion to Release the Property from the purported Inglewood lien, levy and order to docket foreclosure. A hearing was held on 31 March 2011 to determine whether probable cause existed to establish Inglewood's lien. The circuit court issued an order on 23 June 2011, finding probable cause, declaring a lien in the amount of $30,060.20 against Fenwick, in favor of Inglewood (the "Inglewood Lien"). The then pending cases[3] involving the Property were consolidated, and on 18 July 2011, Inglewood amended its Order to Docket Foreclosure, again naming both Fenwick and WMHG as defendants, but alleging facts implicating only Fenwick. Pursuant to the Inglewood Lien, the Property was sold at an auction on 17 October 2011 to Winston (individually), with a winning bid of $250,000. Martin, in the name of WMHG, filed exceptions to the sale on 19 December 2011, alleging violations of the corporate loyalty doctrine. On 13 January 2012, Winston intervened and moved to Strike WMHG's Exceptions.

On 19 August 2013, Martin filed an intervenor motion (as an individual) to dismiss Inglewood's foreclosure action because he believed

[2] As a condition of purchasing the Property, WMHG became a member of the Inglewood Restaurant Park Association, an association of property owners in a part of the so-called "Inglewood" master development where the Property was located.

[3] On 6 June 2011, Case No. CAE11-10974, *Fenwick v. Inglewood Restaurant Park Association* and Case No. CAE11-02632, *Inglewood Restaurant Park Association, Inc. v. Winston Martin Holding Group* were consolidated. The other cases were consolidated later.

that the overdue assessments had been satisfied and, as a result, there was no longer a controversy related to the Inglewood foreclosure action. He included also a counter-claim for declaratory relief, damages and sanctions against Inglewood. Winston and Inglewood opposed Martin's Motion to Dismiss. A hearing was conducted on 7 October 2013 in regard to WMHG's Exceptions to the previous sale to Winston. At this hearing, evidence was presented that showed that money paid by Winston toward the auction purchase price was not in any part in satisfaction of the Inglewood lien, as Martin maintained. Winston testified also that he purchased the Property at the 17 October 2011 auction sale for his personal account.

After an exchange of additional legal memoranda, on 16 January 2014, the circuit court (Judge Thomas P. Smith presiding) issued a Memorandum Opinion and Order ratifying the sale of the Property to Winston. In discussing WMHG's exceptions, Judge Smith explained that:

> As the Court has noted on the record repeatedly, if there is a dispute between Freddie Winston and LaJuan Martin and Winston Martin Holding Group, LLC or any combination thereof, it is not resolvable in a foreclosure proceeding involving inter alia the rights of Inglewood Restaurant Park Association, Inc. These parties are certainly free to institute other litigation regarding these issues.

Martin filed additional motions to challenge the sale, requesting that the circuit court recognize this Court's intervening decision in the appeal of Fenwick v. Winston Martin and stay the judgment because Winston was not a bona fide purchaser. These motions were denied when the circuit court ratified the sale to Winston. On 14 May 2014, Winston and a trustee for Inglewood executed a fee simple deed conveying title of the Property to Winston as the sole owner of the Property.

C. The Present Litigation[4]

On 29 October 2014, Martin filed in the circuit court a Complaint and Motion for Ex Parte Interlocutory and Permanent Injunctive and Declaratory Relief against Winston. Martin's complaint alleged *in personam* claims, and sought to quiet WMHG's title to the Property, appoint Martin as the managing-member for the winding-down process for WMHG, disassociate Winston from WMHG, and an award of fees and costs. The suit was assigned to a judge other than Judge Smith.

After a hearing on 6 November 2014, the circuit court dismissed (without prejudice) on 10 November 2014 Martin's Complaint. Relying on

[4] There remained at the time two other cases involving the Property, but those cases were either settled or dismissed (including the Industrial Bank action). The judgments in those two cases do not bear on our analysis here.

the 16 January 2014 ratification of the foreclosure sale in the *Inglewood* action and the fact that Martin failed to post the required appeal bond for his appeal from the final judgment in that matter, the circuit court dismissed Martin's Complaint for lack of standing as it appeared that Martin "currently has no interest in the subject property."

Martin responded on 11 December 2014 with: (1) an Amended Complaint; (2) a Motion for Permanent Injunction and Declaratory Relief; and furthermore (3) a Motion to Alter or Amend Judgment, but in the *Inglewood* action. The Amended Complaint no longer contained a request to quiet title to the Property, but maintained the personal liability claims against Winston. In the Amended Complaint, Martin requested the following relief:

> 1. A Declaratory Judgment that Winston breached his fiduciary duty to Martin directly and to WMHG derivatively;
> 2. Appointment of Martin as managing member and trustee of WMHG;
> 3. To enjoin Winston from interfering with the winding-down of WMHG;
> 4. An order disassociating Winston from WMHG and reducing his ownership interest to that of a passive limited partner; and
> 5. fees and courts costs.

On 31 December 2014, this Court dismissed the appeal in the Inglewood action because Martin failed to file the required appeal bond. On 16 January 2015, the circuit court denied Martin's Motion to Alter or Amend in the Inglewood action based on the ground that the filing of the Amended Complaint in the present case rendered that motion moot. As for the Amended Complaint, the circuit court stated that it would "take no action on the Amended Complaint at this time as there is no return of service. Additionally, the dismissal of this case pending the outcome of an appeal in a companion case effectively closed the case. There has been no motion for leave to reopen the case."

On 26 January 2015, Winston filed a Motion to Dismiss Martin's Amended Complaint and Motion for Permanent Injunctive and Declaratory Relief, or in the Alternative, a Motion for Summary Judgment and Request for Hearing. Winston argued that Martin's Amended Complaint was barred by res judicata because Martin's claims were determined in the Inglewood action and thus further litigation was precluded.

On 5 February 2015, Martin filed an Opposition to Winston's Motion to Dismiss, in which he argued that, because neither he nor Winston were parties to the other consolidated cases, the claims in his Amended Complaint were not litigated actually there.

The circuit court granted Winston's Motion to Dismiss on 17 April 2015, agreeing that Martin's claims were barred by res judicata. Martin filed

> another Motion to Alter or Amend the Judgment, which was denied summarily on 1 May 2015. Martin appealed timely to this Court.

Martin I, slip op. at 1-7 (some footnotes omitted; others renumbered). We reversed the circuit court's grant of the motion to dismiss, ruling as follows:

> As applied here, [*res judicata*] principles demonstrate that the factual inquiry required to be undertaken to decide Martin's present claims for breach of fiduciary duties by Winston is quite different from that required to determine the validity of the foreclosure sale pursuant to the Inglewood lien. The prior cases involved primarily the Property and who had a legal right to ownership under lien foreclosure procedures. Martin's claims in this proceeding focus on personal claims against Winston in regard to duties owed one-to–the–other and to their business entity, WMHG. The current interests asserted by Martin do not relate to the interests litigated in the Inglewood action, and thus, would not nullify necessarily the judgment in the former case.
>
> Precluding Martin's claims raised in his Amended Complaint was an improper application of Maryland's res judicata standards. Because we determine that Martin's claims do not represent, for purposes of res judicata, claims that could have been brought in the Inglewood action, we need not analyze further the other requirements of res judicata because the absence of even one of the requirements is fatal to the claim preclusion basis for the circuit court judgment. Therefore, we remand this case to the circuit court for further proceedings in regard to Martin's Amended Complaint.

Id., slip op. at 16-17.

Martin's Second Amended Complaint

Following this Court's remand order, Martin filed a second amended complaint in the circuit court, asserting five claims on behalf of himself and WMHG: (1) breach of duty of loyalty and care owed to WMHG; (2) breach of duty of loyalty and care owed to Martin, individually; (3) breach of good faith and fair dealing owed to Martin and WMHG; (4) fraud/misrepresentation; and (5) the disassociation of Winston from WMHG.

Martin moved for partial summary judgment on November 7, 2017, arguing that the undisputed facts established that Winston was "liable for breach in violation of his fiduciary duties imposed by D.C. Official Code § 20-804.09" for (1) "issuing a deed of trust against WMHG's property" and (2) "purchasing WMHG's property," both of which were done without Martin's consent.

Winston filed his own motion for summary judgment on November 28, 2017, the morning the case was set for trial. He argued, among other things, that WMHG lacked standing to pursue its claims and that Martin cited an unfamiliar provision of D.C. law in support of his claims rather than any Maryland law. Winston sought judgment on Count III because WMHG did not have a written operating agreement and Maryland does not recognize an independent cause of action for breach of an implied contractual duty.

The Trial on Remand

On November 28, 2017, the parties appeared for a two-day trial, Martin appearing pro se and Winston represented by counsel. At the outset, the court considered the parties' competing motions for summary judgment. Martin began by asserting that D.C. law governed the internal affairs of WMHG because that is where the LLC was formed. He argued that, under D.C. law, Winston owed him a duty personally, as co-members of the LLC, which Winston breached as a matter of law. The court denied Martin's motion and proceeded to argument on Winston's motion for summary judgment.

Winston sought to dismiss WMHG from the action because the LLC was defunct and was unable to pursue litigation in Maryland without being represented by counsel. As for the remaining counts, Winston's counsel argued that Martin was including himself as

an injured party based on claims he was truly asserting on behalf of the LLC. Specific to the count of fraud, counsel told the court that Martin was alleging that Winston committed fraud by failing to list Martin and WMHG as his principals when he purchased the Property, but they were not, in fact, his principals and Winston had no principals to disclose. According to Winston's counsel, Martin failed to allege facts to support the elements of fraud or misrepresentation.

The circuit court dismissed Counts I after determining that it related to WMHG rather than Martin individually and dismissed Count V after learning that Martin had the same claim pending in a separate action in the District of Columbia. In regard to Count III for breach of duty of good faith and fair dealing, Winston argued that there was no written contract (or operating agreement) and Maryland does not recognize a breach of an implied contractual duty of good faith and fair dealing. The court then asked Martin whether he and Winston had a contract between them, and after a circuitous 'no' from Martin, the court continued:

> THE COURT: . . . it has to be implied because you don't have anything in writing, right? That's why we call it implied. Implied means there's no writing. And you already admitted there's nothing [in] writing. So it would be an implied contractual duty, correct?
> MR. MARTIN: Yes, Your Honor.
> THE COURT: Which the State of Maryland . . . says does not exist. You can't have a separate cause of action for it. I can't change the law in the State of Maryland.
> MR. MARTIN: No no, I'm not asking you to.

The court then ruled, "so [Count] 3 is out. Four and 2 are in, and you're going to proceed on those two Counts only."

The case proceeded to trial,[5] and Martin called himself and Winston as his two witnesses. Martin's testimony—riddled with sustained objections and digressions—focused largely on the Inglewood foreclosure and Judge Smith's eventual ratification of that sale over Martin's exceptions. Winston testified that he purchased the Property at the foreclosure sale "to protect my company, my interests of having to pay a loan back to Industrial. That's why I purchased the land."

At the close of the plaintiff's case, Winston moved for judgment on the two remaining counts. With respect to Count II for breach of duty of loyalty, Winston's counsel asserted that "if he's claiming the breach of loyalty was because [Winston] bought the subject property at the [foreclosure] sale, that alone is not a breach of loyalty, so [Martin] failed to prove his claim in that sense." It was also not a breach, counsel continued, to submit a purchaser's affidavit at the foreclosure sale that did not list Martin or WMHG as his principals because they were not his principals and he was not purchasing the Property on their behalf.

Responding to Martin's arguments about the Fenwick deed, Winston's counsel said:

> It's not even a red herring. It's a misrepresentation, if you will, to the court, [] because the bottom line is, once [] that sheriff's sale for Fenwick was vacated, Fenwick was done. He was never in the chain of title again after it was vacated, and so the property was always with [WMHG], against whom the liens were enforced at the October 17, 2011 foreclosure auction.
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> * * *
>
> That's what Mr. Martin is trying to reargue and that's not an issue before this Court. He's alleging that because Mr. Winston bought this

[5] After Martin conceded during his opening statements that he did not plead an amount of damages suffered and did not know the amount of damages he may have suffered, Winston again moved for judgment. The court said it would take the motion under advisement until the close of Martin's case.

> property from [WMHG], that's some breach of duty and because he submitted the Purchaser's Affidavit. That's also a breach of duty.
>
> So Count II fails on its face. There's no evidence to show that Mr. Winston did anything untoward or that caused the sale of this property. . . .

Moving on to Count IV for fraud, Winston's counsel again asserted that Winston's purchaser's affidavit did not constitute fraud because he did not purchase the Property for a principal and there was no evidence suggesting that he discouraged other bidders. He argued that there was no evidence to support Martin's assertion that Winton agreed secretly with Inglewood to purchase the Property before the foreclosure sale, just as the circuit court had ruled previously when it ratified the foreclosure sale. Finally, Winston reiterated that Martin did not and could not show any damage to himself because he was not the owner of the Property prior to the foreclosure sale and had no claim to the Property, which belonged to WMHG.

Martin responded by rehashing his objections to the already-finalized foreclosure sale that was not at issue in this case. After once again presenting his reasons why he believed it "[wa]s impossible" for the court to have ratified the foreclosure sale, the court asked Martin to make an argument that related to Counts II and IV in his complaint, but Martin once again returned to the prior ratification of the foreclosure sale. Again, the court asked Martin how his evidence supported Counts II and IV, to which he responded that, had he known Winston would buy "the whole property, including my interest, I never would have entered into that contract to begin [with]." After another digression, the court admonished Martin for not specifying an amount of damages in his prayer for relief, before Martin once again returned to challenging the propriety of Judge Smith's prior order

ratifying the foreclosure sale. The court advised Martin that he needed to live with the fact that the Property sale was finalized, but Martin disagreed, telling the court, "Your Honor, I just keeping going." The court warned:

> Well, you know what the problem is there, is that if you keep going, I am about to assess costs against you because you can't keep going when you are in Court time after time after time and you know that you don't have a basis for a claim.
>
> * * *
>
> I've asked you two things. Arguments on loyalty and fraud. You refuse to do that for me.

Finally, Martin asserted that Winston breached a duty of loyalty imposed on him by the D.C. Code to pay the Inglewood Association assessments/dues when Martin became financially unable to make the payments himself. The court read from the D.C. Code provisions that Martin had cited and informed him that those provision did not support his claim.

The Court's Ruling

The court began its ruling by granting judgment in Winston's favor on Count II, noting that WMHG's failure to pay the association dues and loss of a property valued at $900,000 over a $30,000 lien was "just poor business [by] both parties." The court reasoned, "It's not about loyalty. It's not about duty. He had the right to do what he did legally. It was ratified by Judge Smith." The court then granted judgment in Winston's favor on Count IV, ruling that Martin produced "no proof whatsoever" in support of his claim. Finally, the court concluded by assessing attorney's fees against Martin, asking Winston's counsel to submit a detailed account of his fees.

On March 6, 2018, the circuit court entered written judgment in Winston's favor and ordered Martin to pay $22,862.50 for maintaining an action without substantial justification. Martin noted his timely appeal to this Court on April 4, 2018.

We include additional facts as necessary for our discussion.

DISCUSSION

I.

Notice to Apply D.C. Law

Martin argues that the circuit court erred in refusing to apply D.C. law to his claims because he "provided ample notice to Winston in his original complaint, his amended complaint, his second amended complaint and in his motion for partial summary judgment." Without so articulating, Martin seems to suggest that Winston was also on notice because WMHG was organized under D.C. law and, under the internal-affairs doctrine, Maryland courts apply the laws under which a foreign LLC was organized. Martin asserts that he was prejudiced by the court's ruling because D.C. laws governing the conduct of LLC members "are much more prescriptive" than the common-law approach applied in Maryland. Martin sets out five different sections of the D.C. Code—several of which he cites for the first time on appeal—and insists that those provisions permit an LLC member to maintain a cause of action for breach of the duty of good faith and fair dealing based on an oral operating agreement.

In response, Winston contends that Martin failed to provide the trial court with the D.C. law that he sought to apply and did not prove what that law is, as required by CJP § 10-505. According to Winston, Martin's attempts to prove on appeal what D.C. law is

does not save his failure to do so before the trial court. Besides, Winston concludes, Martin has forfeited his right to have D.C. law apply because at all times prior during this and other related litigation, Martin has agreed that Maryland law applies.

Just before the start of trial, Winston's counsel argued that Martin failed to provide the required notice of his intent to apply D.C. law:

> Your Honor, if I could just start with the foreign law. [CJP] Section 10-504 required Mr. Martin to give the Court and me notice as to the foreign law he wanted to apply. . . . I have not received any notice. I get his Partial Motion [for summary judgment] that had all of these D.C. Code Sections, no background as to what these Sections were. It was incumbent upon him, under [CJP] to provide the law that he says this Court should follow. That was not done. Therefore, this Court is to apply Maryland law to this matter.

Martin responded that under the Maryland Code (1975, 2014 Repl. Vol.), Corporations Article, the law of the LLC's state of organization governs the internal affairs of the LLC.

The court asked Martin how he put the defendant on notice of his intent to apply foreign law and he responded, "Within the body of the Motions and Complaints that we filed throughout this litigation, that we're applying D.C. [law.] . . . We say it expressly in the Complaint. We give notice that we're expecting that this law be applied for this LLC." The court observed, "No you didn't give them notice. You think you did, all right." Further, the court continued, simply citing to D.C. law in a complaint "doesn't put them on notice."[6]

[6] At the end of opening statements, Martin asked the court for clarification on Winston's argument regarding notice of foreign law and asked the court, then Winston, for citation to the rule requiring him to provide notice.

On the second day of trial, Martin revisited the applicability of D.C. law, asserting that CJP § 10-504 required only that he cite to a foreign law in his briefing to put the adverse party on notice. The court ruled again: "In the absence of Notice of Intent to Rely on Foreign Law," the court "is not required to notice judicially the law of another state."

Despite the circuit court's announcement that it was not required to take judicial notice of D.C. law, the court permitted Martin to oppose Winston's motion for judgment by offering the provisions on the D.C. Code that Martin believed supported Count II (Duty of Loyalty) of his complaint. Martin argued, (at the hearing but not in the Second Amended Complaint), that Winston breached his duty of loyalty by failing to pay the Inglewood Association dues when Martin could not. The court asked Martin "what provision of the D.C. Code" supported his argument. Martin replied by directing the court to Section 29-804.09 of the D.C. Code, which he said "imposes a duty of loyalty on members of a company[.]" The court interrupted to asked whether Martin was suggesting that Section 29-804.09 required Winston to pay the association dues for the LLC when Martin couldn't, and asked Martin what part provision—specifically—required Winston to pay the association dues. Martin replied that Section 29-804.09 imposed on Winston a duty to "refrain from dealing with the company in the conduct of winding up." The court interjected, "That is so not related – that is so not applicable to what you just argued." The court then allowed Martin to look for another provision, during which time the court read aloud from Section 29-804.07 of the D.C. Code and concluded, "That again does not apply to what you just said about he had an obligation to pay the association dues when you couldn't." Martin responded that, under the duty of good faith, Winston had to pay the

money owed: "if you got the money to pay and we're part of a business arrangement[.]" The court again rejected Martin's argument that Winston had a duty to pay the dues.

A. The Uniform Act

Under the Maryland Uniform Judicial Notice of Foreign Law Act ("Uniform Act"), CJP §§ 10-501 – 10-507, the courts of Maryland "shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States[.]" CJP § 10-501. Before a party may "offer evidence of the law in another jurisdiction or to ask that judicial notice be taken of it," the party relying on foreign law must notify "the adverse parties either in the pleadings or by other written notice." CJP § 10-504; *see also* CJP § 10-502 ("The court may inform itself of those laws in the manner it deems proper, and the court may call upon counsel to aid it in obtaining appropriate information."). Notice, however, is merely a "prerequisite to offering proof of such a foreign law or asking the court to take judicial notice thereof." *Prudential Ins. Co. of Am. v. Shumaker*, 178 Md. 189, 197-98 (1940). Maryland law remains "prima facie the law to be applied" unless the party seeking to benefit from the law of another jurisdiction "prove[s] the foreign law." *Maccabees v. Lipps*, 182 Md. 190, 195-96 (1943). Therefore, if a party fails to provide notice of its intent to rely on foreign law *or* fails to prove the foreign law (or ask the court to take judicial notice of the law in question), Maryland courts presume that the foreign law is the same as Maryland law. *Storetrax.com, Inc. v. Gurland*, 397 Md. 37, 51 n.8 (2007); *Shumaker*, 178 Md. at 198. In the face of such a failure, though, a court may still exercise its discretion to take notice of the foreign law. *Frericks v. Gen. Motors Corp.*, 274 Md. 288, 296-97 (1975).

We will not reverse a circuit court's refusal to judicially notice or apply a foreign law if the court's refusal to do so was harmless—meaning that it did not affect the outcome of the case. *See Storetrax.com*, 397 Md. at 53 (holding that the circuit court's application Maryland law rather than Delaware law was harmless because the court could discern no difference in the outcome of the case regardless of which law applied).

Applying a prior iteration of the Uniform Act, the Court of Appeals explained that the notice requirement was "a prerequisite to offering proof of such foreign law or asking the court to take judicial notice thereof." *Shumaker*, 178 Md. at 197. The Court went on to say, however, that the facts of the case did not require it to decide "the question of what constitutes reasonable notice under the statute." *Id.* at 198; *See also Wilson v. Dailey*, 191 Md. 472, 476 (1948) (suggesting that a plaintiff simply setting out a foreign statute in his pleading was not adequate notice but that judicial notice was proper, regardless, because the defendant had given formal notice of the defendant's intent to rely on the same foreign statute).

More recently, the Court of Appeals held that the plaintiff sufficiently noticed its intent to rely on foreign law when, in a statement in opposition to the defendant's motion for summary judgment, plaintiff averred that it was a Delaware corporation and that the legal issue "[wa]s governed substantively by Delaware law[]" with a footnote that "stated expressly [the plaintiff's] intention to rely upon Delaware law." *Storetrax.com*, 397 Md. at 51 n.8.

We need not decide whether Martin citing to provisions of the D.C. code in his second amended complaint and motion for summary judgment satisfied the notice

requirement set out in the Uniform Act because, as we explain next, Martin failed to prove the D.C. law on which he now seeks to rely, and because he was not prejudiced by the trial court's failure to take judicial notice of D.C. law.

B. Failure to Prove D.C. Law

Martin had asserted that Winston owed a duty of good faith and fair dealing based on D.C. Code 29-804(d). The trial court granted summary judgment in favor of Winston on Count III after ruling that Martin could not, under Maryland law, maintain such a cause of action because the parties did not execute a written operating agreement. Martin does not challenge the correctness of this application of Maryland law but, now on appeal, says that D.C. law *does* recognize such a cause of action based on an implied or oral agreement. To support this point, Martin directs us to Section 29-801.02(10) of the D.C. Code, which defines "operating agreement" to include an "agreement, whether or not referred to as an operating agreement *and whether oral*, in a record, *implied, or in any combination thereof*, of all the members of a limited liability company[.]" (Emphasis added).

The problem with Martin's argument is two-fold. First, Martin failed to argue before the circuit court that D.C. law imposed a duty of good faith and fair dealing on members to an oral or implied operating agreement; nor did he reference D.C. Code § 29-801.02 specifically—even when the court questioned him. *See Lamalfa v. Hearn*, 233 Md. App. 141, 152 (2017), *aff'd*, 457 Md. 350 (2018) (ruling that an appellant was precluded from raising an argument made for the first time on appeal). Second, to the extent Martin gave adequate notice of his intent to rely on some D.C. law, he failed to prove (or ask the trial court to take judicial notice of) the provisions on which he now relies on appeal. *See*

Shumaker, 178 Md. at 198. Martin's failure to raise these arguments or prove that D.C. law could support those arguments precludes him from doing so on belatedly on appeal.

Before the trial court, Martin relied solely on D.C. Code § 29-804(d) to support his claim in that D.C. law imposes a duty of good faith and fair dealing on members of an LLC. Whether D.C. law imposes such a duty was beside the point because the trial court's concern was not the duties owed by members of an LLC but the lack of an operating agreement on which those duties could be based. Martin offered no explanation for how Winston could have owed him a duty of good faith and fair dealing in the absence of a written operating agreement. Nowhere in his second amended complaint, supporting memoranda, or argument in open court did Martin cite, rely on, provide any notice of, or in any way prove D.C. Code § 29-801.02(10). Given his failure to do so, it was proper for the court to presume that D.C. law was the same as Maryland law in regard to whether a written agreement was required to impose a duty of good faith and fair dealing. *See Storetrax.com, Inc.*, 397 Md. at 51 n.8.

C. Harmless Error

We also conclude that Martin was not prejudiced by the trial court's refusal to judicially notice the provision(s) of D.C. law which Martin failed to prove. As we just discussed, Martin failed to argue, prove, or ask the court to take judicial notice that D.C. law supported his claim in Count III. Any prejudice with regard to that issue, then, was caused by Martin's failure to satisfy his burden as a party seeking to rely on foreign law. *See Maccabees*, 182 Md. at 195-96.

When Martin *did* rely on specific provisions of the D.C. Code to support his arguments, the trial court permitted him to do so. With regard to Count II for breach of duty of loyalty, specifically, the court permitted Martin to rely on D.C. Code §§ 29-804.07 & 29-804.09 but, after reading from those provisions, concluded that Martin's reliance was unfounded because the provisions were "not related," and "not applicable" to Martin's cause of action. Martin does not challenge this ruling, or the circuit court's interpretation or application of D.C. law, on appeal. Accordingly, we cannot say that the trial court prejudiced Martin by not taking judicial notice of D.C. law.[7]

II.

The Dismissal of WMHG

Martin contends that the circuit court erred in ruling that he lacked standing to bring claims on behalf of WMHG. Winston responds that an LLC with a revoked charter may not bring an action in Maryland and, by extension, its members cannot file a derivative suit on its behalf.

[7] We note the distinction between the question of whether D.C. law recognizes a cause of action for breach of an implied duty of good faith and fair dealing and the question of whether Martin raised a colorable claim of breach based on Winston's purchase of the Property. Even on appeal, despite referencing several provisions of the D.C. Code, Martin has offered no D.C. law to support his specific claim in Count III of his second amended complaint.

The circuit court in this case found that Martin lacked substantial justification to bring his action against Winston—a finding we uphold on appeal. *See* Section V of our Discussion. Considering this and considering the similarity of the arguments Martin makes on appeal and the baseless arguments he asserted unrelentingly before the circuit court, we are not convinced that Martin could have proven that he raised a colorable claim for breach under D.C. law *even if* he had successfully proven that D.C. law recognizes such a claim.

At the outset of trial, Winston's counsel argued that Martin, who was *pro se* could not represent the LLC, "so the LLC has to be dismissed as a party." He added that the LLC was defunct and, consequently, unable to pursue litigation in Maryland even if it was represented by counsel. Martin asserted that WMHG was no longer defunct and that he was acting as trustee on behalf of the LLC. He offered no evidence to support these assertions. The trial court rejected Martin's arguments and dismissed WMHG from the litigation, ruling the he could not bring a claim "on behalf of a corporation that is no longer in existence" and that he "[could]not proceed if it is in fact, as you want me to believe, still in existence, the laws of the State of Maryland say that . . . a corporation must be represented by an attorney. And you're not an attorney."

Regardless of whether WMHG is or is not defunct, this Court has already ruled in a prior appeal that Martin is not legally permitted to pursue legal claims or appeals on behalf of WMHG. In an order dated May 29, 2018, we dismissed another action that Martin filed against Winston on behalf of WMHG because "WMHG was not represented by counsel as required by Maryland Rule 2-131(a)(2) ("[A] person other than an individual may enter an appearance only by an attorney.")." The circuit court was correct to dismiss WMHG and those counts filed on its behalf.

III.

Fraud

Martin asserts that the circuit court erred in dismissing Count IV of his complaint because no reasonable jury could have concluded that Winston did not commit fraud by failing to disclose a confessed judgment promissory note entered with Inglewood for the

purchase of the Property. He insists that Winston's failure to disclose the note to WMGH was "effectively directed and intended to harm Martin" because "Martin and Winston are the only two members of WMHG." He says that Winston, as a member of WMHG, had a duty to disclose the existence of the Note, which would have effectively stopped the sale of the Property.

Winston responds that the circuit court's ruling "succinctly set forth the reasons [Martin] failed to carry his evidentiary burden as to the Count IV claim for fraud/misrepresentation."

On the second day of trial, the court granted Winston's motion for judgment as to Count IV for fraud, ruling as follows:

> With respect to Count IV, you allege fraud and that there was some agreement between [Winston] and [] Inglewood, again, is that it? The other association. You have brought nobody to the stand to support that. You think it's supported by the documents that were filed in other cases. It's not supported at all that there was some meeting of the minds between him, the association, in order to force you, to get you out of ownership of that property. You've given me nothing to prove that, nothing whatsoever, except allegations. All you did so far today and yesterday, is allege that he did that with no proof whatsoever, no testimony whatsoever, no documents whatsoever to prove it because you say in your Complaint in Count IV . . .
>
> "That Inglewood concealed the fact that Winston had agreed to pay Inglewood prior to the sale.["] . . . [W]ouldn't it be necessary to have Inglewood here to testify to that? Yeah, it would. It didn't prove any of it.

In its role as fact-finder in a case tried to the court, a judge may, at the close of the plaintiff's case, grant judgment as a matter of law in favor of the defendant. Md. Rule 2-519(b). This Court then reviews the court's findings of fact for clear error and its application of law without deference. *Cattail Assocs., Inc. v. Sass*, 170 Md. App. 474, 486-87 (2006).

To maintain a successful action for fraud in Maryland, the plaintiff must show by clear and convincing evidence that

> (1) the defendant made a false representation to the plaintiff, (2) the falsity of the representation was either known to the defendant or the representation was made with reckless indifference to its truth, (3) the misrepresentation was made for the purpose of defrauding the plaintiff, (4) the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) the plaintiff suffered compensable injury as a result of the misrepresentation.

Hoffman v. Stamper, 385 Md. 1, 28 (2005). "Ordinarily, a plaintiff seeking fraud must prove that 'the defendant. . . made a false representation *to the person defrauded*.'" *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 334 (2013) (quoting *Gourdine v. Crews*, 405 Md. 722, 759 (2011) (emphasis in *Gourdine*)). And even in those instances in which a plaintiff may recover for fraud when the allegedly fraudulent statement was not directed at him or her, the plaintiff must still demonstrate that he or she "relied, either directly or indirectly, on the relevant misrepresentation." *Id.* at 335-36.

In this case, we discern no error in the circuit court's determination that Martin adduced "no proof whatsoever" in support of his allegation of fraud. First, it is not clear from Martin's arguments what statement by Winston was allegedly false. What is clear, is that any false statement in the confessed judgment promissory note was not made to Martin. Second, Martin adduced no facts to prove that he knew of or relied on any allegedly fraudulent statement or that the statement was made to defraud him. And third, Martin did not show that he suffered a compensable injury. Aside from failing to adduce any proof that Winston schemed with Inglewood to purchase the Property, Martin failed to demonstrate how he was damaged by the sale of the Property considering he did not own

the Property and the Property was already for sale in a foreclosure action. As the circuit court pointed out, if Winston did not buy the Property at the Inglewood foreclosure sale, someone else would have. It is difficult to understand how the alleged fraud—of which no proof exists—damaged Martin, which may explain why he failed to plead any damages in his complaint and was unable to suggest a method for calculating damages before the circuit court. We discern no error in the circuit court's grant of judgment in Winston's favor on Count IV for fraud.

IV.

Admission of the Amended Order to Docket Foreclosure

Martin argues that the circuit court erred by excluding from evidence as irrelevant the Amended Order to Docket Foreclosure ("Amended Order") filed in the Inglewood Foreclosure. Martin contends that the Amended Order was "relevant to demonstrate the identity debtor and party against whom Inglewood obtained the lien relied on as the basis for the *Inglewood Foreclosure*," which, he says, "[w]as relevant to determining whether Winston breached duties of loyalty and care in [Count II] and good faith and fair dealing in [Count III]." The identity of the debtor and party against whom Inglewood obtained a lien was also relevant, Martin continues, "in light of the fact that Winston now claims he purchased WMHG's interest in the *Inglewood Foreclosure*," which "would likely be in breach of his duty of loyalty and care and good faith and fair dealing."

According to Winston, however, Martin "failed to lay a proper foundation" to admit the Amended Order because Winston did not have personal knowledge of the document.[8]

At trial, during Martin's direct examination of Winston, Martin attempted to admit the Amended Order into evidence, but the court sustained the general objection by counsel for Winston. Martin then attempted to question Winston about the contents of the Amended Order but the circuit court instructed Martin that Winston could testify only to things about which he had personal knowledge. That prompted the following exchange:

> By Mr. Martin:
>
> Q Do you have personal knowledge of that document?
>
> A It is nothing related to, I see Jason Fenwick, and I'm looking at the Docket, I'm trying to get my memory back. I don't recall the document because I don't think that it related to Winston Martin. And on here I don't see my name on here so I don't recall seeing this.
>
> Q All right.
>
> [Winston's Counsel]: Objection.
>
> THE COURT: Basis?
>
> * * *
>
> [Winston's Counsel]: The witness was not able to identify the document.

[8] In Martin's reply brief, which he filed without effecting service as required by Maryland Rule 8-502(c), he asserts that Winston, as debtor and lienee, had personal knowledge of the document that identified him as the debtor and party against whom the lien used as the basis for the sale. Further, Martin says that Winston had knowledge of the order to docket foreclosure because, as purchaser, he was granted party status as an intervenor in the Inglewood Foreclosure action. Martin did not assert these arguments before the trial court (nor did he raise them in his opening brief before this Court), and we will, therefore, not consider them. *See Dolan v. Kemper Indep. Ins. Co.*, 237 Md. App. 610, 627 (2018) ("[W]e do not consider arguments that a party raised for the first time in a reply brief."); *Granados v. Nadel*, 220 Md. App. 482, 499 (2014) (declining to address an argument first raised on appeal).

THE COURT: He didn't identify it. So he can't talk about it.

MR. MARTIN: Thank you, Your Honor.

THE COURT: Okay.

Later, Martin attempted to admit the Amended Order during his own testimony. Winston's counsel objected again, arguing this time that the Amended Order was not relevant because the foreclosure sale had taken place and been ratified by the court. Martin responded, "It has every bit of relevance in this case because it shows that he actually purchased. It's just that simple. He purchased the $30,000 – that was the lien that was foreclosed on. That lien. Under the name of Jason Fenwick. That's what Mr. Winston purchased." The matter continued to come up and Winston's counsel stated the grounds for his objection more thoroughly, bringing some clarity to the issue:

> The bottom line, Your Honor, is that all these documents about the Order to Docket for the lien, they're not relevant. Because the liens were executed and foreclosed on by [I]nglewood. They're not a party to this action. There was a sale. Mr. Winston testified he bid on it and bought the property. Those liens have no bearing on this proceeding and that's why we would ask the court to strike all documents offered and testimony offered to that effect.

The next morning, Martin again moved to admit the Amended Order into evidence (along with two other orders relating to the foreclosure sale). Winston objected again, asserting, "We went through that yesterday and they were not admitted." The court warned Martin that they were "not relitigating the foreclosure action," and asked him how these orders were relevant to his claims against Winston. Martin seemed to suggest that the Amended Order was relevant because it established that Inglewood's lien was against Fenwick as the prior owner, rather than WMHG. The court asked him what he thought

this meant, to which Martin replied: "That means that Mr. Winston knew that [] . . . And in spite of that, after the property was back in the rightful place of [WMHG], he still continued to move against [WMHG] and get the property for himself. That's a person injury. That's an injury against Mr. Martin." Martin then alleged that Inglewood colluded with Winston, and when asked for proof, the following colloquy ensued:

> THE COURT: [] My question to you is, [] what are you using to prove [collusion]?
>
> MR. MARTIN: One, that the foreclosure sale, based upon this record where Judge Smith says that foreclosure is the basis of these proceedings is not against Mr. Martin. I have an Order that says that the liens against Mr. Martin cannot be a foreclosure. I have an Amended Order to Docket –
>
> THE COURT: No. I'm asking you how are you connecting the Defendant to all of this?
>
> MR. MARTIN: I'm connecti[ng] it by the Order that is part of –
>
> THE COURT: Well, how are you connecting him personally . . . to this?
>
> MR. MARTIN: Those claims, Your Honor – let me also go back to the law of the case in this situation?
>
> THE COURT: The law of the case?

An extended digression then ensued, after which Martin asked the court if it was denying admission of the orders. The court responded, "Yeah, I am definitely denying their admission."

Maryland Rule 5-402 mandates, "[e]vidence that is not relevant is not admissible." Relevant evidence is that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it

would be without the evidence." Md. Rule 5-401. Whether evidence is relevant "is a question of law, which we review *de novo*." *Sewell v. State*, 239 Md. App. 571, 619 (2018). We review the exclusion of relevant evidence for abuse of discretion. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011).

The claims before the court were whether Winston committed fraud or breached a duty owed to Martin by purchasing the Property at the Inglewood foreclosure sale. The Amended Order, filed by Inglewood prior to Winston's purchase of the Property would not tend to make it any more or less likely that Winston conspired with Inglewood to agree to the purchase prior to the foreclosure sale; nor would it tend to show the existence of a duty or breach thereof. Martin has offered no sound explanation to the contrary. Additionally, as was clear throughout trial, Martin's case centered on his belief that Judge Smith's ratification of the Inglewood foreclosure sale was "impossible" and contrary to law. Even on appeal, he suggests that WMHG still holds title to the Property (although he concedes that Winston's purchase of the Property created a cloud over WMHG's title). Although Martin clearly believes the Amended Order tended to show that Judge Smith erred by ratifying the Inglewood foreclosure sale, that judgment is final and irrelevant to the underlying case.

Additionally, Martin was unable to introduce the Amended Order during Winston's testimony because Winston had no knowledge of the document and was unable to authenticate it or provide a proper foundation for its admission. The "authentication or identification" of real evidence is a condition precedent to its admission. Md. Rule 5-901(a). Typically, a party admits evidence through a witness with first-hand knowledge (a

sponsoring witness) who can authenticate the evidence through his or her own first-hand knowledge. *See* Md. Rule 5-901(b); *see also Little v. Schneider*, 434 Md. 150, 169 (2013) ("[F]act witnesses must have personal knowledge of the matters to which they testify") (citations omitted). Winston testified that he did not have personal knowledge of the Amended Order. This also supported the court's decision to deny the admission of the evidence.

Accordingly, we hold that the circuit court was correct to sustain Winston's objections to Martin's repeated attempted to admit the Amended Order because it was not relevant and was not properly authenticated.

V.

Attorney's Fees

Martin contends that the trial court erred in awarding attorney's fees because, as he demonstrated with this appeal, "his claims are more than colorable, and the trial court has gone to great lengths to prevent him from prosecuting his claims." In response, Winston maintains that the "trial court properly determined and awarded the amount of legal fees and costs assessed against [Martin] for filing a baseless action."

On the first day of trial, Winston's counsel asked the court to award attorney's fees if it found the lawsuit to be frivolous. He renewed this motion at the close of the plaintiff's case, summarizing "the whole tenor of [Martin's] Complaint" as follows:

> He makes allegations and then he argues against his own allegations and shows that they're not true, that they're baseless. And because of that, we ask you impose attorney[']s fees. We went around and around and around yesterday over a whole lot of nothing. . . .

> When you look at Mr. Martin's Second Amended Complaint, you see it is totally frivolous. He doesn't allege or prove anything of substance. You look at the Second Amended Complaint, he didn't even file the exhibits with it, so the exhibits aren't a part of his Complaint[.]

After hearing argument from Martin, the court ruled as follows with respect to attorney's fees:

> . . . I am going to assess attorney's fees because you can't continue to drag him into court or to drag this case on because you feel in your mind that you are right. You sometimes, sir, have to accept the legal consequence of your actions and move on[] and you don't seem to want to do that, so I'm going to ask that Mr. Marks provide me with detailed account of the attorney's fees he's requesting and then I will enter an Order accordingly.

Maryland Rule 1-341 grants courts the authority to award attorney's fees in actions brought in bad faith or without substantial justification:

> **Rule 1-341. Bad faith – Unjustified proceeding.**
> (a) **Remedial Authority of the Court.** In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party of the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Rule 1-341(b)(1) requires a party requesting attorneys' fees to support its motion with "a verified statement that sets forth the information required in subsections (b)(2) or (b)(3) of this Rule, as applicable." Then, "[w]ithin 15 days after the filing of the statement, the offending party *may* file a response."[9] Md. Rule 1-341(c) (emphasis added).

[9] Despite the permissive language in Rule 1-341(c), Winston asserts that Martin did not preserve the issue of attorney's fees because he failed to file a response to Winston's verified statement as "required" by Maryland Rule 1-341(c). We are unpersuaded by

The Court of Appeals has enunciated the standards of review for a grant of attorneys' fees:

> Rule 1–341 requires a court to make two separate findings, each with different, but related, standards of review. The judge must first find that the conduct of a party during a proceeding, in defending or maintaining the action, was without substantial justification or was done in bad faith. An appellate court reviews this finding for clear error or an erroneous application of the law. Upon review, the evidence is viewed "in a light most favorable to the prevailing party." The burden of demonstrating that a court committed clear error falls upon the appealing party. So long as "there is any competent material evidence to support the factual findings of the [] court, those findings cannot be held to be clearly erroneous."
>
> Next, the judge must separately find that the acts committed in bad faith or without substantial justification warrant the assessment of attorney's fees. An appellate court reviews this finding under an abuse of discretion standard. So long as the hearing judge exercises his or her discretion reasonably, an appellate court will not reverse the judgment under review. *See University of Maryland Medical System Corp. v. Kerrigan*, 456 Md. 393, 401 (2017) ("[A]ppellate courts should be reticent to substitute their own judgment for that of the trial court unless they can identify clear abuse[.]") (internal quotation marks omitted).

Christian v. Maternal-Fetal Med. Assocs. of Md., LLC, 459 Md. 1, 20-21 (2018) (other internal citations omitted).

The Court in *Christian* explained that a claim lacks substantial justification if "a party [has] no 'reasonable basis for believing that the claims would generate an issue of fact for the fact finder,' and the claim or litigation must not be 'fairly debatable, [must] not [be] colorable, or [must] not [be] within the realm of legitimate advocacy.'" *Id.* at 22 (citations omitted). The court should base its decision on "'an examination of the merits'

Winston's argument. But because we agree with Winston on the merits of this issue, we need not address the issue of waiver.

under the totality of the circumstances presented to the court[.]" *Id.* at 23 (citations omitted).

The trial court in this case, determined that Martin produced "no evidence whatsoever" in support of his claims and construed his intention to continue litigating WMHG's loss of the Property despite his outcome at trial, as an indication that he was not basing his claims on substantial justification. For instance, as quoted above, the court characterized Martin's proof supporting Count IV as follows, "You have brought nobody to the stand to support [your claim that there was an agreement between Winston and Inglewood]. . . . You've given me nothing to prove that, nothing whatsoever . . . no testimony whatsoever, no documents whatsoever to prove it[.]"

We discern no clear error in the trial court's determination. Martin offered no evidence that supported his causes of action and, if not for the trial court's tireless prompting, would not have offered any arguments to support the merits of his claims. Instead, he repeatedly digressed to a continued attempt at relitigating Judge Smith's 2014 ratification of the foreclosure sale, which Martin maintains was "impossible." But that judgment is final and not subject to re-litigation in this case or any other. Given the parties' litigation history and the trial judge's assessment on the record following Martin's presentation of his claims, we cannot say that she abused her discretion in assessing fees against him. *See Christian*, 459 Md. at 23.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; APPELLANT TO PAY COSTS.