

Circuit Court for Howard County
Case No. 13-C-17-112182

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2335

September Term, 2018

NEW COLONY VILLAGE HOMEOWNERS
ASSOCIATION INC.

v.

DORINDA D. SHAW

Meredith,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 20, 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 appellants, New Colony Village Homeowners Association, Inc. (the “Association”) filed a Complaint in the Circuit Court for Howard County, seeking preliminary and permanent injunctive relief against appellee, Dorinda D. Shaw (“Ms. Shaw”). After the circuit court granted the Association’s motion for summary judgment, the Association filed a motion to alter or amend judgment and to award attorney’s fees, which was denied. Subsequently, the Association filed a motion for reconsideration, which the circuit court denied as well. On appeal, the Association presents one issue for our review:

Whether the Circuit Court committed an error of law by failing to award Appellant New Colony Village Homeowners Association, Inc. any reasonable attorney’s fees as the prevailing party in the case.

For the reasons explained herein, we reverse and remand the case for further proceedings consistent with this opinion.

FACTS AND PROCEEDINGS

Ms. Shaw owns a home in Elkridge, Maryland that is located within the Association. The Association is governed by the Declaration of Covenants, Conditions and Restrictions (the “Declaration”), the Bylaws, and Rules & Regulations. As a member of the Association, Ms. Shaw is bound by the terms of its governing documents. Pursuant to Article II, Section 2.2(a) of the Declaration, exterior changes to a property within the Association must have written approval from the Association’s Board of Directors (the “Board”) and Architectural Review Committee (“ARC”). This section provides guidelines that ARC uses to evaluate applications for changes. It gives ARC the “right to refuse to

approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations.” Article XI, Section 11.2 governs the enforcement of the Declaration. Critical to this appeal is the following provision of Article XI, Section 11.2(a):

Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Property, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Record Owners for all costs and expenses for which it or they may incur as a result of the said violation or attempted violation, including but not limited to, court costs and attorney’s fees.

On October 3, 2016 Ms. Shaw submitted two applications for architectural changes to ARC. She proposed the installation of a fence with a six-inch setback from her property line and the installation of concrete in several areas around her home.¹ A hearing was conducted that night by the Board upon Ms. Shaw’s request.² The Board denied her requests at the hearing and explained its reasoning. In November, both applications were denied and Ms. Shaw was notified again. Additionally, she was informed of changes she could make to her applications that would make them compliant with ARC’s policies.

¹ We set forth the events as they are framed by the parties. The parties, however, characterize the details of these events in differing ways. We make no factual determination as to the nature of these events. Notably, these facts, do not affect our determination of whether the trial court erred in refusing to award attorney’s fees to the Association.

² The Board and ARC are comprised of the same members of the Association.

Thereafter, Ms. Shaw submitted an application stating that she would comply with ARC's policy that fences be setback one-foot from the owner's property line.

On December 8, 2016, Ms. Shaw was sent a letter by counsel for the Association explaining ARC's rejection of her request to build a fence with a six-inch setback. It explained that fences will generally be approved if they are setback one-foot from the owner's property line. The letter also explained that it has been the historic practice of ARC to approve fences, subject to a one-foot setback from the property line. Nonetheless, Ms. Shaw erected a fence on her property with a six-inch setback. On February 9, 2017, counsel for the Association sent Ms. Shaw a "Notice of Violation" letter. The letter informed Ms. Shaw that she was in violation of the Declaration due to her failure to obtain approval for the fence. It directed her to move the fence to achieve the one-foot setback and to remove rocks from the left side of her driveway within 30 days. It further informed Ms. Shaw that failure to remedy her violations would result in the Association filing a lawsuit against her and that the Association would seek attorney's fees and court costs associated with the lawsuit.

On May 4, a violation notice was hand-delivered to Ms. Shaw. Ms. Shaw had commenced construction of the unapproved concrete pad and was ordered to cease and desist such work immediately by the Association. Counsel for the Association sent Ms. Shaw another letter on May 19, 2017, entitled "Second and Final Notice of Violation." The letter informed Ms. Shaw that she had failed to abate the violations outlined in the prior letter and that she had additionally violated the Declaration by installing a "concrete pad across her front lawn on the left side of her driveway and removed her front steps, neither

of which had prior approval from the Board or ARC.” The letter ordered her to move the fence to achieve the one-foot setback, remove the concrete pad she had installed, restore her front lawn to grass, restore the steps on the front of her home, and remove the pile of rocks from her lot. Again, the letter explained that if she did not remedy the violations within seven days, the Association would file a lawsuit against her and would seek the award of court costs and attorney’s fees.

On July 20, 2017, the Association filed a complaint in the Circuit Court for Howard County seeking permanent injunctive relief for “enforcement of Appellant’s Governing Documents which Appellee violated by making several exterior changes on her property without written approval from the Appellant’s Board of Directors and Architectural Review Committee as required by Article II, Section 2.2 (c) of the Declaration.” The Association filed for summary judgment at the close of discovery, requesting that the court grant it a permanent injunction ordering Ms. Shaw to correct her violations of the Declaration. Additionally, the Association requested that the court award attorney’s fees and costs, as allowed by Article XI, Section 11.2(a).

The circuit court granted the Association’s dispositive motion on June 6, 2018,³ and ordered Ms. Shaw to (a) remove her fence or move the fence to allow a 12-inch setback from the property line as required by ARC; (b) remove the concrete pad she installed on the left side of her driveway as required by ARC; (c) restore her front lawn to grass, restore her front steps, and remove the rocks installed next to her fence; and (d) remove the white

³ The order, however, was not docketed until June 13, 2018.

paint from her driveway.⁴ The order entered by the circuit court was silent regarding the Association's request for attorney's fees and costs.

On June 28, 2018, the Association filed a motion to alter or amend judgment and to award attorney's fees,⁵ which the court denied without a hearing. The Association filed a

⁴ Ms. Shaw filed a motion for summary judgment on June 7, 2018, which was denied as moot.

⁵ In its motion, the Association argued that Maryland Rule 2-705 was applicable to the case. Maryland Rule 2-705 "applies to a claim for an award of attorneys' fees to attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract." Pursuant to Maryland Rule 2-705(f), if a party prevails on a claim for which fee-shifting is permissible, the court must consider the factors set forth in Maryland Rule 2-703(f)(3). Maryland Rule 2-703(f)(3) lists the following factors for the court to consider in determining the amount of the award:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill required to perform the legal service properly;
- (D) whether acceptance of the case precluded other employment by the attorney;
- (E) the customary fee for similar legal services;
- (F) whether the fee is fixed or contingent;
- (G) any time limitations imposed by the client or the circumstances;
- (H) the amount involved and the results obtained;
- (I) the experience, reputation, and ability of the attorneys;
- (J) the undesirability of the case;
- (K) the nature and length of the professional relationship with the client; and
- (L) awards in similar cases.

Md. Rule 2-703(f)(3).

motion to reconsider, which was denied without a hearing as well. Neither order provided the basis for the circuit court’s denial. This timely appeal followed.

STANDARD OF REVIEW

The Association challenges the circuit court’s denial of its motion for attorney’s fees. Ordinarily, we review an award of attorney’s fees for abuse of discretion. *SunTrust Bank v. Goldman*, 201 Md. App. 390, 397 (2011). Nevertheless, when a “provision in the parties’ contract plainly states that the prevailing party ‘shall be entitled to receive reasonable attorney’s fees from the other party’ ... the trial court [does] not have discretion to refuse to award fees altogether.” *Myers v. Kayhoe*, 391 Md. 188, 207-08 (2006). Accordingly, the trial court’s interpretation of such a provision is reviewed for legal correctness. *Weichert Co. of Md., Inc. v. Faust*, 419 Md. 306, 317 (2011) (citing *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 448 (2008)).

To determine whether the trial court’s interpretation was legally correct, “we give no deference to the trial court findings and review the decision under a *de novo* standard of review.” *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018). Further, we examine the contract and the disputed provisions under the “objective theory.” *Weichert, supra*, 419 Md. at 324 (citing *Nova Research*, 405 Md. at 447-48). In doing so, “we look to the entire language of the agreement, not merely a portion thereof.” *Id.* (citations omitted). “When interpreting a contract’s terms, we consider ‘the customary, ordinary and accepted meaning of the language used.’” *Id.* (quoting *Atlantic v. Ulico*, 380 Md. 285, 301 (2004)).

DISCUSSION

The Association argues that it is entitled to attorney’s fees and court costs under Article XI, Section 11.2(a) of the Declaration. We, therefore, must examine the language of this provision of the Declaration, looking at it within the context of the entire document. The Declaration provides certain covenants, conditions, and restrictions for homeowners within the Association. Article II specifically involves the restrictions on exterior changes to a home. Article XI, Section 11.2(a) provides that enforcement of the covenants, conditions, and restrictions contained in the Declaration “shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both.” Critically, Section 11.2(a) provides:

In acquiring title to any Lot in the Property, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Record Owners for all costs and expenses for which it or they may incur as a result of the said violation or attempted violation, including but not limited to, court costs and attorney’s fees.

Ms. Shaw purchased a lot within the Association, binding her to the terms of the Declaration. Ms. Shaw violated Article II of the Declaration by making unapproved changes to the exterior of her home, causing the Association to initiate legal proceedings against her to enjoin those violations and enforce its rights under the Declaration. The Association was granted permanent injunctive relief against Ms. Shaw, which ordered her to correct each violation. Section 11.2(a) clearly and unambiguously allows the

Association to recover reasonable attorney's fees and court costs under these circumstances.⁶

Ms. Shaw does not dispute the language set forth in Section 11.2(a), but instead asserts that the Association is not entitled to attorney's fees and court costs because it did not follow the terms of Article XI, Section 11.2(c) of the Declaration when it filed suit against her. Section 11.2(c) governs the commencement of a lawsuit by the Association, against an individual in violation of the Declaration. Ms. Shaw contends that pursuant to Section 11.2(c), the Association was not authorized by its own terms, to commence legal proceedings against her without having the action:

[A]pproved in writing by, or by the vote of both (i) members entitled to cast at least 75 percent of the votes held by all Owners other than the Class B Member, and (ii) (if such action would be taken during the Development period), the votes of the Class B Member holding at least 75 percent of the votes.

She fails to recognize, however, that Section 11.2(c) further provides:

Nothing in this subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an assessment, (b) *otherwise to enforce the Association's rights or another person's obligations under the Declaration, By-Laws or Articles of incorporation on account of a default or under any other provision of such documents*, or (c) any action taken by the Declarant at any time or action undertaken by the Architectural Review Committee during the development period.

⁶ In its brief, the Association discusses the factors that guide a trial court's determination of the amount of an award of attorney's fees. Additionally, it argues that the fees charged for prosecution of this case were fair and reasonable. We decline to address these contentions, as they are ones to properly be addressed by the circuit court on remand.

(Emphasis added.) The Association filed suit against Ms. Shaw to enforce their rights and her obligations under Article II of the Declaration. We hold, therefore, that the Association was not required to obtain approval of its members before filing suit.

Accordingly, we reverse the circuit court's denial of attorney's fees, and remand the case for the circuit court to determine the amount of fees that the Association is entitled pursuant to Article XI, Section 11.2(a) of the Declaration and Maryland Rule 2-705(f) and Maryland Rule 2-703(f).

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY REVERSED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE.**