

Circuit Court for Baltimore County
Case No. 03-C-15-007317 OT

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2264

September Term, 2017

PETER IRELAND

v.

BEREN RIFFEY, ET AL.

Berger,
Arthur,
Kenney, James A., III
(Retired Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 4, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The sole issue in this appeal is the appropriateness of the circuit court's award of attorney's fees to Beren and David Riffey, appellees. The Riffeys' lawsuit against Peter Ireland, appellant, was based upon Ireland's alleged breach of contract, common law fraud, and violations of the Maryland Consumer Debt Collection Act and Maryland Consumer Protection Act in connection with the performance of a home improvement contract.

On appeal, Ireland asserts that the circuit court erred by awarding attorney's fees because the jury did not specifically award damages on the line designated on the verdict sheet for the violation of the Maryland Consumer Protection Act. Notably, the jury did award damages for separate counts of fraud and consumer debt violations. For the reasons explained herein, we perceive no error and shall affirm.

FACTS AND PROCEEDINGS

The Riffeys entered into a contract with Ireland for landscaping and various other home improvement services at their residence at 3 Opie Road, White Marsh, Maryland. On July 10, 2015, the Riffeys filed suit against Ireland, alleging that he violated the law by operating without a valid home improvement license, made material misrepresentations regarding the work he was going to perform on the Riffeys' property, overcharged and/or double billed for work performed, failed to perform work in a workmanlike manner, failed to pay his subcontractor, and illegally attempted to collect money from the Riffeys.

The case was tried before a jury over three days in August 2017. The jury found in favor of the Riffeys on all counts and determined that Ireland violated the Consumer Debt Collection Act and the Maryland Consumer Protection Act. The jury further determined that Ireland was liable for breach of contract and fraud. The jury awarded damages in the

amount of \$7,500.00 for the violation of the Consumer Debt Collection Act and \$950.00 for breach of contract. For the fraud claim, the jury awarded economic damages in the amount of \$7,500.00, noneconomic damages in the amount of \$15,000, and punitive damages in the amount of \$15,000.00. The jury did not award separate damages for the violation of the Maryland Consumer Protection Act.

The Riffeys subsequently filed a petition for attorney’s fees, which the circuit court granted. This appeal followed.

DISCUSSION

The sole issue before this Court on appeal is the proper interpretation of the Maryland Consumer Protection Act’s fee-shifting provision, codified at Md. Code (1975, 2013 Repl. Vol.), § 13-408 of the Commercial Law Article (“CL”). The parties agree that we apply the non-deferential *de novo* standard of review when determining whether the circuit court’s decision to award attorney’s fees was legally appropriate. *See, e.g., Breslin v. Powell*, 421 Md. 266, 277 (2011).

Ireland asserts that the circuit court erred in awarding attorney’s fees to the Riffeys because the jury’s verdict, as recorded on the verdict sheet, did not specifically award damages for Ireland’s violation of the Maryland Consumer Protection Act. The Riffeys respond that because the jury awarded damages for fraud as well as for Ireland’s violation of the Maryland Consumer Debt Collection Act -- which are *per se* violations of the Maryland Consumer Protection Act -- the attorney’s fees award was legally appropriate.

The fee-shifting provision of the Maryland Consumer Protection Act provides that “[a]ny person who brings an action to recover for injury or loss under this section and who

is awarded damages may also seek, and the court may award, reasonable attorney's fees.” CL § 13-408(b). The Maryland Consumer Protection Act expressly prohibits “unfair, abusive, or deceptive trade practice . . . in . . . [t]he offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services.” CL § 13-303(2). The Act further prohibits “unfair, abusive, or deceptive trade practice . . . in . . . [t]he collection of consumer debts.” CL § 13-302(5).

The definition of “unfair, abusive, or deceptive trade practices” is set forth in CL § 13-301, which provides that “unfair, abusive, or deceptive trade practices include any . . . fraud . . . with the intent that a consumer rely on the same in connection with: (i) [t]he promotion or sale of any consumer goods, consumer realty, or consumer service” CL § 13-301(9). The definition further includes the “[v]iolation of a provision of . . . Title 14, Subtitle 3 of [the Commercial Law] article, the Maryland Consumer Debt Collection Act.” CL § 13-301(14)(iii).

The verdict sheet submitted to the jury in this case separately asked the jury to determine:

- Whether Ireland violated the Consumer Debt Collection Act;
- Whether Ireland violated the Maryland Consumer Protection Act;
- Whether Ireland entered into a contract with the Riffeys, and, if so, whether Ireland breached his contract with the Riffeys; and
- Whether Ireland committed fraud.

The verdict sheet also provided separate lines for the award of damages for each of the injuries. The jury found that Ireland liable for violations of the Consumer Debt Collection Act and Maryland Consumer Protection Act, breach of contract, and fraud. The jury awarded damages for the violation of the Consumer Debt Collection Act, breach of contract, and fraud, but did not award separate damages for the Maryland Consumer Protection Act violation.

Ireland interprets the fee-shifting provision of the Maryland Consumer Protection Act as a two-part test that is a “pre-requisite to an aggrieved individual’s ability to seek and be awarded attorney’s fees.” Ireland asserts that in order to recover attorney’s fees under this section, an “aggrieved individual must 1) bring an action for violation of the Consumer Protection Act; and 2) be awarded damages for the aforesaid violation of the Consumer Protection Act.” Ireland contends that the jury’s failure to specifically award damages on the line designated for the Consumer Protection Act violation on the verdict sheet precludes the Riffeys’ award of attorney’s fees. In our view, Ireland’s interpretation of the statute is unsupported and ignores the fact that violations of the Maryland Consumer Debt Collection Act and fraud are themselves violations of the Maryland Consumer Protection Act. *See* CL §§ 13-301(9), 13-301(14)(iii), and 13-303(1). Critically, the jury found that Ireland was liable both for fraud and the violation of the Maryland Consumer Debt Protection Act and awarded damages for both.

Indeed, courts have acknowledged the interrelated nature of the Maryland Consumer Debt Collection Act and the Maryland Consumer Protection Act. In *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719, 732 (D. Md. 2011), the United States

District Court for the District of Maryland addressed allegations of violations of both Acts together, explaining as follows:

The Maryland Consumer Protection Act (“MCPA”) prohibits “unfair or deceptive trade practices,” Md. Code Ann., Com. Law § 13-301, and expressly designates as “unfair or deceptive trade practices” those that constitute any violation of the MCDCA. *Id.* § 13-301(14)(iii). Essentially, Plaintiffs allege that Hilco’s unlicensed filing of lawsuits against the class members violates the MCDCA’s prohibition on attempting, or threatening to enforce a right with knowledge that the right does not exist, and that violation, in turn, provides the basis for the MCPA violation. Each statute creates a private right of action for victims of debt collectors that violate its provisions. *See id.* § 14-203 (MCDCA) and § 13-408(a) (MCPA). Because the foundation of Plaintiffs’ MCPA claim relies on an alleged underlying violation of the MCDCA, and noting the interrelation of the two statutes, this Court will address both Acts together.

The *Bradshaw* court found a violation of the Maryland Consumer Debt Collection Act and explained that “because violations of the MCDCA are expressly designated as ‘unfair or deceptive trade practices’ under the Maryland Consumer Protection Act, this Court also finds that Hilco has violated that statute as well.” *Id.* at 733.

In the present case, as in *Bradshaw*, the violation of the Maryland Consumer Debt Collection Act constitutes a violation of the Maryland Consumer Protection Act. The jury’s finding of fraud -- an expressly designated example of an “unfair or deceptive trade practice” -- similarly constitutes a violation of the Consumer Protection Act. *See* CL § 13-301(9). Although the damage awards for these violations were listed separately on the verdict sheet, the fact remains that the Riffeys were awarded damages for violations

of the Consumer Protection Act through the damages the jury awarded for fraud and the violation of the Maryland Consumer Debt Collection Act.

We are not persuaded by Ireland’s attempt to analogize this case to cases he cites in support of his assertion that the circuit court erred by awarding attorney’s fees. *CitaraManis v. Hallowell*, 328 Md. 142 (1992), involved the issue of whether the leasing of an unlicensed dwelling unit could constitute a violation of the Maryland Consumer Protection Act when the tenants suffered no actual loss or injury as a result. The tenants had been granted summary judgment by the trial court, and the Court of Appeals reversed, holding that actual loss or injury is an element of a Maryland Consumer Protection Act claim. *Id.* at 158-59.

Ireland’s reliance on *Galola v. Snyder*, 328 Md. 182 (1992), is similarly misplaced.¹ In *Galola*, the Court of Appeals reached the same conclusion as in *CitaraManis* in determining that “[a] tenant is not entitled to damages under § 13-408(a) of the CPA solely upon proof that the leased property was not licensed as required by law; rather, the tenant must prove actual loss or injury caused by the lack of licensure.” *Id.* at 185-86. Unlike the situations presented in *CitaraManis* and *Galola*, in the present case, the jury specifically found that the Riffeys suffered actual injury due to Ireland’s fraud and violation of the Consumer Debt Collection Act.

We recognize that the verdict sheet submitted by the jury in this case awarded no separate damages for Ireland’s violation of the Consumer Protection Act. Nonetheless, as

¹Ireland cites *Galola* in a string cite but does not attempt to explain how *Galola* is analogous.

we have explained, the record reflects that the Riffeys were awarded damages for Ireland’s violation of the Consumer Protection Act via the damage awards for fraud and the violation of the Consumer Debt Collection Act. The jury was not required to specifically find that fraud and the Consumer Debt Collection Act violation constituted violations of the Consumer Protection Act because they constitute violations of the Consumer Protection Act as a matter of law. *See* CL § 13-301(9); 13-301(14)(iii). Moreover, we have explained that “the verdict sheet itself is a tool for the jury to utilize in deciding its verdict but it does not constitute the verdict.” *Ogundipe v. State*, 191 Md. App. 370, 382 (2010), *aff’d*, 424 Md. 58 (2011), *cert. denied*, 566 U.S. 966 (2012). The Court of Appeals characterized the verdict sheet similarly, explaining that “[t]he verdict sheet is merely a tool used to aid the jury in reaching its verdict; it therefore does not bind the jury or the court to its contents.” 424 Md. at 72-73.

The attorney’s fees awarded in this case were authorized by the clear and unambiguous language of the Consumer Protection Act. Furthermore, the award of attorney’s fees is consistent with the purpose of the Maryland Consumer Protection Act. *See Washington Home Remodelers, Inc. v. State, Office of Attorney Gen., Consumer Prot. Div.*, 426 Md. 613, 630 (2012) (“The CPA . . . constitutes remedial legislation that is intended to be construed liberally in order to promote its purpose of providing a modicum of protection for the State’s consumers.”). We hold, therefore, that the circuit court did not err by granting the Riffeys’ petition for attorney’s fees.²

² At oral argument, counsel for the Riffeys specifically requested that we remand this case to the circuit court for consideration of whether attorney’s fees should be awarded

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

for expenses incurred in connection with this appeal. Maryland Rule 2-706 sets forth the procedure by which a party may seek in the circuit court an award of attorney's fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari. We take no position whatsoever with respect to whether appellate attorney's fees should be awarded in this case.